

WSR 14-21-016
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed October 2, 2014, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-19-068.

Title of Rule and Other Identifying Information: The department is amending chapter 388-71 WAC, specifically adult day services.

Hearing Location(s): Office Building 2, 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>), on December 9, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 10, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 23, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant by November 25, 2014, TTY (360) 664-6178, or (360) 664-6092, or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-71 WAC, specifically adult day services, in order to differentiate adult day care from adult day health by separating the rules and to update the rule to meet the provider practice changes.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Casey Zimmer, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2526.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

September 30, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0702 ~~((Purposes and definitions.))~~
What is the purpose of adult day services? (1) WAC 388-71-0702 through 388-71-0776 ~~((contain))~~ contains the eligibility requirements for ~~((medicaid-funded))~~ COPEs waiver and roads to community living (RCL) demonstration funded adult day care and adult day health services. These rules also contain the requirements that apply to adult day care or adult day health centers that contract with the department, an area agency on aging, or other department designee to provide ~~((medicaid))~~ COPEs waiver and RCL services to department clients. Nothing in these rules may be construed as requiring the department, area agency on aging, or other designee to contract with an adult day care or day health center.

(2) An adult day services program is a community-based program designed to meet the needs of adults with impairments through individual plans of care. This type of structured, comprehensive, nonresidential program provides a variety of health, social, and related support services in a protective setting. By supporting families and caregivers, ~~((an adult day services program enables the person))~~ the goals are:

(i) To provide the opportunity for the participant to live in ((the) their community((-));

(ii) To provide the participant with services, clinical and non-clinical to meet their unmet skilled needs;

(iii) To assist the participant to maintain maximal independence in their activities of daily living (ADL); and

(iv) To measure their progress through the interventions.

An adult day services program ~~((assesses))~~ evaluates the needs of the ~~((persons))~~ participant served and offers services to meet those needs and enhance their quality of life. The ~~((persons))~~ participants served attend on a planned basis. The centers evaluate the potential participants to determine if they are able to communicate with each participant in order to meet their identified need/s. Nothing in this generic description ~~((of adult day services))~~ may be construed to modify the specific services or eligibility requirements referenced in the definition of adult day care and adult day health.

(3) The following definitions apply under WAC 388-71-0702 through 388-71-0774:

(a) **"Adult day care"** (ADC) means the services under WAC 388-71-0704 that are provided to clients who meet the eligibility requirement under WAC 388-71-0708.

(b) **"Adult day center"** means an adult day care or adult day health center. A day care or day health center for purposes of these rules is a center operating in a specific location, whether or not the center's owner also operates adult day centers in other locations.

(c) **"Adult day health"** (ADH) means the ADC services and the skilled care services listed under WAC 388-71-0706 that are provided to clients who meet the eligibility requirements under WAC 388-71-0710.

(d) **"Adult day services"** is a generic term referring to adult day care and adult day health services.

(e) **"Authorizing Practitioner"** means a physician, osteopath, nurse practitioner and physician assistant who has the licensed ability to write medical orders for skilled care interventions requiring a practitioner order.

(f) "Chronic-care management" means regular monitoring of the client's chronic health condition, training the client and caregiver, providing treatments or interventions when warranted and regular communication with primary care practitioner and caregivers to help implement and keep current the clinical care plan while ensuring the treatments are having the intended effect of improving health, maintaining health or slowing declining health when the diagnosis is a non-reversible condition.

(g) "Client" means an applicant for or recipient of ((medicaid-)) COPEs waiver or RCL reimbursed adult day services.

((f)) (h) "Direct Care Staff" are the staff in an adult day center that is interacting with participants by providing care, services, and guidance.

(i) "The Discharge Plan" (DC) outlines specific measurable goals expected to occur due to the skilled individualized treatments provided to the participants indicating discharge is appropriate. This plan is developed and addressed on the client's ADC and/or ADH negotiated care plan and updated with each significant change of condition or when the client partially or completely meets the expected measurable goal/s. Discharge planning outcomes reflect the end of the treatment due to the client meeting the measurable outcomes or stipulating that a client has declined to the point of inability to participate in skilled treatment or is no longer able to benefit from skilled treatment.

(j) "Maintenance" is continuing clinically appropriate skilled service/s which is justified as reasonable, necessary, and/or appropriate to sustain minimal loss of function. Maintenance interventions have discharge measurable goals that outline when maintenance skilled services are no longer beneficial.

(k) "Medically Necessary" means the service is reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent worsening of conditions in the client that endangers life, or causes suffering or pain, or results in an illness or infirmity, or threatens to cause or aggravate a disability, or causes physical deformity or malfunction.

(l) "Negotiated Care Plan" The adult day center must use the participant state assessment, center's evaluation and preliminary service plan to develop a written negotiated care plan. The center must ensure each participant's negotiated care plan includes:

- (1) A list of the care and services to be provided;
- (2) Identification of who will provide the care and services;
- (3) When and how the care and services will be provided;
- (4) How medications will be managed, including how the participant will receive their medications when attending the adult day center;
- (5) The participant's activities preferences and how the preferences will be met;
- (6) Other preferences and choices about issues important to the resident, including, but not limited to:
 - (a) Food;
 - (b) Daily routine;
 - (c) Grooming; and

(d) How the center will accommodate the preferences and choices.

(7) If needed, a plan to:

(a) Follow in case of a foreseeable crisis due to a participant's assessed needs;

(b) Reduce tension, agitation and problem behaviors;

(c) Respond to participant's special needs, including, but not limited to medical devices and related safety plans;

(d) Respond to a participant's refusal of care or treatment, including when the participant's physician or practitioner should be notified of the refusal; and

(8) Identification of any communication barriers the participant may have and how the center will use behaviors and nonverbal gestures to communicate with the resident.

(m) "Participant" means clients and other persons receiving adult day services at an adult day center.

(n) The adult day center must ensure that each participant has a preliminary service plan that includes:

(1) The participant's specific problems and needs identified in the assessment;

(2) The needs for which the participant chooses not to accept or refuses care or services;

(3) What the center will do to ensure the participant's health and safety related to the refusal of any care or service;

(4) Participant defined goals and preferences; and

(5) How the center will meet the participant's needs.

(o) "Rehabilitative Service" is provided using applicable physical therapy or occupational therapy or speech therapy standards of practice and is considered medically necessary if the type, amount, and duration of services outlined in the plan of care increase the likelihood of meeting one or more of these stated goals: to improve function, minimize loss of function, improve cognition or minimize loss of cognition, or decrease risk of injury and disease.

(p) "Significant Change" means:

(i) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(ii) The change is significant enough so the current assessment and/or negotiated care plan does not reflect the resident's current status; and

(iii) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

(q) "Skilled Nursing Services" must be reasonable and necessary for the treatment of the illness or injury, that is the services must be consistent with the unique nature and severity of the participant's illness or injury, his or her particular medical needs, and accepted standards of medical and nursing practice, without regard to whether the illness or injury is acute, chronic, terminal, or expected to last a long time. The standards of nursing conduct or practice must follow WAC 246-840-700.

(r) "Specific Goals" mean those expected outcomes, individualized to the client's skilled need, that stipulate the measurable, detailed and expected progress the client may make while receiving the skilled service. They address the how, who, what and when of the expected final outcome. If a client's goal is to prevent a decline in their condition/s the goal/s must have measurable outcomes which identify the intervention to prevent the decline and how to measure this

prevention. If you cannot measure the expected outcome of the clinical intervention then you are not preventing a decline.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-71-0704 (~~(Adult day care—Services.)~~)

What services are provided in adult day care? Adult day care is a supervised (~~(daytime)~~) non-residential program providing (~~(core)~~) services as defined in WAC 388-106-0800. (~~(Core services)~~) Services are appropriate for adults with medical or disabling conditions that do not require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's (~~(physician)~~) authorizing practitioner. The adult day care center must offer and provide on-site the following (~~(core)~~) services. These (~~(core)~~) services must meet the level of care needed by the client as assessed by the department case manager for waiver funded clients and do not exceed the scope of services that the adult day care center is able to provide.

(1) Assistance with activities of daily living:

- (a) Locomotion outside of room, locomotion in room, (~~(walk)~~) walks in room;
- (b) Body care;
- (c) Eating;
- (d) Repositioning;
- (e) Medication management that does not require a licensed nurse;
- (f) Transfer;
- (g) Toileting;
- (h) Personal hygiene at a level that ensures client safety while in attendance at the program; and
- (i) Bathing at a level that ensures client safety and comfort while in attendance at the program.

(2) Social services on a consultation basis, which may include:

- (a) Referrals to other providers for services not within the scope of (~~(medicaid)~~) COPES waiver or RCL reimbursed adult day care services;
 - (b) Caregiver support and education; or
 - (c) Assistance with coping skills.
- (3) Routine health monitoring with consultation from a registered nurse that a consulting nurse acting within the scope of practice can provide with or without (~~(a physician's)~~) an authorizing practitioner's order. Examples include:

- (a) Obtaining baseline and routine monitoring information on client health status, such as vital signs, weight, and dietary needs;
- (b) General health education such as providing information about nutrition, illnesses, and preventative care;
- (c) Communicating changes in client health status to the client's caregiver;

(d) Annual and as needed updating of the client's medical record; or

(e) Assistance as needed with coordination of health services provided outside of the adult day care program.

(4) General therapeutic activities that an unlicensed person can provide or that a licensed person can provide with or without (~~(a physician's)~~) an authorizing practitioner's order. These services are planned for and provided based on the client's abilities, interests, and goals. Examples include:

- (a) Recreational activities;
- (b) Diversionary activities;
- (c) Relaxation therapy;
- (d) Cognitive stimulation; or
- (e) Group range of motion or conditioning exercises.

(5) General health education that an unlicensed person can provide or that a licensed person can provide with or without (~~(a physician's)~~) an authorizing practitioner's order, including but not limited to topics such as:

- (a) Nutrition;
- (b) Stress management;
- (c) Disease management skills; or
- (d) Preventative care.

(6) A nutritional meal and snacks every four hours, including a modified diet if needed and within the scope of the program, as provided under WAC (~~(388-71-0768)~~) 388-71-0770;

(7) Supervision and/or protection if needed for client safety;

(8) Assistance with arranging transportation to and from the program; and

(9) First aid and provisions for obtaining or providing care in an emergency. NOTE: If the client requires the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of (~~(a physician)~~) an authorizing practitioner, consider adult day health services.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-71-0706 (~~(Adult day health—Services.)~~)

What services are provided in adult day health? Adult day health is a supervised (~~(daytime)~~) non-residential program providing skilled nursing and/or rehabilitative therapy services in addition to (~~(core)~~) all services provided in an adult day care center. Adult day health services are only appropriate for adults with medical or disabling conditions that require the skilled intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's (~~(physician)~~) authorizing practitioner.

The adult day health center must offer and provide on-site the following services:

- (1) All (~~(core)~~) services under WAC 388-71-0704; and
- (2) Skilled nursing services other than routine health monitoring with nurse consultation; or
- (3) At least one of the following skilled therapy services: physical therapy, occupational therapy, or speech-language pathology or audiology, as defined under chapters 18.74, 18.59 and 18.35 RCW; and

(4) Psychological or counseling services, including assessing for psycho-social therapy need, dementia, abuse or neglect, and alcohol or drug abuse; making appropriate referrals; and providing brief, intermittent supportive counseling. These services are provided by social services professionals.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0708 ~~((Adult day care—Eligibility.))~~
What are the eligibility criteria for enrollment in adult day care? Clients are eligible for adult day care services if they meet criteria outlined in WAC 388-106-0805.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0710 ~~((Adult day health—Eligibility.))~~
What are the eligibility criteria for enrollment in adult day health? Clients are eligible for adult day health services if they meet the criteria outlined in WAC 388-106-0815 which references WAC 388-106-0300 and 0305.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0712 ~~((Adult day health—Skilled nursing.))~~ **What is considered skilled nursing in adult day health?** (1) Skilled nursing services are medically necessary services provided directly or indirectly by a registered nurse under ~~((physician))~~ an authorizing practitioner's supervision, or by a licensed practical nurse under physician or registered nurse supervision, that a licensed nurse acting within the scope of practice can provide or supervise. ~~((Physician))~~ Authorizing practitioner orders must be obtained when required by applicable state practice laws for licensed nurses. Authorizing practitioner orders must be obtained upon initial service, updated when a significant change occurs changing the nursing intervention or at least annually.

(2) Skilled nursing services must exceed the level of routine health monitoring, general health education, and general therapeutic activities as defined in WAC 388-71-0704, and must be provided with the reasonable expectation that the services will improve, restore, ~~((or))~~ maintain function ~~((as defined in WAC 388-71-0710 (1)(e)))~~ or slow the client's decline of the disease or functional ability. Skilled nursing services are:

- (a) Specific to a ~~((client))~~ client's diagnosis;
- (b) Individualized to the client with planned measurable ~~((outcomes))~~ outcome goals; and
- (c) ~~((Evaluated))~~ Re-evaluated every ninety days or sooner when there is a significant health change for effect on improvement or maintenance of health status, or ~~((prevention of decline))~~ slowing the decline of the disease or functional ability.

(3) Skilled nursing services, including the initial client nursing assessment and development of the nursing plan of care, must be provided or supervised by a registered nurse in accordance with nursing practice standards under chapter 246-840 WAC.

(4) A skilled nursing service is not a qualifying adult day health service merely because the service is ordered by ~~((a physician))~~ an authorizing practitioner or is provided by a nurse. If, by way of example, the service can be performed by the client or at the client's direction by a person other than a licensed nurse, ~~((or the client does not meet eligibility criteria.))~~ it is not a qualifying adult day health service.

(5) Skilled nursing services must be medically necessary as defined under WAC ~~((388-500-0005))~~ 182-500-0070. Medically necessary skilled nursing services ~~((may, but do not necessarily.))~~ include but at not limited to:

(a) ~~((Care and assessment))~~ Assessment, care and evaluation with collaboration of services of an acute or chronic unstable or unpredictable medical condition, with time ~~((limited))~~ specific measurable treatment goals, requiring frequent skilled intervention by a registered nurse or by a licensed practical nurse under the supervision of a registered nurse according to WAC 246-840-705 and ordered by the authorizing practitioner;

(b) Evaluation and management of the care plan when unstable medical conditions or complications require complex nonskilled care and skilled nurse oversight to ensure that the nonskilled care is achieving its purpose;

(c) Time-limited training by licensed nursing staff to teach the client and/or the client's caregiver self-care for newly diagnosed, acute, or episodic medical conditions that require the skills of a licensed nurse to teach, and that will optimize client function, as illustrated by the following examples:

- (i) Self administration of an injection;
 - (ii) Prefilling insulin syringes;
 - (iii) Irrigating a catheter;
 - (iv) Caring for a colostomy or urostomy;
 - (v) Wound dressing changes or aseptic technique; or
 - (vi) Disease self-management.
- (d) Skilled interventions provided directly by a licensed nurse such as:
- (i) Inserting or irrigating a catheter;
 - (ii) Administering medications or oxygen;
 - (iii) Administering and managing infusion therapy; or
 - (iv) Treating ~~((decubitis))~~ decubitus ulcers, or other types of wound care.

(e) Provide holistic collaborative care of the client's acute, chronic, unstable or unpredictable medical condition or disease.

(6) Medically necessary skilled nursing services, by way of example, do **not** include:

- (a) Reminding or coaching the client;
- (b) Monitoring of a medical condition that does not require frequent skilled nursing intervention or a change in ~~((physician))~~ authorizing practitioner treatment orders, or where there is no reasonable expectation that skilled services will maintain, improve, or slow the effect of a progressive disabling condition on the pain, health or functioning of a client;

(c) Medication assistance when the client is capable of self-administration or is having this need met through paid or unpaid caregivers;

(d) Evaluation and management of the care plan when the complexity of care to be provided by nonskilled persons

does not require skilled nurse oversight beyond routine health monitoring;

(e) Continued training by nursing staff to teach self-care for newly diagnosed, acute, or episodic medical conditions when it is apparent that the training should have achieved its purpose or that the client is unwilling or unable to be trained;

(f) ~~((Core))~~ ADC services that can be provided by an adult day care center, such as routine health monitoring, general health education, or general therapeutic activities; or

(g) Group therapy or training where three or more clients are being simultaneously treated or trained by the nurse.

(7) Skilled nursing services must be documented as provided under WAC 388-71-0746 and ~~((chapter 388-502))~~ WAC 182-502-0020.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0714 ~~((Adult day health—Rehabilitative therapy))~~ What is considered rehabilitative therapy in adult day health? (1) Skilled rehabilitative therapy services are medically necessary services provided by or under the supervision of a licensed physical, occupational, or speech-language pathology or audiology therapist that the therapist acting within the scope of practice can provide or supervise directly or indirectly. ~~((Physician))~~ Authorizing practitioner orders must be initially obtained and updated when a significant change occurs or at least annually when required by applicable state practice laws for licensed therapists.

(a) Persons that can provide rehabilitative care under the direction and supervision of a licensed therapist include occupational therapy aides, occupational therapy assistants, physical therapy aides, physical therapy assistants, and nurses within their respective scopes of practice. Adult day health program aides, specifically trained in rehabilitative techniques, may also provide care under the direction and supervision of a licensed therapist.

(b) Services, group or individual, must be related to an active written plan of care with time ~~((limited))~~ specific measurable treatment goals approved by the ~~((physician))~~ authorizing practitioner;

(c) Services, group or individual, must require the assessment, knowledge and skills of a licensed therapist; and

(d) Services, group or individual, must be provided with the reasonable expectation that the services will improve, restore, ~~((or))~~ maintain function, or slow decline. Rehabilitative services are:

(i) Specific to a client diagnosis;

(ii) Individualized to the client with planned, measurable outcomes; and

(iii) ~~((Evaluated))~~ Re-evaluated every ninety days for effect on improvement of health status or ~~((prevention of))~~ slowing the decline.

(2) Skilled rehabilitative therapy is not a qualifying adult day health service merely because the therapy is ordered by ~~((a physician))~~ an authorizing practitioner or is provided by a therapist or under the supervision of a therapist. If, by way of example, the therapy can be performed independently by the client or at the client's direction by a person other than a

licensed therapist, ~~((or the client does not meet eligibility criteria,))~~ it is not a qualifying adult day health service.

Skilled rehabilitative therapy services must be medically necessary as defined under WAC ~~((388-500-0005))~~ 182-500-0070.

(3) Medically necessary physical therapy services may, but do not necessarily include:

(a) Assessing baseline mobility level, strength, range of motion, endurance, balance, and ability to transfer;

(b) One to one and group treatment to relieve pain, ~~((or))~~ develop, restore, or maintain functioning, with individualized and measurable client treatment goals;

(c) Establishing a maintenance or restorative program with measurable treatment goals, and providing written and oral instruction to the client, caregivers, or program staff as needed to assist the client in implementing the program;

(d) Training the client or the client's caregivers in the use of supportive, adaptive equipment or assistive devices;

(e) Evaluation and management of the care plan when medical conditions or complications require complex non-skilled care and skilled therapist oversight to ensure that the non-skilled care is achieving its purpose; or

(f) Providing other medically necessary services that can only be provided by or under the direct or indirect supervision of a physical therapist acting within the therapist's scope of practice.

(4) Medically necessary occupational therapy services may, but do not necessarily include:

(a) Administering a basic evaluation to determine baseline level of functioning, ability to transfer, range of motion, balance, strength, coordination, activities of daily living and cognitive-perceptual functioning;

(b) Teaching and training the client, caregivers, or program staff in the use of therapeutic, creative, and self-care activities to improve or maintain the client's capacity for self-care and independence, and to increase the range of motion, strength and coordination;

(c) One to one and group treatment to develop, restore, or maintain functioning with individualized and measurable client treatment goals;

(d) Training the client or the client's caregivers in the use of supportive, adaptive equipment or assistive devices;

(e) Evaluation and management of the care plan when medical conditions or complications require complex non-skilled care and skilled therapist oversight to ensure that the non-skilled care is achieving its purpose; or

(f) Providing other medically necessary services that can only be provided by or under the direct or indirect supervision of an occupational therapist acting within the therapist's scope of practice.

(5) Medically necessary speech-language pathology or audiology services may, but do not necessarily include;

(a) Assessing baseline level of speech, swallowing, auditory, or communication disorders;

(b) Establishing a treatment program to improve speech, swallowing, auditory, or communication disorders;

(c) Providing speech therapy procedures that include auditory comprehension tasks, visual and/or reading comprehensive tasks, language intelligibility tasks, training involv-

ing the use of alternative communication devices, or swallowing treatment;

(d) Training the client or the client's caregivers in methods to assist the client in improving speech, communication, or swallowing disorders;

(e) Evaluation and management of the care plan when medical conditions or complications require complex non-skilled care and skilled therapist oversight to ensure that non-skilled care is achieving its purpose; or

(f) Providing other medically necessary services that can only be provided by or under the direct or indirect supervision of a speech-language pathology or audiology therapist acting with the therapist's scope of practice.

(6) Medically necessary skilled rehabilitative therapy services, by way of example, do **not** include:

(a) Reminding or coaching the client in tasks that are not essential to the skilled therapy or intervention in the client's service plan;

(b) Monitoring of a medical condition that does not require frequent skilled therapist intervention or a change in ~~((physician))~~ authorizing practitioner treatment orders, or where there is no reasonable expectation that skilled services will maintain, improve, or slow the effect of a progressive disabling condition on the pain, health or functioning of a client;

(c) Massage therapy;

(d) Evaluation and management of the care plan when the complexity of the care to be provided by nonskilled persons does not require the skills of a licensed therapist for oversight;

(e) Continued training by therapy staff to teach self-care for newly diagnosed, acute, or episodic medical conditions when it is apparent that the training should have achieved its purpose or that the client is unwilling or unable to be trained;

(f) ~~((Core))~~ ADC services that can be provided by an adult day care center, such as routine health monitoring, general health education, or general therapeutic activities; or

(g) Group therapy or training where the ratio of licensed therapists and assisting program staff to clients is inadequate to ensure that:

(i) The group activity contributes to the individual client's planned therapy goals; and

(ii) The complexity of the individual client's need can be met.

(7) Skilled therapy services must be documented as provided under WAC 388-71-0746 and ~~((chapter 388-502))~~ WAC 182-502-0020.

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

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0716 ~~((Adult day care—Assessment and service plan.))~~ What kind of assessment and service plan is required to determine a client's unmet needs for adult day care? (1) The department or an authorized case manager must perform a comprehensive assessment reporting evaluation (CARE) ~~((assessment))~~ to determine a client's

need for adult day care, per WAC 388-106-0065. Based on the assessment, the case manager determines whether the client should be referred for day care services or whether the client's needs can be met in other ways.

(2) If the case manager determines an unmet need for ~~((a core))~~ an ADC service that may be provided at a day care center, the case manager works with the client and/or the client's representative to develop a service plan that documents the needed services and the number of days per week that the services are to be provided. The case manager refers the client to a waiver-contracted day care center that the client and the case manager agree can potentially meet the client's needs.

(3) Clients receiving adult day care services must be reassessed at least annually.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0718 ~~((Adult day care—Negotiated care plan.))~~ What is the adult day care center's responsibility in developing the client's negotiated care plan? (1) Upon referral of a COPES or RCL eligible client by the department or authorized case manager, the ~~((day care))~~ ADC center will respond in writing to the department or authorized case manager within two working days of receipt of the referral and its ability to process and evaluate the referred client. The ADC center must conduct an intake evaluation based on an interview with the client and/or the client's representative to assess the center's ability to meet the client's needs as identified in the department service plan.

(2) The case manager will provide the client's service plan to the adult day care provider within five working days after the client or client's representative has signed it.

~~((2) Within two working days of the referral, the day care center must respond to the referral and notify the case manager of its ability to process and evaluate the referral.))~~

(3) The ADC center will schedule intake evaluations visits with the referral client and/or their representative to evaluate the ADC center's ability to meet the needs of the client as defined in the client's service plan.

(4) Within ten working days ~~((of))~~ from the initial date of client attendance at the day care center, the center must determine whether it can meet the client's needs, how those needs will be met, and whether to accept the client to the program. The center must not accept a client whose needs the center cannot meet. The center will document in the client's file the date he/she was accepted into the ADC program.

~~((4))~~ (5) Within thirty calendar days of acceptance into the program, the day care center must work with the client and/or their representative to develop and complete a negotiated care plan signed by the client or the client's representative and the day care center.

(6) This care plan must be updated annually and when there is a significant change in the client's condition and needs. the care plan when updated, annually or after significant change, must be shared with the client's case manager. The care plan must:

(a) Be consistent with the department-authorized service plan and include all day care services authorized in the service plan;

(b) Document the client's needs as identified in the service plan, the adult day care services that will be provided to meet those needs, and when, how, and by whom the services will be provided;

(c) Document the client's choices and preferences concerning the provision of care and services, and how those preferences will be accommodated;

(d) Document potential behavioral issues identified in the assessment, service plan, or through the intake evaluation, and how those issues will be managed;

(e) Document contingency plans for responding to a client's emergent care needs or other crises; and

(f) Be approved by the client's case manager.

~~((5))~~ (7) The adult day care center must keep at least the current negotiated care plan in the client's file, must offer a copy of the plan to the client or client representative, and must provide a copy to the client's case manager. The case manager must review the negotiated care plan for inclusion of services that are appropriate and authorized for the client's care needs.

~~((6))~~ (8) The negotiated care plan must limit the frequency of services to the number of days authorized in the department-authorized service plan.

~~((7))~~ (9) The day care center must review each service in the negotiated care plan if the client's condition changes, and determine if the care plan continues to meet the client's needs. Changes in the client's condition or unanticipated absences of more than three consecutive days of scheduled service must be reported to the client's case manager within one week. Unanticipated absences by way of example may include absences due to client illness or injury, or a change in transportation access. The case manager may follow-up with the client and ~~((determine))~~ determines if any updates to the assessment, service plan, and service authorization are needed.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0720 ~~((Adult day health—Assessment and service plan.))~~ What is the adult day health center's responsibility in working with the department or their designee to obtain, use and update the CARE assessment?

(1) The department or an authorized case manager must perform a CARE assessment to determine a client's need for adult day health, per WAC 388-106-0065. Based on the assessment, the case manager determines whether the client should be referred for day health services or whether the client's needs can be met in other ways.

(2) If the client **has** a department or area agency on aging case manager, the adult day health center or other referral source must notify the case manager of the client's potential adult day health service need. The case manager must assess the client's need for skilled nursing or skilled rehabilitative

therapy within the department's normal time frames for client reassessments.

(3) If the client **does not have** a department or area agency on aging case manager, the adult day health center or other referral source must notify the department of the referral and the client's potential adult day health service need, or refer the client to the department for intake. The department's assigned case manager must assess the client's need for adult day health services within the department's normal time frames for initial client eligibility assessments.

(4) The case manager may consult with the client's authorized practitioner, department or area agency on aging nursing services staff, or other pertinent collateral contacts, concerning the client's need for skilled nursing or rehabilitative therapy.

(5) If the department or area agency on aging case manager determines and documents a potential unmet need for day health services, the case manager works with the client and/or the client's representative to develop a service plan that documents the potential unmet needs and the anticipated number of days per week that the services are needed. The case manager refers the client to a department contracted adult day health center for evaluation and the development of a preliminary ~~((negotiated))~~ service plan ~~((of care))~~.

(6) The department or area agency on aging case manager must reassess adult day health clients at least annually. Clients must also be reassessed if they have a break in service of more than thirty days. The adult day health center must inform the case manager of the break in service so payment authorization can be discontinued.

(7) ~~((Recipients))~~ COPES and RCL recipients of adult day health services must be assessed by the department or an authorized case manager for initial or continued ~~((or initial))~~ eligibility as follows:

(a) Annual reassessment for department clients; or

(b) ~~((Adult day health quarterly review for current non-departmental clients as resources allow; and~~

~~((e) New referrals for adult day health services are to be forwarded to))~~ A new client to the center who potentially could be eligible for state paid ADH services are to be referred to the local department offices for intake and assessment for eligibility.

(8) The department or area agency on aging case manager must review a client's continued eligibility for adult day health services every ninety days, coinciding with the quarterly review completed by the adult day health program. At the case manager's discretion, additional information will be gathered through face to face, collateral or other contact methods to determine continued eligibility. Services will be continued, adjusted, or terminated based upon the case manager's determination during the eligibility review.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0722 ~~((Adult day health—Negotiated care plan.))~~ What is the adult day health center's responsibility in developing the client's negotiated care plan? (1) ~~((Upon referral of a client by the department or an authorized case manager, the day health center must conduct an intake~~

evaluation and multidisciplinary assessment based on an interview with the client or the client's representative to determine the center's ability to meet the client's core service needs and potential adult day health needs as identified in the preliminary department service plan. The case manager will provide the client's service plan to the day health center within five working days after the client or client's representative has signed it. The day health center must evaluate the client's skilled and core service needs, and may provide up to ten days of paid service to complete the evaluation and develop a preliminary or negotiated plan of care to be provided to the client and the case manager.

~~(2) Within two working days of the referral, the day health center must respond to the referral and notify the case manager of its ability to process and evaluate the referral.~~

~~(3) Within ten paid days of service, the day health center must determine whether it can meet the client's needs, how those needs will be met, and whether to accept the client to the program. The center must not accept a client whose needs the center cannot meet. The center will be reimbursed under WAC 388-71-0724 for any service days provided from the start of the evaluation if the case manager has authorized services. The evaluation includes acceptance of the client to the center, the development of the initial assessment, and the preliminary negotiated plan of care.) Upon referral of a COPES or RCL eligible client by the department or an authorized case manager, the ADH center will respond in writing to the department or authorized case manager within two working days of receipt of the referral regarding its ability to process and evaluate the referred client.~~

~~(2) The department case manager will send the client's signed service plan to the ADH center within five working days after signature.~~

~~(3) The ADH center will schedule intake evaluation visits with the referred client and/or their representative to assess the ADH center's ability to meet the needs of the client as defined in the client's service plan.~~

~~(4) Within ten paid days of service, the day health center must determine if it can meet the client's needs, whether to accept the client to the program, and how those needs will be met. The center must document in the client's file the date of acceptance into their program. The center must not accept a client whose needs the center cannot meet. The center will be reimbursed under WAC 388-71-0724 for any service days provided from the start of the intake evaluation if the case manager has authorized services. The written intake evaluation includes acceptance of the client to the center or reason/s why not accepted, the development of the evaluation, and the preliminary service plan.~~

~~(5) When the ADH center conducts the intake evaluation visits there must be a multidisciplinary assessment conducted based on an interview and evaluation of the client's strengths and deficits with the client or the client's representative to determine the center's ability to meet the client's adult day care service needs and potential adult day health needs as identified in the department service plan. If the department service plan indicates a nursing and/or rehabilitative need then during the intake evaluation period these professionals will conduct evaluations and assessment of the client's clinical/rehabilitative needs to determine if they can be met at the center.~~

~~cal/rehabilitative needs to determine if they can be met at the center.~~

~~(6) The ADH center may provide up to ten days of paid service to the client to complete the evaluation with the development of a preliminary service plan to be provided to the client and the case manager.~~

~~((4)) (7) Upon approval by the case manager of the adult day health preliminary ((or negotiated care)) service plan, the day health center multidisciplinary team must obtain and provide to the case manager any required practitioner's orders for skilled nursing and rehabilitative therapy along with a copy of the ((negotiated)) preliminary service plan ((of care)), according to department documentation requirements. Orders must indicate how often the client is to be seen by the authorized practitioner. The case manager or nursing services staff may follow up with the practitioner or other pertinent collateral contacts concerning the client's need for skilled services. Services may not be authorized for payment without current practitioner orders and the client's consent to follow up with the practitioner.~~

~~((5)) (8) Within thirty calendar days of the client's acceptance into the program, the day health multidisciplinary team must work with the client and/or their representative to develop a negotiated care plan signed by the client or the client's representative and the day health center. The negotiated care plan can be developed initially in lieu of developing a preliminary service plan. The care plan must:~~

~~(a) Be consistent with the department-authorized service plan and include all day health services authorized in the service plan;~~

~~(b) Include an authorized practitioner's order(s) for skilled nursing and/or skilled rehabilitative therapy according to applicable state practice laws for licensed nurses or therapists. These authorizing practitioner orders must be reviewed, updated or revised when a significant change occurs or at least annually, or sooner if required by the prescriber;~~

~~(c) Document that the client or the client's representative has consented to follow up with the primary authorizing practitioner;~~

~~(d) Document the client's needs as identified in the service plan, the authorized services that will be provided to meet those needs, and when, how, and by whom the services will be provided;~~

~~(e) Establish time((limited, client)) specific, measurable individualized client goals, not to exceed ninety days from the date of signature of the negotiated care plan, for accomplishing the ((objectives)) goals of adult day health skilled services and/or discharging or transitioning the client to other appropriate settings or services;~~

~~(f) Document the client's choices and preferences concerning the provision of care and services, and how those preferences will be accommodated;~~

~~(g) Document potential behavioral issues identified in the assessment, service plan, or through the intake evaluation, and how those issues will be managed;~~

~~(h) Document contingency plans for responding to a client's emergent care needs or other crises; and~~

~~(i) Be approved by the case manager.~~

~~((6)) (9) The adult day health center must keep the negotiated care plan in the client's file, ((the plan)) provide a~~

copy to the client or client representative, and ~~((must provide))~~ a copy to the client's case manager, including any required authorizing practitioner orders. The department case manager must review the negotiated care plan for inclusion of services that are appropriate and authorized for the client's care needs.

~~((7))~~ (10) The negotiated care plan must limit the frequency of department-funded services to the number of days in the department-authorized service plan.

~~((8))~~ (11) The day health center must review each service in the negotiated care plan every ninety days or more often if the client's condition changes, or if the client is reassessed for eligibility after a break in service of more than thirty days. Changes in the client's condition or unanticipated absences of more than three consecutive days of scheduled service must be reported to the client's case manager within one week. Unanticipated absences by way of example may include absences due to client illness or injury. The case manager may follow-up with the client and ~~((determine))~~ determines if any updates to the assessment, service plan, and service authorization are needed.

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

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0724 ~~((Adult day services—Contracting and rates.))~~ **How do I apply for an adult day program state contract?** (1) The department, or an area agency on aging (or other department designee) as authorized by the department, must determine that the adult day care or day health center meets the applicable adult day care or day health requirements and any additional requirements for contracting with the area agency on aging, according to each AAA's procurement procedure, through a ~~((COPES))~~ state contract.

(2) All ADH centers must also have a core provider agreement with the health care authority in order to bill for providing care and services to the COPES or RCL participants. ~~((or with the department through a medicaid provider contract.))~~

(3) If a center is contracting for both day care and day health, requirements of both adult day services must be met.

~~((a))~~ (4) A prospective provider desiring to provide adult day services shall be provided an application form from the department or the area agency on aging. A prospective provider convicted of abuse or neglect of a vulnerable adult is not eligible to provide adult day services in any capacity within the organization per chapter 74.34 RCW.

~~((b))~~ (5) The prospective provider will provide the area agency on aging with evidence of compliance with, or administrative procedures to comply with, the adult day service rules under this chapter.

~~((c))~~ (6) The area agency on aging will conduct a site inspection of the adult day center and review of the requirements for contracting.

~~((d))~~ (7) Within thirty days of completing the site visit, the area agency on aging will advise the prospective provider

in writing of any deficiencies in meeting contracting requirements.

~~((e))~~ (8) The area agency on aging will verify correction of any deficiencies within thirty days of receiving notice from the prospective provider that deficiencies have been corrected, before contracting can take place.

~~((f))~~ (9) The area agency on aging will provide the department with a written recommendation as to whether or not the center meets contracting requirements.

~~((g))~~ (10) Minimum application information required to apply for contract/s with the department, or an area agency on aging includes:

(a) Mission statement, ~~((articles of incorporation))~~ business structure, ~~((and))~~ bylaws, ~~((as))~~ articles of organization or articles of incorporation if applicable and current business license;

(b) Names and addresses of the center's owners, officers, and directors as applicable;

(c) Organizational chart;

(d) Fiscal policies and procedures;

(e) A business plan to address the future financial needs of the center. This plan must include projected program growth, capital purchases, projected revenue, projected expenses, and plans for fund raising, if applicable. Also include an annual ~~((Total))~~ program operating budget including all anticipated revenue sources and expenditures and any fees generated;

~~((h))~~ (f) The most current financial statement prepared in accordance with generally accepted account principles (GAAP) or the latest audit report of the organization by a certified public accountant;

(g) Program policies and operating procedure manual;

~~((i))~~ (h) Personnel policies and job descriptions and qualifications of each paid staff position and volunteer position functioning as staff;

~~((j))~~ (i) Policies and procedures meeting the requirements of mandatory reporting procedures as described in chapter 74.34 RCW to adult protective services for vulnerable adults and local law enforcement for other participants;

~~((k))~~ ~~((Audited financial statement.))~~

~~((l))~~ (j) Floor plan of the facility;

~~((m))~~ (k) Local building inspection, fire department, and health department reports with food handler permits if applicable;

~~((n))~~ (l) Updated TB test results for each staff member according to ~~((local public health requirements))~~ WAC 388-71-0750;

~~((o))~~ (m) Sample client case file including all forms that will be used; ~~((and))~~

~~((p))~~ (n) Activities calendar for the month prior to application, or a sample calendar if the day service provider is new.

(o) Role and function of the board of directors if applicable and advisory committee;

(p) Monthly menu or sample if center is new; and

(q) Certificates of insurance per WAC 388-71-0736.

~~((r))~~ (10) The area agency on aging or other department designee monitors the adult day center at least annually to determine continued compliance with adult day care and/

or adult day health requirements and the requirements for contracting with the department or the area agency on aging.

(a) The area agency on aging will send a written notice to the provider indicating either compliance with ~~((contacting))~~ contracting requirements or any deficiencies based on the annual monitoring visit and request a corrective action plan. The area agency on aging will determine the date by which the corrective action must be completed

(b) The area agency on aging will notify the department of the adult day center's compliance with contracting requirements or corrected deficiencies and approval of the corrective action plan for continued contracting.

~~((4))~~ (11) Adult day care services are reimbursed on an hourly basis up to four hours per day. Service provided four or more hours per day will be reimbursed at the daily rate.

~~((5) Payment rates are established on an hourly and daily basis for adult day care centers as may be adopted in rule. Rate adjustments are))~~ (12) Adult day center reimbursements are adopted by rule with adjustments determined by the state legislature. Providers seeking current reimbursement rates can refer to ~~((SPS))~~ the billing instructions.

~~((6) Rates as of July 1, 2002, are as follows:~~

Counties	COPEs Adult Day Care	
	Daily Rate	Hourly Rate
King	\$36.48	\$9.10
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, & Yakima	\$32.45	\$8.11
All other counties	\$30.75	\$7.69

~~(7) Payment rates are established on a daily basis for adult day health centers as may be adopted in rule. Rate adjustments are determined by the state legislature. Providers seeking current reimbursement rates can refer to MAA billing instructions or http://maa.dshs.wa.gov.~~

~~(8) Rates as of July 1, 2002, are as follows:~~

Counties	Day Health Daily
King	\$47.48
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, & Yakima	\$43.06
All other counties	\$40.68))

(13) A one-time only initial intake evaluation provided by an adult day health center, including development of a negotiated care plan, is reimbursed at an established rate as may be adopted in rule. ~~((The rate as of July 1, 2002 is eighty-nine dollars and thirty-eight cents.))~~ Rate adjustments are determined by the state legislature. Separate reimbursement is not available for subsequent evaluations.

~~((9))~~ (14) Transportation to and from the program site is not reimbursed under the adult day care rate. Transportation arrangements are made with locally available transportation ~~((providers))~~ companies or informal resources.

~~((10))~~ (15) Transportation to and from the program site is ~~((not))~~ reimbursed under the adult day health daily rate. ~~((Transportation arrangements for eligible medicaid clients are made with local medicaid transportation brokers, informal providers, or other available resources per chapter 388-546 WAC))~~ Adult day health is required to assist clients in arranging or providing transportation to and from the program sites.

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

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0728 ((Coordination of services.)) Can a client receive both adult day care and adult day health?

(1) A ~~((COPEs-))~~ COPEs or RCL-eligible client may receive adult day care services on some days and adult day health services on different days if the service plan documents which level of service ~~((is))~~ are to be provided on which days. However, ~~((ore))~~ ADC services must be provided on all days that adult day health skilled services are provided, and reimbursement is limited to the day health rate on days that day health services are provided.

(2) Clients receiving services from the department in an adult family home, ~~((boarding home))~~ assisted living, or other licensed community residential facility may not receive ~~((COPEs-))~~ COPEs or RCL-funded adult day care, but may receive ~~((medicaid))~~ COPEs funded adult day health services when the skilled nursing or rehabilitative services are approved by the client's case manager as part of the client's service plan.

(3) A licensed ~~((boarding home))~~ assisted living facility providing department-approved day care under chapter 388-78A WAC is subject to any applicable provisions of that chapter and is also subject to the rules under this chapter if the facility contracts with an area agency on aging or the department to provide COPEs waiver or ~~((other medicaid-))~~ RCL funded adult day services.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0730 ((Senior Citizens Services Act/respice care.)) What other funds are available through the area agency on aging?

(1) Except as provided under this section, the adult day services rules under this chapter do not apply to adult day care or day health services funded under chapters 74.38 and 74.41 RCW.

(2) An area agency on aging that elects to provide adult day services using Senior Citizens Services Act funding under chapter 74.38 RCW or respice care funding under chapter 74.41 RCW must contract with an adult day center that meets all administrative and facility requirements under WAC 388-71-0736 through 388-71-0774.

(3) The adult day care or day health services funded under chapters 74.38 or 74.41 RCW must be the same as the day care services required under WAC 388-71-0704 or the day health services required under WAC 388-71-0706. The

area agency on aging may require additional services by contract.

(4) The area agency on aging may, by contract, establish eligibility and assessment requirements for day care or day health services in accordance with locally identified needs. However, funding provided under chapters 74.38 or 74.41 RCW may only be used to meet the needs of individuals who are not eligible for adult day care under WAC 388-71-0708 or for adult day health under WAC 388-71-0710, or who are eligible for those services and are not receiving them because of funding limitations.

(5) Nothing in this section or chapter may be construed as requiring an area agency on aging to contract with an adult day center, whether or not the center has a COPEs (~~or other medicaid~~) and RCL contract. Nor may anything in this section or chapter be construed as creating an entitlement to state-funded adult day services authorized under chapters 74.38 and 74.41 RCW.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0732 ((Hearing rights.)) What are the client's hearing rights? (1) If the department or area agency on aging denies, terminates, or reduces ((~~an~~) a COPEs or RCL individual client's adult day care or day health services, the client has the right to ((~~a fair~~) an administrative hearing as provided under chapter 388-02 WAC. If a client funded with senior citizen services act or respite care has a complaint, grievance or dispute, the resolution process is a hearing as outlined in the departments area agency on aging polity and procedure manual chapter 6. The area agency on aging would work with the client through this process.

(2) An adult day care or day health center has those hearing or dispute resolution rights that are afforded under RCW 43.20B.675 and the center's contract with the area agency on aging or the department. An adult day health center has any other applicable hearing or dispute resolution rights under ((chapter 388-502)) WAC 182-502-0220.

(3) Adult day health centers are subject to all applicable provisions of chapter ((388-502)) 182-502 WAC, and the department's aging and ((adult services)) long term support administration may exercise the department's authority under that chapter to the same extent as the ((medical assistance administration)) health care authority.

AMENDATORY SECTION (Amending WSR 05-02-064, filed 1/4/05, effective 2/4/05)

WAC 388-71-0734 ((Limiting expenditures.)) Would the department limit expenditures in the adult day service program? (1) In order to provide adult day services within the limits of available funding, the department may limit services when program expenditures exceed the budget appropriation or when limiting services is required to prevent expenditures from exceeding the appropriation.

(2) When adult day health program expenditures exceed available funding, the department may limit adult day health services based on the four care level system as determined through the established department assessment and described in chapter 388-105 WAC.

(a) Using the care level determined by the department assessment tool, the department will limit adult day services on a statewide basis to clients whose total scores exceed the assessed need level identified by the department as necessary to provide adult day health services to the extent of available funding.

(b) At least thirty days before implementing the limitation on services under this subsection, the department will notify the area agencies on aging, adult day health centers, and the affected adult day health clients that services are being limited and for what period of time the limitation is estimated to remain in effect.

(c) For purposes of RCW 74.08.080, the reduction in services shall be deemed an assistance adjustment for an entire class of recipients that is required by state laws prohibiting the department from expending funds in excess of appropriations.

(3) The department may adopt additional or alternative rules to control costs, such as, but not limited to, imposing a moratorium on contracting with new adult day centers, limiting services to clients based on level of care need, or reducing the numbers of days per week that clients may receive services.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0736 ((Adult day centers—Administrative policies and procedures.)) What business and administrative documentation does the center need? (1) Adult day centers must have written ((policies, procedures, and)) documentation of the organizational structure and administration of the program.

(2) ((Administrative policies and procedures)) Organizational and administrative documentation must include but are not limited to:

(a) ((Mission statement)) Core values and mission statement of the organization;

(b) ((Articles of incorporation and bylaws, as applicable)) Ethical standards of the center and professional standards of conduct;

(c) Short and long-range program goals;

(d) Definition of the target population, including number, age, and needs of participants;

(e) Geographical definition of the service area;

(f) Hours and days of operation (Centers or a combination of centers under single ownership must operate at least three days a week for four consecutive hours, with each center providing at least four hours of programming a day.);

(g) Description of basic services and any optional services;

(h) Description of service delivery

(i) Business structure, articles of organization or bylaws, as applicable;

((~~e~~)) (j) Current business license;

((~~t~~)) (k) Names and addresses of the center's owners, officers, and directors, as applicable;

((~~e~~)) (l) Certificates of insurance, including but not limited to property and general liability insurance; business auto if the center uses vehicles to transport clients; professional

liability; workers' compensation; employers' liability if applicable; coverage for acts and omissions of employees and volunteers; and certificates of insurance for any subcontractors;

((~~(f)~~)) (m) Minutes of last three meetings of the board of directors, if applicable, and the advisory committee;

((~~(g)~~)) (n) Role and functions of an advisory committee, which must meet at least twice a year and which must be representative of the community and include family members of current or past clients and nonvoting staff representatives (When an adult day center is a subdivision of a multifunction organization, a committee or subcommittee of the governing body of the multifunction organization may serve as the advisory committee. A single purpose agency may utilize its governing board as an advisory committee.);

((~~(h)~~)) (o) An organizational chart illustrating the lines of authority and communication channels of the center, which must be available to all staff and clients;

((~~(i)~~)) (p) A calendar of programming (or sample calendar if the center is new);

((~~(j)~~)) (q) A monthly menu (or sample menu if the center is new);

((~~(k)~~)) (r) Current building, health, food service and fire safety inspection reports, and food handler permits, as applicable; and

((~~(l)~~)) (s) Quality improvement plans and results.

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

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0738 (~~(Adult day centers—Operating policies and procedures.)~~) **What operating policies and procedures does the center need?** (1) All policies and procedures must ((~~be~~)) include date of initial development and/or revision along with date of being reviewed and approved

on a regular basis, at least annually, by the advisory committee, and conform to the requirements outlined in WAC 388-71-0702 through 388-71-0774, as applicable.

(2) Policies and procedures must include:

(a) (~~Core values and mission of the organization;~~

(b) Ethical standards of the center and professional standards of conduct;

(c) Short- and long-range program goals;

(d) Definition of the target population, including number, age, and needs of participants;

(e) Geographical definition of the service area;

(f) Hours and days of operation (Centers or a combination of centers under single ownership must operate at least three days a week for four consecutive hours, with each center providing at least four hours of programming a day.);

(g) Description of basic services and any optional services;

(h) Description of service delivery;

(i)) Procedures for ((assessments, reassessments)) evaluations, re-evaluation, and the development of a negotiated care plan with clients and/or representatives, including provisions for the utilization of a multidisciplinary team for this process;

((~~(j)~~)) (b) If applicable, research procedures that comply with chapter 388-04 WAC;

((~~(k)~~ Staffing pattern)) (c) Procedure for developing staffing schedules with staff to participant ratios being at a minimum one staff to six participants;

((~~(l)~~ A plan for utilizing)) (d) Policy regarding the utilization of community resources;

((~~(m)~~)) (e) Gift policy;

((~~(n)~~)) (f) Marketing ((~~plan~~)) policy and procedures;

((~~(o)~~ Contracting)) (g) Policy and procedure for contracting for services; ((~~and~~

~~(p))~~) (h) Medication policy including but not limited to: disposal of wasted or contaminated medications;

(i) Emergency and evacuation policy and procedures for fire safety as approved by the local fire authority must be adopted and posted, including provisions for fire drills, inspection and maintenance of fire extinguishers, and periodic inspection and training by fire department personnel. The center must conduct and document quarterly fire drills and document the center's ability to meet procedures. Improvements must be based on the fire evaluation drills;

(j) Grievance and complaint ((~~processes~~)) policies and procedures for staff and participants(-);

(k) Admission and discharge criteria policy and procedure. Discharge policies must include specific measurable criteria that establish when the participant is no longer eligible for services and under what circumstances the participant may be discharged. Unless the discharge is initiated by the client's department or authorized case manager, the center must notify the client, client representative if applicable, and case manager in writing of the specific reasons for the discharge. The center must also provide the client with adequate information about appeal and hearing rights. The discharge may occur due to the client's choice, other criteria as defined in the center's policy such as standards of conduct or inappropriate behavior, or changes in circumstances making the client ineligible for services under WAC 388-71-0708 or 388-71-0710;

(l) Health Insurance Portability and Accountability Act (HIPAA) policy and procedure;

(m) Confidentiality policy and procedure;

(n) Policy regarding how the center will comply with all applicable nondiscrimination laws, including but not limited to age, race, color, gender, religion, national origin, creed, marital status, sexual orientation, Vietnam era or disabled veteran's status, or sensory, physical, or mental handicap;

(o) A policy and procedure to afford the participants' their bill of rights describing the client's rights and responsibilities must be developed, posted, distributed to, and explained to participants, families, staff, and volunteers. Participants will be provided the bill of rights in the language understood by the individual upon request;

(p) Policies and procedures to ensure that the client's record/chart is appropriately organized and thinned according to the center's policy.

(q) Client record policy and procedures for:

(i) Confidentiality and the protection of records that define procedures governing the use and removal, and conditions for release of information contained in the records;

(ii) The release of client information and circumstances under which a signed authorization from the client or client representative is required; and

(iii) The retention, storage and access to records per the agency's contract with the department and/or the department's designee, including contingency plans in the event the center discontinues operation.

(r) The center must have an advance directive policy as required by the Patient Self Determination Act of 1990 (see 42 C.F.R. § 489.102 and chapter 70.122 RCW); and

(s) A policy and procedure for illness/injury/medical emergency/death must be followed in the event a participant becomes ill, is injured, or dies. The procedures must describe arrangements for hospital inpatient and emergency room service and include directions on how to secure ambulance transportation and complete incident reports.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0740 (~~Adult day centers—Fiscal operations~~) What are the center's fiscal operational responsibilities? (1) Adult day centers must demonstrate fiscal responsibility (~~(by using generally accepted accounting principles)~~). Fiscal policies, procedures, reports, statements and records must be developed (~~((to))~~) in accordance with generally accepted accounting principles (GAAP) and enable the administrator to meet the fiscal reporting needs of the governing body.

(2) Adult day centers must develop a yearly plan to address the future financial needs of the center. The plan must include projected program growth, capital purchases, projected revenue, projected expenses, and plans for fund raising, if applicable.

(3) Adult day centers must create a total center operating budget, including all expenditures, revenue sources and participant fees generated annually.

(4) ~~((A))~~ An annual financial statement or the latest audit report of the organization by a certified public accountant performed at least every two years must be available.

(5) A statement of charges for services (fee schedule), including private pay rates and/or ancillary charges for additional services outside the scope of these rules, must be available.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0744 (~~Adult day center—Client records~~) What are the center's requirements for client records? (1) The adult day center must (~~(have))~~) follow their policies and procedures to ensure that the client's record/chart is appropriately organized and that confidentiality of information is maintained.

(2) Client information forms must be standardized, with each page showing the client's name or identification number.

(3) Individual client files must include:

(a) Personal/biographical data, including addresses, phone numbers, emergency contacts, and client representatives, reviewed and updated as needed;

(b) Application, enrollment, and consent to services forms;

(c) Department-authorized service plan and service authorization;

(d) All client information, including but not limited to the intake evaluation, date of acceptance to the center, negotiated care plan, attendance and service records, progress notes, and correspondence;

(e) Signed authorizations concerning the release of client information, photographs, and receipt of emergency medical care, as appropriate;

(f) Client photograph, with client or client representative permission, updated as needed per change in the client's appearances or picture being difficult to clearly view;

(g) Transportation plans regarding how the client will be transported back and forth from the center and who is responsible for the transportation;

(h) Fee determination forms;

(i) Appropriate medical information, with client consent, including but not limited to significant illnesses, accidents, treatments, medical conditions, (~~(immunizations,))~~) allergies, medications, tobacco use, and alcohol or substance use;

(j) Advance directives (if any) and a statement signed by the client that he or she has received the center's policies concerning advance directives; and, as applicable,

(k) (~~(Physician))~~) Authorizing practitioner orders for skilled nursing and/or rehabilitative therapy containing department-required information and in accordance with applicable licensing and practice act regulations.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0746 (~~Adult day center—Documentation~~) What are the adult day center's client records requirements? (1) (~~(Entries in))~~) If the client's record is hand-written it must be ((typewritten or)) legibly written in ink, dated, and signed by the recording person with his/her title. Identification of the author may be a signature, initials, or other unique identifier within the requirements of applicable licensing standards and center policy. All hand-written documentation must be legible to someone other than the author. If signature is a unique identifier, such as initials, there must be a key readily available for use by the department of their designee. The negotiated care plan must have the center's author's full name and title on the signature line.

(2) If the client's record is an automated electronic record then it must be within a secured client record system to ensure confidentiality for all records, in accordance with state and federal laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA). If electronic signature is a unique identifier then there must be a key readily available for use by the Department or their designee. The Negotiated Care Plan must have the center's author's full name and title on the signature line.

(3) Progress notes must be (~~((chronological,))~~) entered into the file chronologically and timely((, and recorded at least weekly by adult day health centers and at least monthly by adult day care center)). Adult day health centers' professional interventions must be charted directly after providing

the service. Adult day care centers must have progress summary notes at least monthly. Client dates and hours of attendance are to be kept daily.

~~((3))~~ (4) Consultation, (and/or) care plan reviews and updating orders, hardcopy or electronic records, must be dated and initialed by the (physician or other authorizing practitioner who reviewed them. If the reports are presented electronically, there must be representation of review by the ordering practitioner) center's reviewer/s or authorizing practitioner. The authorizing practitioner must update the skilled clinical orders at least annually or when a significant change occurs warranting a change in the skilled clinical intervention. The authorizing practitioner does not need to review the care plan but does need to update skilled clinical orders as outlined above.

~~((4))~~ (5) Documentation of medication use must include the name of the medication, dosage, frequency of administration, route of administration, site of injection if applicable, date and time and signature or initials of the person administering the medication, title, and date.

~~((5) The record must be legible to someone other than the writer.)~~

(6) If the client records are thinned or achieved, per your policy and procedure, all records must be readily available to the federal, state or their designee for monitoring purposes.

(7) Department-contracted adult day health centers must comply with all other applicable documentation requirements under WAC ((388-502-0020)) 182-502-0020.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

~~WAC 388-71-0748 ((Adult day centers—Record retention.))~~ **What are the adult day centers' record retention requirements?** (1) The adult day center must maintain a secure client record system to ensure confidentiality for all records, whether paper or electronic, in accordance with state and federal laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA).

(2) The adult day center must maintain a permanent registry of all clients with dates of admission, attendance and discharge.

(3) The adult day center must ~~((have))~~ follow their written policies concerning:

~~(a) Confidentiality and the protection of records that define procedures governing the use and removal, and conditions for release of information contained in the records;~~

~~(b) The release of client information and circumstances under which a signed authorization from the client or client representative is required; and~~

~~(c) The retention and storage of records for at least six years from the last date of service to the client, including contingency plans in the event the center discontinues operation.)~~ record and maintenance and retention, see WAC 388-71-0738 operating policy section.

(4) Client records maintained on the center's premises must be in a secure storage area that includes locking cabinets or storage. Computerized records must be backed up, daily for any changes made in the record that day and a full backup on a weekly basis. Weekly backup records would be ((and))

stored offsite either in a physical, (cd, tape or thumb drive) or electronic file, (through the cloud backup system) compliant with HIPAA.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

~~WAC 388-71-0750 ((Adult day centers—Personnel policies and procedures.))~~ **What are the adult day center's personnel policies and procedures requirements?** (1) Personnel policies and procedures must be in place to ensure that staff ~~((are))~~ is trained and knowledgeable to provide quality services in a safe environment. Policies must include at least the following:

(a) The center must have policies concerning the recruitment, orientation, training, evaluation, and professional development of staff and volunteers.

(b) The center must have job descriptions for each paid staff and volunteer position, which functions as staff, that are in accordance with ADA requirements and that specify qualifications for the job, delineation of tasks, essential functions and lines of supervision and authority.

(c) Each employee must receive, review, and sign a copy of the job description at the time of employment and whenever job descriptions are modified. Volunteers who function as staff must receive written descriptions of responsibilities.

(d) Probationary evaluations and annual performance evaluations, in accordance with job descriptions, must be conducted and must conform to the policy of the funding or parent organization. Both the employee and supervisor will sign and date the written evaluation. Copies will be kept in locked personnel files.

(e) Each staff person or volunteer, who functions as a staff person, is to have ~~((a tuberculin test within thirty days of employment. If a test has been performed within twelve months of employment, the results of that test may be accepted. Tuberculin tests will be repeated according to local public health requirements))~~ tuberculosis (TB) testing according to current local health authorities recommendations.

(f) The center must have policies to restrict a staff person or participant's contact with clients when the staff person or participant has a known communicable disease in the infectious stage that is likely to spread in the center.

(g) Policies must also be established concerning hand washing, universal precautions, infection control, infectious waste disposal, bloodborne pathogens, and laundry and handling of soiled and clean items.

(2) The center must have policies and procedures concerning suspected participant abuse, neglect, or exploitation reporting that include provisions preventing access to any participant until the center investigates and takes action to assure the ~~((participant's))~~ participants' safety.

(3) The center must not interfere with the lawful investigation of a complaint, coerce a participant, or conceal evidence of alleged improprieties occurring within the center.

(4) The center must have policies that meet the requirements of mandatory reporting procedures as described in chapter 74.34 RCW to adult protective services for vulnerable adults and to local law enforcement for other participants.

(5) Each employee must receive or have access to a copy of the program's personnel policies at the time of employment.

(6) Whenever volunteers function in the capacity of staff, all applicable personnel policies (~~((must))~~) pertain.

(7) The center must conform to federal and state labor laws and be in compliance with equal opportunity guidelines.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0752 (~~((Adult day center—Staffing requirements.))~~) **What are the adult day centers' staffing qualifications and requirements?** (1) Staff selection is dependent on participant needs, program design, and contracting requirements. The center must have the proper balance of professionals and paraprofessionals or nonprofessionals to adequately meet the needs of participants. Services must be delivered by those with adequate professional training. A staff person can have multiple functions, such as an administrator who is also responsible for providing nursing services or social services.

(2) To ensure continuity of direction and supervision, there must be a clear division of responsibility between the governing body and the adult day center administrator.

(3) The administrator must be given full authority and responsibility to plan, staff, direct, and implement the program. The administrator must also have the responsibility for establishing collaborative relations with other community organizations to ensure necessary support services to participants and their families/caregivers.

(4) The administrator must be on site to manage the center's day-to-day operations during hours of operation. If the administrator is responsible for more than one site, or has duties not related to adult day center administration or provision of services, a program director must be designated for each additional site and must report to the administrator.

(5) The administrator must be responsible for the development of a written plan of operation with approval of the governing body and the development, coordination, supervision, fiscal control, and evaluation of services provided through the adult day center.

(6) A nurse or other personnel (~~((trained in))~~) with a current first aid and CPR card must be on (~~((hand))~~) site whenever participants are (~~((present))~~) attending the adult day care or health program.

~~((7))~~ (~~((Background checks pursuant to RCW 43.43.830 and 43.43.832 must be performed for all applicants hired, existing employees, and volunteers. Unsupervised access to participants is prohibited until a background check has been completed and the employee's suitability for employment has been determined.~~

~~((8))~~) Required credentials must be verified to ensure that they are current and in good standing for licensed and certified staff.

~~((9))~~) (8) Adult day centers may utilize a range of staff under contract or consulting from a larger parent organization or from a private entity to provide services.

~~((10))~~) (9) Staff commonly utilized by both adult day care and adult day health centers must meet the following requirements:

(a) An activity coordinator must have a bachelor's degree in recreational therapy or a related field and one year of experience (full-time equivalent) in social or health services; or an associate degree in recreational therapy or a related field plus two years of appropriate experience; or three years of paid experience in an activity program and expertise with the population served at the center.

(b) The nurse must be a registered nurse (RN) with valid state credentials in good standing and have at least one-year applicable experience (full-time equivalent) in ambulatory care or hospital nursing or geriatric or preferably in home health or older adult community based nursing and/or work with disabled clients. In addition to a registered nurse, an adult day center can utilize a licensed practical nurse (LPN), but the LPN must be supervised in compliance with all applicable nurse practice acts and standards. The LPN must have valid state credentials in good standing and at least one-year applicable experience (full-time equivalent) in ambulatory care of hospital nursing or geriatric or preferably in home health or older adult community based nursing and/or work with disabled clients. In the adult day care center the RN/LPN does not need to be on site during all hours of operation. In the adult day health center the RN and/or LPN must be on site when the attending participants' who need nursing services are attending the ADH program. If there are no participants who have nursing service interventions identified on their negotiated care plan in attendance then the nurse is not required to be on site during the ADH program time.

(c) The social services professional must have a master's degree in social work, gerontology, or other human services field, or counseling and at least one year of professional work experience (full-time equivalent), or a bachelor's degree in social work, counseling, or a related field and two years of experience in a human services field.

(d) Program assistant/aides or personal care aides must have (~~((one or more years of experience (full time equivalent) in working with adults in a health care or social service setting))~~) the appropriate knowledge, skills and training to meet the individual needs of the participants before they are allowed to provide care and services. The assistant/aide competencies must be documented demonstrating their qualification to meet the needs of the center's participants within their job description.

(e) Consultants from a larger parent organization without formal contracts may be utilized whenever the center is part of a larger organization that has the ability to provide professional services within the larger framework.

(f) Consultants, with appropriate, valid state credentials may be utilized as needed to meet the requirements outlined in this chapter. The rehabilitative consultants must perform the professional assessment of the participant, train the staff regarding the participants therapy needs and therapeutic intervention/s, monitor the rehabilitation program and evaluate the participants progress for discharge planning.

(g) Secretary/bookkeepers must have at least a high school diploma or equivalent and skills and training to carry out the duties of the position.

(h) If the adult day center provides transportation drivers must have a valid and appropriate state driver's license, a safe driving record, and training in first aid and CPR. The driver must meet all state requirements for licensure or certification.

(i) Volunteers may be individuals or groups who desire to work with adult day center clients and must take part in program orientation and training. Volunteers and staff must mutually determine the duties of volunteers. Duties to be performed under the supervision of a staff member must either supplement staff in established activities or provide additional services for which the volunteer has special talents. Volunteers will be included in the staff ratio only when they conform to the same standards and requirements as paid staff, meet the job qualification standards of the organization, and have designated responsibilities.

(j) Dietitians must be certified with valid state credentials and have a minimum of one year applicable experience (full-time equivalent).

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0754 ((Staffing ratios.)) What are the adult day center's staff ratio requirements? (1) ((Staffing levels)) Direct care staff in adult day centers will vary based upon the number of participants and ((the)) their care ((pro-vided)) and service requirements. The centers must provide sufficient numbers of qualified staff to meet the participants' needs, but at a minimum must have one staff to six clients for:

(a) Adequate nutrition and hydration;

(b) Health monitoring, education and referral to health services if needed;

(c) Assistance with activities of daily living;

(d) Socialization, recreation, therapeutic activities and stimulation;

(e) Transportation assistance;

(f) Supervision and protection; and

(g) Provision of a safe environment.

(2) The staffing level must be sufficient to serve the number and functioning levels of adult day center participants, meet program objectives, and provide access to other community resources.

(3) There must be sufficient maintenance and house-keeping personnel to assure that the facility is clean, sanitary, and safe at all times.

(4) To ensure adequate care and safety of participants, there must be provision for qualified substitute staff.

(5) As the number of participants with functional impairments, skilled nursing or skilled rehabilitative therapy needs increases, the required staff-participant ratio must be adjusted accordingly.

~~(6) ((All centers must have written policies regarding staff-participant ratios. The ratio must be a minimum of one staff to six participants. The provider must ensure that appropriate professionals provide needed services to the participants based upon the participants' service and care plans. The center is also required to employ sufficient staff to meet the needs of the participants))~~ Direct service staff to participant ratio must be met according to each program the center is contracted to provide, i.e. COPES/RCL and memory care and

wellness services (MCWS). The center is required to have daily documentation outlining how they met the staff to resi-dent ratio. This data would include but not be limited to names/titles of employees with date and hours worked and participants' names and date and hours attended.

(7) Staff counted in the staff-participant ratio ((are)) is those who are trained and able to provide direct service to participants. When there is ((more than)) one participant present, to ensure safety of participant, there must be at least two organizational staff members ((on the premises, one of whom is directly supervising the participants)) who have the skills, knowledge and ability to meet the clients need and at least one is currently certified in CPR and First Aid.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0756 ((Adult day care—Staffing requirements.)) What are the adult day care centers' minimum staff requirements? (1) ((Minimum)) The minimum staffing requirements for adult day care centers include an administrator/program director, activity coordinator, a consulting registered nurse, and a consulting social worker.

(2) The administrator/program director must have a master's degree and one year of supervisory experience in health or social services (full-time equivalent); or a bachelor's degree in health, social services or a related field, with two years of supervisory experience (full-time equivalent) in a social or health service setting; or a high school diploma or equivalent and four years of experience in a health or social services field, of which two years must be in a supervisory position, and have expertise with the populations served at the center.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0758 ((Adult day health—Staffing requirements.)) What are the adult day health centers' minimum staff requirements? (1) ((Minimum)) The minimum staffing requirements for adult day health centers include an administrator, program director, registered nurse, activity coordinator, a PT/OT or speech therapist, and a social worker. The administrator and program director may be the same person.

(2) The program administrator must have a master's degree and one year of supervisory experience in health or social services (full-time equivalent), or a bachelor's degree and two years of supervisory experience in a social or health service setting. The degree may be in nursing.

(3) The program director must have a bachelor's degree in health, social services or a related field with one year of supervisory experience (full-time equivalent) in a social or health service setting. Upon approval by the department, a day health center may request an exception for an individual with an associate's or vocational degree in health, social services, or a related field with four years of experience in a health or social service setting, of which two years must be in a supervisory position.

(4) Registered nurses and licensed practical nurses per WAC 388-71-0752.

(5) Therapists, regardless of specific expertise, such as physical therapists, occupational therapists, speech therapists, recreation therapists, mental health therapists, or any other therapists used, must have valid state credentials and one year of experience in a social or health setting.

~~((5))~~ (6) Rehabilitative therapeutic assistants must be certified with valid state credentials, have at least one year of applicable experience (full-time equivalent), and meet the requirements of chapter 246-915, 246-847, or 246-828 WAC.

~~((6))~~ (7) A certified or registered nursing assistant must meet the requirements of chapter 18.88A, RCW ~~((18.88A-020))~~.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0760 ~~((**Adult day centers—Employee records**))~~ **What are the adult day centers' employee file requirements?** (1) Each employee must have an individual file containing the employee's application, verification of references, TB status, signed job description, and all performance evaluations. Copies of current license, ~~((6))~~ certificate, or registration and verification of current good standing, and a current certification of CPR and first aid training, if applicable, must also be in the file.

(2) Centers must maintain employee records for the duration of staff employment and at least seven years after termination of employment.

(3) Employee records must contain ~~((all records of training, such as staff orientation and training pertinent to duties or regulatory compliance, including CPR, first aid, and universal precautions training))~~ documentation demonstrating the employee was oriented to the facility, job and possesses the knowledge, skills and ability to perform their assigned duties. The record should also contain documentation demonstrating the employee understands and will follow the center's policies and procedures regarding but not limited to medication disposal, the emergency and evacuation plan, the abuse, neglect, abandonment and financial exploitation of vulnerable adults and universal precaution policies and procedures.

(4) ~~((Employee records must contain criminal history disclosure and background checks))~~ Background checks pursuant to RCW 43.43.830 and 43.43.832 must be performed for all applicants hired, existing employees, and volunteers who function as staff or who have unsupervised access to participants. Unsupervised access to participants is prohibited until a background check has been completed and the employee's suitability for employment has been determined. Background checks must be updated every two years and documentation maintained in the employees' or volunteers' functioning as staff, record.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0762 ~~((**Adult day centers—Education and training**))~~ **What are the adult day centers' employee education and training requirements?** (1) Provision must be made for orientation of new employees, contractors, and volunteers.

(2) ~~((A))~~ Every year, all staff, contractors, and volunteers, functioning as staff, must receive, at a minimum, quarterly in-service training and staff development that meets their individual training needs to support program services. This must be documented and readily accessible in the personnel file ~~((and in a general file))~~.

(3) Staff, contractors, and volunteers, who function as staff, must receive training ~~((about documentation, reporting requirements, and universal precautions))~~ regarding the following at a minimum:

(a) How to document in participants' records;

(b) What the center's emergency plan and evacuation procedure is and how to implement;

(c) How to respond to aggressive or assaultive participants;

(d) How to receive and respond to grievances;

(e) What are universal precautions and how to implement in the day to day operations in the center;

(f) Reporting requirements such as but not limited to:

(i) Mandatory reporting for abuse, neglect, abandonment, and exploitation of vulnerable adults; and

(ii) Local health department procedure for disease outbreak.

(4) At a minimum, one staff person per shift must ~~((be trained and certified))~~ have current training and certification in CPR/First Aid.

(5) Staff and volunteers functioning as staff, must receive education and training on all applicable policies and procedures within two weeks of employment.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0764 ~~((**Adult day centers—Medication**))~~ **How will medications be provided in an adult day center?** (1) The center must develop written medication policies that ~~((are))~~ support and promote safe medication storage and administration for each participant and meet the requirements of chapter 69.41 RCW and chapter 246-88 WAC and other applicable statutes. These policies must be explained and accessible to all staff, contractors, volunteers, and participants that have responsibility in this area. ((At a minimum, policies must meet the following requirements:

(a) Medications must be kept in locked storage. If medications need to be refrigerated, they should be in a locked box, if not in a separate refrigerator dedicated to medication refrigeration.

(b) Medication policies must describe:

(i) Under what conditions licensed program staff will administer medications;

(ii) How medications brought to the program by a client must be labeled;

~~(iii) How nonprescription medications such as aspirin or laxatives are to be used;~~

~~(iv) How the administration of medications will be entered in participant case records as described in WAC 388-71-0744(4); and~~

~~(v) Medication policies must be consistent with laws governing medication administration under RCW 69.41.010 and chapter 246-888 WAC.)~~

(2) Participants who need to take medications while at the center, and who are able to self medicate, must be encouraged and expected to bring and take their own medications as prescribed. Some participants may need assistance with their medications, and ~~((a few))~~ some may need to have their medications administered by qualified program staff.

(3) In order for the center staff to administer any prescribed medication, there must be a written authorization from the participant's authorizing practitioner stating that the medication is to be administered at the program site.

(4) Staff must be trained to observe medication usage and effects, and to document and report any concerns or difficulties with medications.

(5) At a minimum, medication policies must include the following:

(a) How medications will be labeled and stored. Medications must be:

(i) Labeled according to your policy including prescribed and over the counter medications;

(ii) Kept in a locked storage area organized so client's medications are not mixed together; and

(iii) If refrigeration is necessary, medications should be in a locked box, if not in a separate refrigerator dedicated to medication refrigeration.

(b) Procedures for administration of medications, including:

(i) What program staff are allowed and able to administer medications and under what circumstances;

(ii) How nonprescription medications such as aspirin or laxatives are to be used; and

(iii) How the administration of medications will be entered in participant case records as described in WAC 388-71-0744.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0766 ((~~Adult day centers~~ Facility))

What are the adult day centers' facility requirements? (1)

Selection of a location for a center must be based on information about potential participants in the service area and be made in consultation with other agencies, organizations, and institutions serving older individuals and those with functional impairments, as well as considering the availability of a suitable location.

(2) Centers must have available a current floor plan of the facility indicating usage of space with interior measurements, building inspection report from the local, city or county, building department, if applicable, fire department inspection report, and the local health department kitchen inspection report and permit if operating ((*) an on-site kitchen.

~~(3) ((The facility must comply with applicable state, county, and local building regulations, zoning, fire, and health codes or ordinances.~~

~~(4))~~ When possible, the facility should be located at street level. If the facility is not located at street level, it is essential to have a ramp and/or elevators. All new adult day service centers contracted with the department after February 1, 2014 must have a ramp, at least a 1:12 slope, for emergency evacuation if the center has any step or stairs to be navigated during an emergency evacuation. An evacuation plan for relocation of participants to another building must also be in place in the event of an emergency. The center must post a floor plan of the center and indicate the evacuation route from each room to the outside meeting place.

(5) Each adult day center co-located in a facility housing other services must have its own separate identifiable space for main activity areas during operational hours. Certain space can be shared, such as the kitchen and therapy rooms.

(6) Each center must provide appropriate hardware on doors of storage rooms, closets, bathrooms, and other rooms to prevent participants from being accidentally locked in.

(7) When possible, the location should be within a transit authority's core service area.

(8) The facility must have sufficient space to accommodate the full range of program activities and services. The facility must be adaptable to accommodate variations of activities (group and/or individual) and services. The program must provide and maintain essential space necessary to provide services and to protect the privacy and dignity of the participants receiving services. There must be sufficient private space to permit staff to work effectively and without interruption. There must be sufficient space available for private discussions.

(9) The facility must provide at least sixty square feet of program space for multipurpose use for each day center participant. In determining adequate square footage, only those activity areas commonly used by participants are to be included. Hallways, dining and kitchen areas are to be included only if these areas are used by clients for activities other than meals. Reception or lobby areas, storage areas, offices, restrooms, passageways, treatment rooms, service areas, or specialized spaces used only for therapies are not to be included when calculating square footage.

(10) Storage space.

(a) There must be adequate storage space for program and operating supplies.

(b) Toxic substances, whether for activities or cleaning, must be stored in an area not accessible to participants. Substances must be clearly marked, the contents identified, and stored in original containers.

(11) Restrooms.

(a) The facility's restrooms must be located as near the activity area as possible, preferably no more than forty feet away. The facility must include at least one toilet for every ten participants. The facility must provide privacy for the participant when using the restroom facilities.

(b) Programs that have a large number of participants who require more scheduled toileting or assistance with toileting must have at least one toilet for every eight participants.

(c) The toilets shall be equipped for use by mobility-limited persons and easily accessible from all program areas. One toilet area should be designed to allow assistance from one or two staff. More accessible units may be required based upon the needs of the participants.

(d) Each restroom must contain an adequate supply of soap, toilet tissues, and paper towels.

(e) After Month/Day/Year all newly contracted adult day service facilities or contracted adult day service provider opening another site must have at least one roll in shower for participant use. Showers are to be accessible to those who require bathing as an ADC service.

(12) Rest area.

(a) In addition to space for program activities, the facility must have a rest area and designated areas to permit privacy and to isolate participants who become ill or disruptive, or who may require rest.

(b) The rest area must be located away from activity areas and near a restroom and the nurse's office. There must be at least one bed, couch, or recliner for every ten participants that can be used for resting or the isolation of a participant who is ill or suspected of coming down with a communicable disease.

(c) If beds are used, the mattresses and pillow must be protected, cleaned and disinfected after each participant use. The bed linens must be clean and changed after each use by different participants to prevent the spread of infection.

(13) Loading zones/parking/entrances/exits.

(a) A loading zone with sufficient space for getting in and out of a vehicle must be available for the safe arrival and departure of participants and the use of emergency personnel.

(b) There must be sufficient parking available to accommodate family caregivers, visitors, and staff.

(c) When necessary, arrangements must be made with local authorities to provide safety zones for those arriving by motor vehicle and adequate traffic signals for people entering and exiting the facility.

(d) Adequate lighting must be provided in all loading and parking zones, entrances, and exits.

(e) An adult day center must be visible and recognizable as a part of the community. The entrance to the facility must be clearly identified. The center must also be appealing and protective to participants and others.

(f) At least two well-identified exits must be accessible from the building.

(14) Atmosphere and design.

(a) The center's design must facilitate the participants' movement throughout the facility and encourage involvement in activities and services.

(b) The environment must reinforce orientation and awareness of the surroundings by providing cues and information about specific rooms, locations, and functions that help the participant to get his/her orientation to time and space.

(c) A facility must be architecturally designed in conformance with the requirements of section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act to accommodate individuals with a disability and meet any state and local barrier-free requirements.

(d) Illumination levels in all areas must be adequate, and careful attention must be given to avoiding glare. Attention must be paid to lighting in transitional areas, such as outside to inside and between different areas of the facility.

(e) Sound transmission must be controlled. Excessive noise, such as fan noise, must be avoided.

(f) Comfortable conditions must be maintained within a comfortable temperature range. Excessive drafts must be avoided uniformly throughout the facility.

(g) Sufficient furniture must be available for the entire population present. Furnishings must accommodate the needs of participants and be attractive, comfortable, sturdy, clean and safe. Straight-backed chairs with arms must be used during activities and meals.

(h) A telephone must be available for participant use. Local calls are to be available at no cost to the participant.

(15) Safety and sanitation.

(a) The facility and grounds must be safe, clean, and accessible to all participants, and must be designed, constructed, and maintained in compliance with all applicable local, state, and federal health and safety regulations.

(b) Non-slip surfaces must be provided on stairs, ramps, and interior floors.

(c) Alarm/warning systems are necessary to ensure the safety of the participants in the facility in order to alert staff to potentially dangerous situations. This system needs to be activated when the center's staff have determined a participant/s have the potential safety issues with wandering. It is recommended that call bells be installed or placed in the rest areas, restroom stalls, and showers.

(d) An emergency evacuation plan with outside meeting location at a safe distance from the building must be strategically posted in each facility so that all participants, staff, and visitors can view it. If the center provides services to primarily non-English speaking clients the evacuation plan must also contain instructions in the primary language used by clients of the center. The center's emergency disaster plan must be readily available to all staff and reviewed routinely to ensure a safe and secure environment during a disaster.

(e) The facility must be free of hazards, such as high steps, steep grades, and exposed electrical cords. Steps and curbs must be painted and the edges of stairs marked appropriately to highlight them. All step, stairs, ramps, and bathrooms accessible to those with disabilities must be equipped with securely anchored handrails on both sides.

(f) Emergency first-aid kits and manuals must be visible and accessible to staff. Contents of the kits must be replenished after use and reviewed as needed.

(g) Maintenance and housekeeping must be carried out on a regular schedule and in conformity with generally accepted sanitation standards, without interfering with the program.

(h) If smoking is permitted, the center must follow RCW 70.160-Smoking in Public Places.

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

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0770 (~~(Adult day center—Food and nutrition services.)~~) **What are the adult day centers' food and nutrition service requirements?** Centers must provide meal service to all participants as outlined in WAC 388-71-0704 and 388-71-0706

(1) All meals provided are to meet one-third of the minimum required daily allowance or dietary reference intake as determined by the Food and Nutrition Board of the Institute of Medicine.

(2) The center must ensure that food served meets nutritional needs, takes into consideration individual and ethnic preferences to the extent reasonably possible, caloric need, special dietary requirements, and any physical condition making food intake difficult.

(3) The center must provide a variety of foods and not repeat menus for a minimum of three weeks.

(4) Participant input must be gathered when planning meals.

(5) Menus must be posted at least one week in advance; indicate the date, day of the week, month and year; and include all food and snacks served that contribute to nutritional requirements.

(6) Nutrient concentrates, supplements, and dysphagia-modified diets related to a choking or aspiration risk, are to be served only with the written approval of the participant's (~~(physician)~~) authorizing practitioner.

(7) Safe and sanitary handling, storage, preparation, and serving of food must be assured. If meals are prepared on the premises, kitchen appliances, food preparation area, and equipment must meet state and local requirements and pass inspections annually.

(8) All staff and volunteers handling or serving meals must have the appropriate food handler's permits, if applicable.

(9) In the event meals are prepared at a separate kitchen facility, the adult day center must ensure that persons preparing food have a food handler's permit and that the food is transported in airtight containers to prevent contamination.

(10) The center must ensure that the food is transported and served at the appropriate and safe temperature.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0772 (~~(Adult day centers—Emergency procedures.)~~) **What are the adult day centers' emergency procedures requirements?** (1) A written emergency/disaster/earthquake plan must be (~~(posted)~~) readily available to all staff at each program site and in all program owned vehicles. Staff must be trained to ensure smooth implementation of the emergency plan.

(2) All staff and volunteers must be trained in evacuation/fire safety procedures.

(3) (~~(A)~~) The center's written illness/injury/medical emergency/death procedure must be followed in the event a participant becomes ill, is injured, or dies. The procedures must be (~~(posted in at least one visible location at all program sites)~~) readily available to all staff during program hours and

must be explained to staff, volunteers, and participants. (~~The procedures must describe arrangements for hospital inpatient and emergency room service and include directions on how to secure ambulance transportation and complete incident reports.~~)

(4) Procedures for fire safety as approved by the local fire authority must be adopted and (~~(posted)~~) readily available to all staff, including provisions for fire drills, inspection and maintenance of fire extinguishers, and periodic inspection and training by fire department personnel. The center must conduct and document quarterly fire drills and document the center's ability to meet procedures. Improvements must be based on the fire drill evaluation. The center must post their building's floor plan with evacuation route from each room to the outside pre-determined meeting place. Smoke detectors must also be used and serviced on a routine basis per the center's policy.

(5) Each center must provide adequate emergency lighting or flashlights in all areas.

(6) Each center must provide and maintain first aid kits with manuals in adequate numbers to meet the needs of the participant and staff.

(7) Each center must ensure, in accordance with local emergency procedures, that supplies, food, water and equipment are available in the event power, heat and/or electricity are not available during an emergency.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0774 (~~(Adult day centers—Quality assurance and improvement.)~~) **What are the adult day centers' quality assurance plan requirements?** (1) (~~(Every)~~) All adult day (~~(center)~~) centers must develop (~~(a)~~) an annual quality improvement plan(~~(, with)~~) that identifies specific concerns regarding the quality of care and services to clients. The plan must also include a description of the plan of action that would address the concerns. The plan must have specific measurable objectives, designed to meet requirements of any licensing, funding sources, professional standards, or regulatory compliance.

(2) Policies and procedures for monitoring program quality and determining further action must be developed by the administrator with the advice of the multidisciplinary staff team and the advisory committee, and with the approval of the governing body and center clients and/or representatives.

(3) Quality assurance and improvement plans may include but are not limited to annual program evaluations, utilization reviews, (~~(participant)~~) participants' and former participants' satisfaction surveys, and sampling participant (~~(improvement and/or care plan audits)~~) care plans to audit for assurances of meeting the WAC requirements.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0776 **Effective date.** WAC 388-71-0702 through 388-71-0776 (~~(are)~~) is effective February 1, 2014.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 388-71-0726 Adult day health transportation.
 WAC 388-71-0742 Adult day centers—Client policies and procedures.
 WAC 388-71-0768 Adult day centers—Physical environment requirements.

WSR 14-21-134

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 20, 2014, 3:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-110.

Title of Rule and Other Identifying Information: The department is considering adding new sections and amending the following sections in chapter 388-76 WAC, Adult family homes: WAC 388-76-10000 Definitions, 388-76-10037 License requirements—Multiple adult family homes—Additional homes, 388-76-10125 License—May be denied, 388-76-10130 Qualifications—Provider, entity representative and resident manager, 388-76-10146 Qualifications—Training and home care aide certification, 388-76-10315 Resident record—Required, 388-76-10525 Resident rights—Description, 388-76-10535 Resident rights—Notice of change to services, 388-76-10540 Resident rights—Disclosure of fees and charges—Notice requirements—Deposits, 388-76-10595 Resident rights—Advocacy access and visitation rights, 388-76-10615 Resident rights—Transfer and discharge, 388-76-10925 Disclosure of inspection and complaint investigation reports, 388-76-10935 Washington protection and advocacy—Long-term care ombudsman—Official duties—Penalty for interference, 388-76-10960 Remedies—Department may impose remedies, 388-76-10975 Remedies—Specific—Civil penalties, 388-76-10980 Remedies—Specific—Stop placement—Admissions prohibited; and other related rules as appropriate.

Hearing Location(s): Office Building 2, Lookout Room, 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>), on December 9, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 10, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU

RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 9, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by November 25, 2014, TTY (360) 664-6178 or (360) 664-6092 or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to comply with and be consistent with newly passed state laws: SHB 1629 Home care aides—Credentialing and continuing education, EHB 1677 Adult family homes—Multiple facility operators, SHB 1686 K-12 Schools—High school equivalency certificates, SSB 5077 Statutes—Gender-neutral terms, SB 5510 Vulnerable adults—Abuse, and SSB 5630 Vulnerable adults—Adult family homes. In additional [addition] the department is amending rules to comply with SHB 2056 Assisted living facilities, passed (chapter 10, Laws of 2012) in the 2012 legislative session, which change the terminology of "boarding home" to assisted living facility.

Reasons Supporting Proposal: The department is amending these rules to comply with and be consistent with newly passed state laws.

Statutory Authority for Adoption: Chapter 70.128 RCW.

Statute Being Implemented: Chapter 70.128 RCW.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Christi Pederson, P.O. Box 45600, Olympia, WA 98513, (360) 725-3204; **Implementation:** Carl Walters, P.O. Box 45600, Olympia, WA 98513, (360) 725-2401; and **Enforcement:** Bett Schlemmer, P.O. Box 45600, Olympia, WA 98513, (360) 725-2403.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

October 16, 2014
 Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult:

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

"Adult family home" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Applicant" means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - The resident capacity. The capacity number listed on the license is the "resident capacity."

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

"Department" means the Washington state department of social and health services.

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some

examples of financial exploitation are given in RCW 74.34.-020(6).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

"Entity representative" means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health or safety.

"Indirect supervision" means oversight by a person who:

- (1) Has demonstrated competency in the basic training and specialty training if required; or
- (2) Has been exempted from the basic training requirements; and
- (3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (~~Boarding homes~~) Assisted Living Facilities, chapter 18.51 RCW (Nursing homes), chapter 70.128 RCW (Adult family homes), chapter 72.36 RCW (Soldiers' homes), chapter 71A.20 RCW (Residential habilitation centers), or any other facility licensed by the department.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

- (1) A medical device is not always a restraint and should not be used as a restraint;
- (2) Some medical devices have considerable safety risks associated with use; and
- (3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome and/or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple facility provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order and/or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practi-

tioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

"Recurring" or **"repeated"** means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger; and/or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a resident.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental or psychosocial well being (i.e., safety, quality of life, quality of care).

"Significant change" means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

(1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or ~~((developmentally disabled persons))~~ individuals with developmental disabilities or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules; and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

"Willful" means the deliberate or nonaccidental action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(2) Found incapacitated under chapter 11.88 RCW;

(3) Who has a developmental disability as defined under RCW 71A.10.020;

(4) Admitted to any facility;

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal

aide to perform a health care task as authorized by RCW 74.39.050.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10037 License requirements—Multiple adult family homes—Additional homes. The department will only accept and process an application for an additional license as follows:

(1) For a second home, if the applicant has maintained the first adult family home license for at least twenty-four months with no enforcement actions as listed in RCW 70.128.160(2) related to a significant violation of chapters 70.128, 70.129 or 74.34 RCW, this chapter or other applicable laws and regulations; and

(2) For a third or additional homes(~~(, if a minimum of twelve months have passed since the previous adult family home license was granted and no enforcement action was taken against any of the currently licensed homes.)~~) as follows:

(a) When twelve months have passed since the previous adult family home license and the department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twelve months prior to application;

(b) When less than twelve months have passed since the previous adult family home license was granted; and

(i) The applications are due to the change in ownership of existing adult family homes that are currently licensed; and

(ii) No enforcement action was taken against any of the applicant's currently licensed homes during the twelve months prior to application.

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10125 License—May be denied. The adult family home license may be denied if the applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(1) Has any conviction or pending criminal charge for crime that is not automatically disqualifying under chapter 388-113 WAC, but that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home;

(2) Has abused, neglected, or financially exploited a vulnerable adult, unless denial is required under WAC 388-76-10120.

(3) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a license denial under WAC 388-76-10120;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed. In connection with the operation of any facility for the care of

children or vulnerable adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intended to deny, suspend, or revoke the license, unless such action requires a license denial under WAC 388-76-10120;

(6) Has a history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities that resulted in revocation, suspension, or nonrenewal of a license;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state medicaid agency;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;

(12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(13) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order; or

(b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations.

(15) Misappropriated property of a resident, unless such action requires a license denial under WAC 388-76-10120;

(16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(19) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(20) Has failed to meet personal financial obligations;

(21) Interfered with a long-term care (~~ombudsman~~) ombuds or department staff in the performance of his or her duties;

(22) Has not demonstrated financial solvency or management experience in its currently licensed homes, or has not demonstrated the ability to meet other relevant safety, health, and operating standards pertaining to the operation of

multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes; or

(23) The home is currently licensed:

(a) As an assisted living facility; or

(b) To provide care for children in the same home, unless:

(i) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;

(ii) The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and

(iii) The total number of persons receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home.

(24) Failed to give the department access to all parts of the home as authorized under RCW 70.128.090.

(25) Has demonstrated any other factors that give evidence the individual lacks the appropriate character, competence, and suitability to provide care or services to vulnerable adults.

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10130 Qualifications—Provider, entity representative and resident manager. The adult family home must ensure that the provider, entity representative and resident manager have the following minimum qualifications:

(1) Be twenty-one years of age or older;

(2) Have a United States high school diploma or (~~general education development~~) high school equivalency certificate as provided in RCW 28B.50.536, or any English or translated government document of the following:

(a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;

(b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an associate's degree;

(c) Admission to, or completion of course work at a foreign or United States college or university for which credit was awarded;

(d) Graduation from a foreign or United States college or university, including award of a bachelor's degree;

(e) Admission to, or completion of postgraduate course work at, a United States college or university for which credits were awarded, including award of a master's degree; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required.

(3) Completion of the training requirements that were in effect on the date they were hired or became licensed providers, including the requirements described in chapter 388-112 WAC;

(4) Have good moral and responsible character and reputation;

(5) Be literate and able to communicate in the English language, and assure that a person is on staff and available at the home who is capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans.

(6) Assure that there is a mechanism to communicate with the resident in his or her primary language either through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as a language line.

(7) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;

(8) Have completed at least one thousand hours of successful direct care experience in the previous sixty months obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home. Individuals holding one of the following professional licenses are exempt from this requirement:

(a) Physician licensed under chapter 18.71 RCW;

(b) Osteopathic physician licensed under chapter 18.57 RCW;

(c) Osteopathic physician assistant licensed under chapter 18.57A RCW;

(d) Physician assistant licensed under chapter 18.71A RCW;

(e) Registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW.

(9) Have no disqualifying criminal convictions or pending criminal charges under chapter 388-113 WAC;

(10) Have none of the negative actions listed in WAC 388-76-10180;

(11) Obtain and keep valid cardiopulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112 WAC; and

(12) Have tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-10146 Qualifications—Training and home care aide certification. (1) The adult family home must ensure staff persons hired before January 7, 2012 meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC.

(2) The adult family home must ensure all adult family home caregivers, entity representatives, and resident managers hired on or after January 7, 2012, meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

- (d) Cardiopulmonary resuscitation and first aid; and
- (e) Continuing education.

(3) All persons listed in subsection (2) of this section, must obtain the home-care aide certification if required by this section or chapters 246-980 or 388-112 WAC.

(a) Until March 1, 2016, a provisional home-care aide certification may be issued by the department of health to a long-term care worker who is limited English proficient.

(4) Even if an adult family home applicant does not intend to provide direct personal care, the applicant must meet the long-term care worker training and home-care aide certification requirements under chapter 388-112 WAC to the same extent that the requirements would apply if the applicant was a long-term care worker.

(5) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals, including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant programs, are exempt from home-care aide certification and long-term care worker training requirements. This exemption does not apply to continuing education; these individuals must comply with continuing education requirements under chapter 388-112 WAC.

(6) The adult family home must ensure that all staff receive the orientation and training necessary to perform their job duties.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10315 Resident record—Required. The adult family home must:

- (1) Create, maintain, and keep records for residents in the home where the resident lives and ensure that the records:
 - (a) Contain enough information so home can provide the needed care and services to each resident;
 - (b) Be in a format useful to the home;
 - (c) Be kept confidential so that only authorized persons see their contents;
 - (d) Are only released to the following persons:
 - (i) A health care institution;
 - (ii) When requested by the law;
 - (iii) To department representatives; and
 - (iv) To the resident;
 - (e) Be protected to prevent loss, alteration or destruction and unauthorized use;
 - (f) Be kept for three years after the resident leaves the home or death of the resident;
 - (g) Be available so that department staff may review them when requested; and
 - (h) Provide access to the resident to review their record and obtain copies of their record at a reasonable cost.
- (2) Ensure staff has access to the parts of residents' records needed by staff to provide care and services; and
- (3) Allow representatives of the long-term care ~~((ombudsman))~~ ombuds access to a resident record if approved by the resident.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10525 Resident rights—Description.

The adult family home must give each resident a written description of resident's rights that includes a:

- (1) Description of how the home will protect personal funds;
- (2) Posting of names, addresses, and telephone numbers of the:
 - (a) State survey and certification agency;
 - (b) State licensing office;
 - (c) State ~~((ombudsmen))~~ ombuds program; and
 - (d) Protection and advocacy systems.
- (3) Statement informing the resident that he or she may file a complaint with the appropriate state licensing agency concerning alleged abandonment, abuse, neglect, or financial exploitation.

NEW SECTION

WAC 388-76-10532 Resident rights—Standardized disclosure of services form The adult family home is required to complete the department's standardized disclosure of services form.

- (1) The home must:
 - (a) List on the form the scope of care and services available in the home;
 - (b) Send the completed form to the department; and
 - (c) Provide an updated form to the department thirty days prior to changing services, except in emergencies, when the scope of care and services is changing.
- (2) The form does not:
 - (a) Replace the notice of services required when a resident is admitted to the adult family home as directed in chapter 388-76-10530 WAC.
 - (b) Replace any other form or policy as required in chapter 388-76 WAC.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10535 Resident rights—Notice of change to services. (1) The adult family home must inform each resident:

- (a) In writing; and
- (b) In advance of changes in the availability of, or the charges for services, items, or activities, or of changes in the home's rules.
- (2) The home must provide notice:
 - (a) ~~((Thirty days before the change, except in emergencies; or~~
 - (b) Fourteen days before the change, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities)) Give residents thirty days notice prior to the effective date of the change if the home decreases services due to circumstances beyond the home's control; and
 - (b) Give residents ninety days notice prior to the effective date of the increase if the home voluntarily decreases ser-

vices and the change results in the discharge of at least one resident.

(3) The home is not required to give notice:

(a) If the home gives each resident written notice of the availability and charges of services, items and activities before admission, when there are changes and every twenty-four months; and

(b) If the resident is provided different or additional services, items or activities from the home.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10540 Resident rights—Disclosure of fees and charges—Notice requirements—Deposits. (1) ~~((If the))~~ The adult family home ((requires payment of an admission fee, deposit, prepaid charges or any other fees or charges, by or on behalf of a person seeking admission)) must complete the disclosure of charges forms as provided by the department and provide a copy of it to each resident who is admitted to the home.

(2) If the adult family home chooses to provide its own disclosure of fees and charges to residents in addition to the form required by the department, the home:

- (a) Must give full disclosure in writing;
- (b) In a language the resident understands;
- (c) Prior to the receipt of any funds.

~~((2))~~ (3) The disclosure must include:

(a) A statement of the amount of any admissions fees, security deposits, prepaid charges, minimum stay fees or any other fees or charges specifying what the funds are paid for and the basis for retaining any portion of the funds if the resident dies, is hospitalized, or is transferred or discharged from the home;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the security deposits, admission fees, prepaid charges, minimum stay fees or any other fees or charges that will be refunded to the resident if the resident leaves the home.

~~((3))~~ (4) The home must ensure that the receipt of the disclosures required under subsection (1) of this section is in writing and signed and dated by the resident and the home. The home must retain a copy of the disclosure and acknowledgement.

~~((4))~~ (5) If the home does not provide these disclosures, the home must not keep the security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges.

~~((5))~~ (6) If a resident dies, is hospitalized or is transferred to another facility for more appropriate care and does not return to the home, the adult family home:

(a) Must refund any deposit or charges already paid less the home's per diem rate for the days the resident actually resided, reserved or retained a bed in the home in spite of any minimum stay policy or discharge notice requirements; except that

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges;

unless the resident has given advance notice in compliance with the admission agreement;

(c) May not require the resident to obtain a refund from a placement agency or person.

~~((6))~~ (7) The adult family home may not retain funds for reasonable wear and tear by the resident or for any basis that would violate RCW 70.129.150.

~~((7))~~ (8) All adult family homes covered under this section are required to refund any and all refunds due the resident within thirty days from the resident's date of discharge from the home.

~~((8))~~ (9) Nothing in this section applies to provisions in contracts negotiated between a home and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

~~((9))~~ (10) If the home requires an admission agreement by or on behalf of an individual seeking admission the home must ensure the terms of the agreement are consistent with the requirements of this section, chapters 70.128, 70.129 and 74.34 RCW, and other applicable state and federal laws.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10595 Resident rights—Advocacy access and visitation rights. The adult family home must not interfere with each resident's right to have access to and from:

- (1) Any representative of the state;
- (2) The resident's own physician;
- (3) The state long-term care ~~((ombudsman))~~ ombuds program as established under chapter 43.190 RCW;

(4) The agency responsible for the protection and advocacy system for developmentally disabled individuals as established under Part C of the developmental disabilities assistance and bill of rights act;

(5) The agency responsible for the protection and advocacy system for mentally ill individuals as established under the protection and advocacy for mentally ill individuals act;

(6) Immediate family or other relatives of the resident and others who are visiting with the consent of the resident, subject to reasonable limits to protect the rights of others and to the resident's right to deny or withdraw consent at any time;

(7) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the Rehabilitation Act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law; and

(8) The resident's representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10615 Resident rights—Transfer and discharge. (1) The adult family home must allow each resident to stay in the home, and not transfer or discharge the resident unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the home;

(b) The safety or health of individuals in the home is or would otherwise be endangered;

(c) The resident has failed to make the required payment for his or her stay; or

(d) The home ceases to operate.

(2) Before a home transfers or discharges a resident, the home must:

(a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;

(b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(c) Record the reasons in the resident's record; and

(d) Include in the notice the items described in subsection (5) of this section.

(3) Except as specified in (4) of this section, the home must give notice of the transfer or discharge at least thirty days before the resident is transferred or discharged.

(4) The home may make the notice as soon as practicable before transfer or discharge when:

(a) The safety and health of the individuals in the home would be endangered;

(b) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(c) A resident has not resided in the home for thirty days.

(5) The home must include the following in the written notice specified in subsection (2) of this section:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location where the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ~~((ombudsman))~~ ombuds;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and

(f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals.

(6) The home must give residents enough preparation and orientation to ensure a safe and orderly transfer or discharge from the home.

(7) If the home discharges a resident in violation of this section, the home must readmit the resident to the home as soon as a gender-appropriate bed becomes available.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10925 Disclosure of inspection and complaint investigation reports. ~~((Upon request, the))~~ (1) The department ((must provide)) make available to the public

~~((with))~~ copies, subject to applicable public disclosure and confidentiality requirements, of:

~~((+))~~ (a) Inspection and complaint investigation reports as soon as they are completed;

~~((2) The home's plan of correction, if a copy is available at the time of the request; and~~

~~((3))~~ (b) Any final written decision by the department to take an enforcement action.

(2) The department will, upon request, provide the public with copies of the home's plan of correction if a copy is available at the time of the request.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10935 Washington protection and advocacy—Long-term care ombudsman—Official duties—Penalty for interference. The adult family home must not willfully interfere with a representative of the following in the performance of official duties:

(1) Washington protection and advocacy system as defined under RCW 71A.10.080; or

(2) Long-term care ~~((ombudsman))~~ ombuds as defined under chapter 43.190 RCW, the state regulations for the long-term care ombudsman and under federal law.

(3) The department must impose a civil penalty as per WAC 388-76-10975 for any such willful interference with a representative of the long-term care ~~((ombudsman))~~ ombuds program.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10960 Remedies—Department may impose remedies. The department may impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

(1) Has been convicted of:

(a) Any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; or

(b) A crime involving a firearm used in the commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused, or financially exploited a vulnerable adult, unless such decision requires imposition of a remedy under WAC 388-76-10955;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed;

(6) Has a history of violations of chapter 70.128 RCW, or any law regulating residential care facilities, that resulted in revocation, suspension, or nonrenewal of a license with the department;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state medicaid agency;

(9) Has been the subject of a sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;

(12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(13) Willfully prevented, interfered with, or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

(a) A condition or limit imposed on a license or a stop placement order; or

(b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or any other applicable laws.

(15) Misappropriated property of a resident, unless such action requires a remedy under WAC 388-76-10955;

(16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intends to deny, suspend, cancel or revoke the license, unless such action requires imposition of a remedy under WAC 388-76-10955;

(19) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(20) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(21) Has failed to meet personal financial obligations and that failure has resulted in a failure to provide necessary care and services to the residents;

(22) Interfered with a long-term care ((~~ombudsman~~) ombuds) or department staff in the performance of his or her duties; or

(23) Failed to relinquish or surrender the license as required.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10975 Remedies—Specific—Civil penalties. (1) The department may impose civil penalties of at least one hundred dollars per day per violation:

(a) Fines up to one thousand dollars can be issued under RCW 70.128.150 for willful interference with a representative of the long-term care ((~~ombudsman~~) ombuds); and

(b) Fines up to three thousand dollars can be issued under RCW 74.39A.060 for retaliation against a resident, employee, or any other person making a complaint, providing information to, or cooperating with, the ((~~ombudsman~~) ombuds), the department, the attorney's general office, or a law enforcement agency; and

(c) Fines up to ten thousand dollars may be issued under RCW 70.128.065(2) for a current or former licensed provider who is operating an unlicensed home.

(2) When the adult family home fails to pay a fine under this chapter when due, the department may, in addition to other remedies, withhold an amount equal to the fine plus interest, if any, from any contract payment due to the provider from the department.

(3) Civil monetary penalties are due twenty-eight days after the adult family home or the owner or operator of an unlicensed adult family home is served with notice of the penalty unless the adult family home requests a hearing in compliance with chapter 34.05 RCW, RCW 43.20A.215, and this chapter. If the hearing is requested, the penalty becomes due ten days after a final decision in the department's favor is issued. Thirty days after the department serves the adult family home with notice of the penalty, interest begins to accrue at a rate of one percent per month as authorized by RCW 43.20B.695.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10980 Remedies—Specific—Stop placement—Admissions prohibited. (1) The department may order stop placement and prohibit the admission of residents if the home does not meet the requirements of chapters 70.128, 70.129, 74.32 RCW or this chapter.

(2) Once imposed, the adult family home must not admit any person until the stop placement order is terminated.

(3) If the home requests, the department may approve readmission of a resident to the home from a hospital or nursing home during the stop placement.

(4) The department must end the stop placement ((~~when~~) only after) the department finds the:

(a) Deficiencies necessitating the stop placement have been corrected; and

(b) Home can show it has the capacity to maintain adequate care and service.

WSR 14-22-049
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed October 30, 2014, 7:28 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-853-990 Osteopathic fees and renewal cycle, 246-851-990 Optometry fees and renewal cycle, 246-812-990 Denturist fees and renewal cycle, and 246-817-990 Dentist fees and renewal cycle. The department is proposing amendments to add retired active renewal fees and retired active renewal late fees to these professions. The department is also proposing clarification of when the impaired provider surcharge and University of Washington (HEAL-WA) surcharge are due, deleting obsolete language, and making minor housekeeping changes.

Hearing Location(s): Department of Health, PPE Conference Room 153, 310 Israel Road S.E., Tumwater, WA 98501, on December 16, 2014, at 9:00 a.m.

Date of Intended Adoption: December 23, 2014.

Submit Written Comments to: Sherry Thomas, P.O. Box 47850, Olympia, WA 98504-7850, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by December 16, 2014.

Assistance for Persons with Disabilities: Contact Sherry Thomas by December 8, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amends existing fee rules to establish renewal and late fees for a retired active license category for osteopathic physicians, osteopathic physician assistants, optometrists, denturists, and dentists. Each of these profession's disciplining authorities is developing rules for obtaining and renewing a retired active license. RCW 18.130.250 directs the secretary to adopt fees for these credentials.

Reasons Supporting Proposal: RCW 43.70.250 requires the department to charge sufficient fees to cover the costs of administering each profession. The proposed fees meet this requirement by enacting sufficient fees to cover the new retired active license status, which includes a late renewal penalty. The proposed fees have been determined through fee analyses to support the costs of the new credential status.

Statutory Authority for Adoption: RCW 18.130.250, 43.70.250, 18.130.186, 18.32.534.

Statute Being Implemented: RCW 18.130.250, 43.70.-250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sherry Thomas, 111 Israel Road S.E., Tumwater, WA 98504, (360) 236-4612.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

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)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

October 28, 2014

Dennis E. Worsham

Deputy Secretary

for John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending WSR 10-19-071, filed 9/16/10, effective 10/15/10)

WAC 246-812-990 Denturist fees and renewal cycle.

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
<u>Original application</u>	
Application	\$1,500.00
Examination	1,500.00
Reexamination, written	500.00
Reexamination, practical	500.00
<u>Active license renewal</u>	
((License)) Renewal	1,855.00
Late renewal penalty	300.00
Expired license reissuance	300.00
<u>Inactive license renewal</u>	
((Inactive license)) Renewal	750.00
Expired ((inactive)) license reissuance	300.00
<u>Retired active license renewal</u>	
<u>Renewal</u>	<u>930.00</u>
<u>Late renewal penalty</u>	<u>150.00</u>
Duplicate license	15.00
Certification of license	25.00
Multiple location licenses	50.00

AMENDATORY SECTION (Amending WSR 13-21-069, filed 10/16/13, effective 1/1/14)

WAC 246-817-990 Dentist fees and renewal cycle. (1)

Licenses must be renewed every year on the practitioner's

birthday as provided in chapter 246-12 WAC, Part 2, except faculty and resident licenses.

(2) Faculty and resident licenses must be renewed every year on July 1 as provided in chapter 246-12 WAC, Part 2.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application by examination*	
Initial application	\$500.00
Original application - Without examination	
Initial application	500.00
Initial license	500.00
Faculty license application	500.00
Resident license application	115.00
Active license renewal:	
Renewal	350.00
Surcharge - Impaired dentist	50.00
Late renewal penalty	288.00
Expired license reissuance	300.00
Inactive license renewal:	
Renewal	125.00
Surcharge - Impaired dentist	50.00
Late renewal penalty	50.00
Retired active license renewal	
<u>Renewal</u>	<u>150.00</u>
<u>Surcharge - Impaired dentist</u>	<u>50.00</u>
<u>Late renewal penalty</u>	<u>75.00</u>
Duplicate license	15.00
Certification of license	25.00
Anesthesia permit	
Initial application	150.00
Renewal - (Three-year renewal cycle)	150.00
Late renewal penalty	75.00
Expired permit reissuance	50.00
On-site inspection fee	To be determined by future rule adoption.

* In addition to the initial application fee above, applicants for licensure via examination will be required to submit a separate application and examination fee directly to the dental testing agency accepted by the dental quality assurance commission.

AMENDATORY SECTION (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

WAC 246-851-990 Optometry fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
<u>Original application</u>	
Application	\$175.00
Out-of-state seminar	100.00
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Active license renewal</u>	
((License)) <u>Renewal</u>	199.00
Late renewal penalty	100.00
Expired license reissuance	75.00
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Inactive license renewal</u>	
((Inactive license)) <u>Renewal</u>	75.00
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Retired active license renewal</u>	
<u>Renewal</u>	<u>94.00</u>
<u>Late renewal penalty</u>	<u>50.00</u>
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
Duplicate license	15.00
Certification of license	25.00
((UW online access fee (HEAL-WA))	16.00

AMENDATORY SECTION (Amending WSR 13-21-069, filed 10/16/13, effective 1/1/14)

WAC 246-853-990 Osteopathic fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates.

(3) The following nonrefundable fees will be charged for osteopathic physicians:

Title of Fee	Fee
<u>Original application</u>	
Endorsement application	\$425.00
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Active license renewal</u>	
((Active license)) <u>Renewal</u>	425.00
((Active)) <u>Late renewal penalty</u>	250.00
((Active)) <u>Expired license reissuance</u>	250.00
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Substance abuse monitoring surcharge</u>	<u>25.00</u>
<u>Inactive license renewal</u>	
((Inactive license)) <u>Renewal</u>	350.00
Expired ((inactive)) license reissuance	225.00
((Inactive)) <u>Late renewal penalty</u>	175.00
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>

Title of Fee	Fee
<u>Substance abuse monitoring surcharge</u>	<u>25.00</u>
<u>Retired active license renewal</u>	
<u>Renewal</u>	<u>219.00</u>
<u>Late renewal penalty</u>	<u>110.00</u>
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Substance abuse monitoring surcharge</u>	<u>25.00</u>
Endorsement/state exam application	500.00
Reexam	100.00
Certification of license	50.00
<u>Limited license</u>	
((Limited license)) <u>Application</u>	325.00
((Limited license)) <u>Renewal</u>	300.00
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Substance abuse monitoring surcharge</u>	<u>25.00</u>
Temporary permit application	70.00
Duplicate certificate	20.00
((Substance abuse monitoring surcharge	25.00
UW online access fee (HEAL-WA)	16.00))
(4) The following nonrefundable fees will be charged for osteopathic physician assistants:	
Title of Fee	Fee
<u>Original application</u>	
Application	\$250.00
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Active license renewal</u>	
Renewal	250.00
Late renewal penalty	150.00
Expired license reissuance	100.00
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Substance abuse monitoring surcharge</u>	<u>25.00</u>
<u>Retired active license renewal</u>	
<u>Renewal</u>	<u>134.00</u>
<u>Late renewal penalty</u>	<u>75.00</u>
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
<u>Substance abuse monitoring surcharge</u>	<u>25.00</u>
Certification of license	30.00
Interim permit	200.00
License after exam	100.00
Duplicate certificate	20.00
((Substance abuse monitoring surcharge	25.00
UW online access fee (HEAL-WA)	16.00))

WSR 14-22-060
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed October 31, 2014, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-015.

Title of Rule and Other Identifying Information: WAC 458-61A-202 Inheritance or devise and 458-61A-303 Affidavit.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 18, 2014, at 1:30 p.m. *Call-in option can be provided upon request no later than three days before the hearing date.* Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: December 24, 2014.

Submit Written Comments to: David Hesford, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail DavidH@dor.wa.gov, by December 18, 2014.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB [2ESHB] 1117, effective on June 12, 2014, provides a new REET exemption for transfers pursuant to a transfer on death deed and substantiation requirements to claim that exemption, as well as a change to the affidavit requirements for transfer on death deed transfers. WAC 458-61A-202 and 458-61A-303 need to be amended to reflect this new exemption and accompanying substantiation and affidavit requirements for transfers pursuant to transfer on death deeds.

Reasons Supporting Proposal: Amending these rules to reflect the new transfer on death deed provisions in ESHB [2ESHB] 1117 will provide taxpayers, practitioners, and counties with guidance on how to treat filings and recordings related to these transfers.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, and 82.01.060(2).

Statute Being Implemented: RCW 82.45.010 (3)(b), 82.45.150, 82.45.197.

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

Name of Proponent: [Department of revenue], governmental.

Name of Agency Personnel Responsible for Drafting: David Hesford, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1586; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1300.

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

A cost-benefit analysis is not required under RCW 34.05.328.

October 31, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-06-060, filed 2/28/14, effective 3/31/14)

WAC 458-61A-202 Inheritance or devise. (1) **Introduction.** Transfers of real property by inheritance or devise are not subject to the real estate excise tax. For the purpose of this exemption, it does not matter whether the real property transferred was encumbered by underlying debt at the time it was inherited or devised.

(2) **Nonpro rata distributions.** A nonpro rata distribution is one in which the transfer of real property to the heirs or devisees may not be in proportion to their interests. For example, Aunt Mary wills her entire estate equally to her three nieces. The estate consists of her primary residence, a cottage at the ocean, and significant cash assets, among other things. Rather than take title to the two parcels of real estate in all three names, the estate may be distributed by deeding the primary residence to Meg, the oceanfront property to Beth, and the majority of the cash assets to Jo. Such distribution by a personal representative of a probated estate or by the trustee of a trust is not subject to the real estate excise tax if the transfer is authorized under the nonintervention powers of a personal representative under RCW 11.68.090 or under the nonpro rata distribution powers of a trustee under RCW 11.98.070(15), if no consideration is given to the personal representative or the trustee for the transfer. For the purpose of this section, consideration does not include the indebtedness balance of any real property that is encumbered by a security lien.

(3) **Subsequent transfers.** A transfer of property from an heir to a third party is subject to the real estate excise tax. Examples:

(a) Steve inherits real property from his mother's estate. He sells the property to his son for \$50,000. The transfer of the property from the estate to Steve is exempt from real estate excise tax. The subsequent sale of the property to his son is a taxable event, and tax is due based upon the full sales price of \$50,000.

(b) Susan inherits real property from her father's estate. She decides to sell it to a friend on a real estate contract for \$100,000. Tax is due on the \$100,000.

(c) Sheri and her two sisters inherit their father's home, valued at \$180,000, in equal portions. Sheri wants sole ownership of the home but there are not "in-kind" assets of sufficient value to be distributed by the personal representative to her two sisters in a nonpro rata distribution. In order to take title directly from the personal representative, Sheri pays each of her sisters \$60,000, and they quitclaim their right to the property under the will. Tax is due on the total of \$120,000 paid for the property.

(4) **Community property or right of survivorship.** The transfer of real property to a surviving spouse or surviving domestic partner in accordance with a community property

agreement or a survivorship clause is not subject to real estate excise tax.

(5) **Joint tenants.** The transfer of real property upon the death of a joint tenant to the remaining joint tenants under right of survivorship is not subject to the real estate excise tax.

(6) **Life estates and remainder interests.** The transfer of a life estate to the grantor with a remainder interest to another party is not a taxable transfer if no consideration passes. For example, Nate and Libby convey their property to their son, Rex, and retain a life estate. The transaction is not subject to real estate excise tax because Rex pays no consideration. Upon the deaths of Nate and Libby, the title will vest in Rex and no real estate excise tax is due. However, if Nate and Libby convey their property to Rex, while retaining a life estate, and Rex pays any consideration for his future interest, the transaction is taxable. Tax is due on the total consideration paid.

(7) **Transfer on death deeds.** The transfer of real property pursuant to a transfer on death deed to the beneficiary(ies) named in the transfer on death deed occurs upon the death of the transferor and is generally not subject to the real estate excise tax. However, if the transfer of real property pursuant to a transfer on death deed satisfies a contractual obligation of the transferor owed to the beneficiary(ies) designated in the transfer on death deed, real estate excise tax is due on the transfer.

(8) **Documentation.** In order to claim this exemption, the following documentation must be provided:

(a) **Community property agreement.** If the property is being transferred under the terms of a community property agreement, copies of the recorded agreement and certified copy of the death certificate;

(b) **Trusts.** If property is being transferred under the terms of a trust instrument, a certified copy of the death certificate, and a copy of the trust instrument showing the authority of the grantor;

(c) **Probate.** In the case of a probated will, a certified copy of the letters testamentary, or in the case of intestate administration, a certified copy of the letters of administration, showing that the grantor is the court appointed executor/ executrix or administrator;

(d) **Joint tenants with rights of survivorship and remainder interests.** A certified copy of the death certificate is recorded to perfect title;

(e) **Court order.** If the property is being transferred pursuant to a court order, a certified copy of the court order requiring the transfer of property, and confirming that the grantor is required to do so under the terms of the order;

(f) **Transfer on death deeds.** If the property is being transferred pursuant to a transfer on death deed, the beneficiary(ies) of the transfer on death deed must record a certified copy of the death certificate to perfect title.

(g) **Other.** If the community property interest of the decedent is being transferred to a surviving spouse or surviving domestic partner absent the documentation set forth in (a) through ~~((e))~~ (f) of this subsection, a certified copy of the death certificate and a signed affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir of the property.

AMENDATORY SECTION (Amending WSR 14-06-060, filed 2/28/14, effective 3/31/14)

WAC 458-61A-303 Affidavit. (1) **Introduction.** This section explains when a real estate excise tax affidavit is required for the transfer of real property. See WAC 458-61A-101 for procedures pertaining to transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(2) **Affidavit required.** In general, an affidavit must be filed when ownership or title to real property transfers as evidenced by conveyance, deed, grant, assignment, quitclaim, or any other document effectuating the transfer including, but not limited to, the following:

(a) Transfer establishing or separating community property, or in fulfillment of a settlement agreement incident to a dissolution of marriage, legal separation, or declaration of invalidity, or in fulfillment of a community property agreement under RCW 26.16.120;

(b) Transfer resulting from a court order;

(c) Transfer to secure a debt;

(d) Transfer of a taxable easement;

(e) A deed in lieu of foreclosure of a mortgage;

(f) A deed in lieu or declaration of forfeiture of a real estate contract;

(g) Transfer to an heir in the settlement of an estate;

(h) Transfer to or from the United States, the state of Washington, or any political subdivision or municipal corporation of this state;

(i) Transfer of development rights, water rights, or air rights;

(j) Transfer of leasehold improvements;

(k) Boundary line adjustments; ((~~or~~))

(l) Rerecording a document to correct a minor error, such as the legal description or spelling of a name; or

(m) Transfer pursuant to a previously recorded transfer on death deed when the beneficiary(ies) perfect title by recording a certified copy of the transferor's death certificate.

(3) **Affidavit not required.** The real estate excise tax affidavit is not required nor accepted for the following transactions including, but not limited to:

(a) Transfer of cemetery lots or graves;

(b) Transfer for assignment or release of security, stated on the face of the instrument:

(i) To secure or assign a debt; or

(ii) To provide or release collateral;

(c) A lease of real property that does not transfer lessee-owned improvements;

(d) A mortgage or deed of trust, satisfaction of mortgage, or reconveyance of a deed of trust;

(e) A seller's assignment of deed and contract;

(f) A fulfillment deed pursuant to a real estate contract;

(g) A community property agreement under RCW 26.16.120;

(h) Purchase of an option; ((~~or~~))

(i) An earnest money agreement;

(j) The recording of a transfer on death deed; or

(k) The revocation of a transfer on death deed.

(4) **Examples.**

(a) Lionel Construction has developed a group of new homes. It deeds a street to the homeowners' association upon

completion of the development. This is done to clear title, which is an exempt transaction. The affidavit should cite the appropriate exemption rule, describe the exemption as "clearing title for street for homeowners' association," and have attached all department-required documentation.

(b) Webb Corporation transfers its interest in a parcel of real property to its wholly owned subsidiary, Watson Company. This is an exempt transaction because there is no change in beneficial ownership of the property. The affidavit must cite the appropriate exemption rule, describe the exemption as "transfer to wholly owned subsidiary; no change in beneficial ownership," and have attached all documentation required by the department.

(c) Amy records a transfer on death deed naming her two children as beneficiaries. No affidavit is required when Amy records the transfer on death deed and no real estate excise tax is due on the transfer. When Amy dies, the transfer on death deed transfers the property to her two children. This is an exempt transaction because the transfer was pursuant to a transfer on death deed, and there was no other consideration on the transfer. However, in order to perfect title, both of Amy's children must sign an affidavit claiming the appropriate exemption (WAC 458-61A-202) and record a certified copy of Amy's death certificate along with the signed affidavit at the county where Amy recorded the transfer on death deed.

(5) **Multiple buyers.** When the transfer of property is to two or more buyers, the affidavit must clearly state the relationship between them as joint tenants, tenants in common, partners, etc., and identify the form and proportion of interest each is acquiring.

(6) **Affidavit must be complete.**

(a) Taxpayers must provide complete and accurate information on the affidavit, as well as all documentation required by the department for claimed tax exemptions. Incomplete affidavits will not be accepted.

(b) An affidavit is incomplete if any required information is omitted or obviously incorrect, such as the use of a nominal selling price. A nominal selling price is an amount stated on the affidavit that is so low in comparison with the fair market value assessment stated on the property tax rolls that it would cause disbelief by a reasonable person. In the case of a nominal selling price, the county assessed value will be used as the selling price, unless there is an independent appraisal showing a greater value.

(7) **Documentation required when claiming an exemption.** Claims of exemption from the real estate excise tax must be specific and include the following:

(a) Current assessed values of parcels involved as of the date of sale; and

(b) Complete reasons for the exemption, including reference to the specific tax exemption in this chapter, citing the specific WAC section and subsection providing the exemption, as well as a brief description of the exemption.

(8) **Completion of affidavit.** The department will provide a real estate excise tax affidavit to be completed by the taxpayer and filed with the agent of the county where the property is located. Affidavits will be furnished by the department to the county agents and accessible to the public in one or more formats to be determined by the department.

Alternative forms may be used, as long as they are in a format accepted by the department.

In most instances, the affidavit must be signed by the seller or the seller's agent and the buyer or the buyer's agent, under oath, certifying that all information on the affidavit is complete and correct. However, an affidavit given in connection with the grant of an easement or right of way to a utility company, public utility district or cooperative, or a governmental entity needs to be signed only on behalf of the entity purchasing the utility right of way or easement. In addition, an affidavit given in connection with the transfer of real property pursuant to a transfer on death deed need only be signed on behalf of the transferor by the designated beneficiary(ies) named in the transfer on death deed.

(9) **Duplicate affidavits.** To accommodate the requirement that the affidavit be signed by both the seller and buyer, or agents of each, identical affidavits may be submitted for a single transaction, one bearing the seller's or seller's agent's signature and one bearing the buyer's or buyer's agent's signature. Both affidavits must be complete and have identical information. The county agent will receipt one of the affidavits and attach the other affidavit to the receipted affidavit.

(10) **Retention of records.** The taxpayer must retain all records pertaining to the transaction for a period of at least four years from the date of sale.

WSR 14-22-061

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed October 31, 2014, 9:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-17-137.

Title of Rule and Other Identifying Information: Amending three rules; decodifying and recodifying two rules; and repealing ten rules in chapter 458-276 WAC, Access to public records. These rules explain the Public Records Act, chapter 42.56 RCW, and establish procedures the department of revenue will follow to provide access to public records.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 11, 2014, at 10:30 a.m. *Call-in option can be provided upon request no later than three days before the hearing date.* Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: December 18, 2014.

Submit Written Comments to: Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 534-1606, by December 11, 2014, at noon.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating these rules interpreting the Public Records Act, chapter 42.56

RCW, will clarify and update the procedures the department follows to provide access to public records. These rules will provide information and establish processes for requesting and obtaining access to public records. These rules also explain statutory exemptions from disclosure.

Reasons Supporting Proposal: These changes will provide the public with a better understanding of the department's procedures regarding access to public records and the statutory exemptions from disclosure.

Statutory Authority for Adoption: RCW 82.01.060(2).

Statute Being Implemented: Chapter 42.56 RCW, Public Records Act.

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

Name of Proponent: [Department of revenue], governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not create reporting, recordkeeping, and other compliance requirements that would economically impact a small business or fiscally impact a school district.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule under RCW 34.05.328.

October 31, 2014

Dylan Waits

Rules Coordinator

AMENDATORY SECTION (Amending WSR 78-02-064, filed 1/23/78)

WAC 458-276-010 ((Declaration of) Authority and purpose of access to public records. ~~((This chapter is promulgated by the department of revenue in compliance with RCW 42.17.250 and to set out procedures by which public records of the department will be made available to the public for inspection and copying.))~~ (1) The purpose of the Public Records Act, chapter 42.56 RCW, is to provide for the public's access to information concerning the conduct of government. The purpose of these rules in this chapter is to establish the procedures the department of revenue (department) will follow in order to provide this access to nonexempt public records. These rules provide information to persons requesting access to public records of the department and establish processes for both requestors and department staff that are designed to assist members of the public in obtaining access.

(2) In carrying out its responsibilities under the Public Records Act, the department must give due regard to the applicable statutory exemptions or limitations from disclosure described in WAC 458-276-045.

AMENDATORY SECTION (Amending WSR 78-02-064, filed 1/23/78)

WAC 458-276-020 (~~(Definitions.)~~) Agency description—Public records officer—Public records. (1) (Public records. "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) Writing. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3)) **Department of revenue.** The department of revenue (department) is an agency headed by a director (director) appointed by the governor subject to ((~~confirmation~~)) confirmation by the state senate. The powers and duties of the director are(~~, inter alia,~~) those prescribed by RCW 82.01-060. The department ((~~of revenue will hereinafter be referred to as the "department," and the director will hereinafter be referred to as the "director."~~)) administers state tax and business licensing laws, acts as advisor on revenue matters to the governor, the legislature, and other state and local agencies, and supervises and assists in the administration of property tax laws at the state and local level. Where appropriate, the term department also refers to the staff and employees of the department of revenue.

(2) **Public records officer.** The department's public records officer oversees compliance with the Public Records Act but other department employees, referred to as public records designees, will generally process the specific requests. These rules, therefore, will refer to the public records officer or designee. The public records officer or designee of the department will:

- Assist requestors in obtaining the requested records;
- Create and maintain for use by the public and department employees an index to the department's public records;
 - Protect public records from damage or disorganization;
 - Fulfill public records requests without excessive interference with essential functions of the department;
 - Give due regard to statutory exemptions or other judicially recognized limitations from disclosure; and
 - Prevent unreasonable invasions of privacy or the use of records for purposes of commercial lists when releasing records to the public.

(3) **Public records.** A public record is any writing prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics containing information relating to the conduct of government or the performance of any governmental or proprietary function.

(4) **Writing.** Writing is every means of recording any form of communication or representation whether by handwriting, typewriting, printing, photostating/copying, photographing, or other means of recording. A "writing" includes, but is not limited to, letters, e-mail messages, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints,

magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

AMENDATORY SECTION (Amending WSR 78-02-064, filed 1/23/78)

WAC 458-276-030 (~~(Description of central and field organization of the department.)~~) Availability of public records—Centralized administration—Public records requests and processing—Contact information and hours—Index—Costs. ((The department of revenue administers state tax laws, acts as advisor on revenue matters to the governor, the legislature, and other state and local agencies, and supervises and assists in the administration of property tax laws at state and local levels. The central administrative offices of the department and its staff are located at General Administration Building, Fourth Floor, Olympia, Washington 98504. Operating divisions of the department are: Field Operations, Interpretation and Appeals, Research and Information, Office Operations, Inheritance Tax, Property Tax, Administrative Services, and Forest Tax.)) (1) **Availability.** All public records of the department of revenue (department) are deemed to be available for public inspection and copying pursuant to these rules in this chapter, except as otherwise provided by WAC 458-276-045 regarding exemptions and other limitations on disclosure of records.

(2) **Centralized administration.** All communications with the department regarding administration or enforcement of chapter 42.56 RCW and these rules in this chapter, and written requests for copies of the department's public records, decisions, and other matters, are handled by the centralized administration of the public records officer or designee, sometimes collectively referred to as the department's public records unit. This rule describes this centralized administration. The public records officer or designee may be contacted at their centralized location described in subsection (6) of this rule.

(3) **Written and dated requests.** Requestors are encouraged to view the documents available on the web site prior to submitting a records request. The department recommends a written and dated request for public records to protect against unauthorized disclosure of confidential taxpayer information, unauthorized disclosure of licensing information, unauthorized disclosure of confidential property tax information, invasion of privacy, and to enhance the accuracy of the department's response to the request. A written request minimizes confusion or misunderstanding as to what is being requested and establishes a contact for clarifications and questions.

(4) **Request for records.** The written request is most effective if it contains the following information:

- (a) Name of the person requesting the records or a point of contact;
- (b) Calendar date on which the request is made;
- (c) Specific records requested, if not identified in the public records index located online at dor.wa.gov, then an appropriate description of the records requested; and

(d) Contact information for questions about the request including, if possible, mailing address, e-mail address, and telephone number.

(5) **Web site public records e-mail request available.** The department has developed an "e-mail request form" to assist requestors in obtaining public records. This e-mail request form is located on the department's web site at www.dor.wa.gov (searching: "public records").

(6) **Department's contact information.** Any person requesting access to public records of the department or seeking assistance in making such a request should contact the public records officer or designee of the department. Written requests for identifiable public records may be submitted to the department's public records officer or designee by mail, e-mail message, secure message, facsimile transmission, or delivered in person to the following addresses and physical location:

Mail delivery:
Department of Revenue
Public Records Unit
P.O. Box 47478
Olympia, WA 98504-7478;

E-mail message: dorpublicrecords@dor.wa.gov;
Internet web site: dor.wa.gov (search: "public records");
Facsimile transmission (fax): 360-705-6655;

Street address:
6500 Linderson Way S.W., Suite 102
Tumwater, WA 98501-6561.

(7) **Response.** Within five business days of the receipt of the initial public records request by the public records officer or designee, the department will:

- Provide the record;
- Acknowledge that the department has received the request and provide a reasonable estimate of the time it will take to fully respond;
- Seek a clarification of the request; or
- Deny the request.

(8) **Electronic format.** When a person requests public records in an electronic format, the public records officer or designee will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the department and is generally commercially available, or in a format that is reasonably translatable from the format in which the department keeps the records.

(9) **Public records index.** The department of revenue (department) maintains and makes available for public inspection and copying an appropriate index or indices in accordance with RCW 42.56.070. Such index or indices are located on the department's web site (searching: "public records index").

(10) **Hours for inspection and copying.** Public records maintained by the department in the central administrative offices of the taxpayer services division at the address and location described in subsection (6) of this rule, will be available for inspection and copying at the central administrative office during the customary office hours of the department. For the purposes of these rules in this chapter, the customary

office hours are 9:00 a.m. to noon and 1:30 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(11) **Copying.** There is no fee for the inspection of public records. The department may charge fifteen cents per page for standard black and white paper photocopying. For other than standard photocopies a reasonable fee for providing copies of public records and for use of the department's copy equipment may be charged. The department will publish copying fees to make them readily available to the public. Any fee will be limited to reimbursing the department for its costs incident to such copying. The present fees for copying can be found on the department's internet web site: dor.wa.gov (search: "public records").

AMENDATORY SECTION (Amending WSR 78-02-064, filed 1/23/78)

WAC 458-276-060 Public records (~~officer~~) exemptions—Determining limitations on disclosure—Commercial lists—Redactions—Exemption log. ((The department's public records are in the charge of the public records officer designated by the director. The person so designated will be located in the central administrative office, research and information division, of the department. The public records officer is responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally ensuring compliance by the department with the public records disclosure requirements of chapter 42.17 RCW.)) (1) **Exemptions.** The Public Records Act provides that certain documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any other statute exempts or prohibits disclosure. The following statutes and judicially recognized limitations prohibit the availability of some documents held by the department of revenue (department) for inspection and copying:

- RCW 19.02.115 concerning certain business licensing information;

- RCW 82.32.330 concerning disclosure of tax returns and confidential taxpayer information;

- RCW 84.08.210 concerning certain property tax information; and

- Limitations from disclosure found in chapter 42.56 RCW and other statute exemptions, including an employee's right to privacy; deliberative process exemption under RCW 42.56.210(1) regarding records containing predecisional opinions or recommendations of subordinates expressed as part of the deliberative process that are not cited by the agency; attorney-client privilege in RCW 5.60.060 (2)(a) and RCW 42.56.210(1) exempting attorney work-product involving a controversy; and the prohibition on providing lists requested for commercial purposes prohibited by RCW 19.02.115, 42.56.070(9), and 82.32.330 (3)(k).

(2) **Nondisclosure for commercial lists.** The department is prohibited by RCW 19.02.115, 42.56.070(9), and 82.32.330 (3)(k) from giving, selling, or providing access to any list of persons for any commercial purpose. The department may require the requestor to sign a declaration that the

requestor will not put a list of persons in the record to use for a commercial purpose.

(3) Determination required. The department must determine that a public record requested in accordance with the procedures outlined in WAC 458-276-030 is not exempt from disclosure under the provisions of RCW 19.02.115, 42.56.230, 82.32.330, 84.08.210, chapter 42.56 RCW, other statute limiting disclosure, or judicially recognized limitation from disclosure prior to the record's release.

(4) Redactions.

(a) RCW 42.56.210(1) creates an exception for tax information from any redaction requirement. Further, RCW 82.32.330 (1)(c), the department is not required to redact confidential taxpayer information within a document to permit its disclosure. RCW 19.02.115 states licensing information is confidential and privileged and does not list redaction as an authorized exception allowing disclosure. RCW 84.08.210 states tax information is confidential and privileged and does not list redaction as an authorized exception allowing disclosure. The department's policy is to not redact confidential taxpayer information or licensing information for purposes of disclosure.

(b) Pursuant to RCW 42.56.070, the department will redact identifying details when disclosure of such details would be an invasion of privacy protected by chapter 42.56 RCW. The department may redact for the deliberative process exemption found at RCW 42.56.210(1). The department may redact information when protected by the attorney-client privilege found at RCW 5.60.060 (2)(a) and 42.56.210(1). The public records officer or designee will provide a brief explanation justifying such redaction in writing.

(5) Exemption log. All denials, partially or fully denied, of requests for public records will be accompanied by a written statement specifying the reason for the denial. This will include an exemption log of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

AMENDATORY SECTION (Amending WSR 78-02-064, filed 1/23/78)

WAC 458-276-070 (~~Hours for records inspection and copying~~) **Review of denials of public records requests—Department's process—Attorney general and court review.** ((Public records maintained in the central administrative offices will be available for inspection and copying at the administrative office during the customary office hours of the department. For the purposes of this chapter, the customary office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Specific records not available in the central administrative offices will be made available pursuant to the procedures described in WAC 458-276-080(3).)) (1) **Requestor's petition.** Any person who objects to the full or partial denial of a public records request may petition the department of revenue (department) in writing (including by e-mail message) to the public records officer or designee for prompt review of such decision. The petition shall include a copy of the full or partial denial received by the requestor.

(2) Prompt review. After receiving a written request for review of a decision denying a public record, the public records officer or designee denying the request will refer it to the public records officer's supervisor for review. The petition will be reviewed promptly within two business days following the department's receipt of the petition or within such other time as the department and the requestor may mutually agree. Such approval or disapproval shall constitute final department action for purposes of review under RCW 42.56.530.

(3) Attorney general office's review. Pursuant to RCW 42.56.530, if the department denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request that the attorney general's office review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Court review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative review under this rule.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
458-276-060	458-276-045
458-276-070	458-276-055

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 458-276-040	Operations and procedures.
WAC 458-276-050	Public records available.
WAC 458-276-080	Requests for public records.
WAC 458-276-090	Copying.
WAC 458-276-100	Exemptions.
WAC 458-276-110	Review of denials of public records requests.
WAC 458-276-120	Limitations on disclosure.
WAC 458-276-130	Records index.
WAC 458-276-140	Administrative offices.
WAC 458-276-150	Adoption of form.

WSR 14-22-062

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed October 31, 2014, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-19-062.

Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 10, 2014, at 10:00 a.m. Call-in option can be provided upon request no later than three days before the hearing date. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: December 16, 2014.

Submit Written Comments to: Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 534-1606, by December 10, 2014.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed rule will apply to the first half of 2015.

Further, RCW 84.33.140 requires that forest land values be adjusted annually by a statutory formula contained in RCW 84.33.140(3). The department anticipates amending the forest land values rule (WAC 458-40-540) to adjust the table of forest land values in Washington as required by statute. County assessors will use these published land values for property tax purposes in 2015.

Reasons Supporting Proposal: Required by statutes and values needed to calculate timber excise and property taxes.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: [Department of revenue], governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1300.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not create reporting, recordkeeping, and other compliance requirements that would economically impact a small business or fiscally impact a school district.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Mark E. Bohe, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-

7453, phone (360) 534-1574, fax (360) 534-1606, e-mail markbohe@dor.wa.gov. The proposed rule is a significant legislative rule as defined by RCW 34.05.328.

October 31, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-01-097, filed 12/17/13, effective 1/1/14)

WAC 458-40-540 Forest land values—((2014)) 2015. The forest land values, per acre, for each grade of forest land for the ((2014)) 2015 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2014)) 2015 VALUES PER ACRE
((1	1	\$189
	2	187
	3	175
	4	127
2	1	160
	2	155
	3	148
	4	106
3	1	124
	2	120
	3	119
	4	92
4	1	96
	2	93
	3	92
	4	69
5	1	69
	2	62
	3	61
	4	43
6	1	35
	2	33
	3	33
	4	31
7	1	16
	2	16
	3	15
	4	15
8	1	4))
	1	\$193
	2	191
	3	179
1	4	130
	1	164
	2	158
	3	151
2	4	108

LAND GRADE	OPERABILITY CLASS	((2014)) 2015 VALUES PER ACRE
3	1	127
	2	123
	3	122
	4	94
4	1	98
	2	95
	3	94
	4	71
5	1	71
	2	63
	3	62
	4	44
6	1	36
	2	34
	3	34
	4	32
7	1	16
	2	16
	3	15
	4	15
8	1	1

AMENDATORY SECTION (Amending WSR 14-14-079, filed 6/27/14, effective 7/1/14)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((July)) January 1 through ((December 31, 2014)) June 30, 2015:

**Washington State Department of Revenue
STUMPAGE VALUE TABLE**

((July)) January 1 through ((December 31, 2014)) June 30, 2015

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Starting July 1, 2012, there are no separate Quality Codes per Species Code.

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
((Douglas-fir ⁽²⁾)	DF	1	\$476	\$469	\$462	\$455	\$448
		2	516	509	502	495	488
		3	438	431	424	417	410
		4	530	523	516	509	502
		5	470	463	456	449	442
		6	265	258	251	244	237
Western Hemlock and	WH	1	408	401	394	387	380

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Other Conifer ⁽³⁾		2	430	423	416	409	402
		3	396	389	382	375	368
		4	385	378	371	364	357
		5	407	400	393	386	379
		6	273	266	259	252	245
Western Redcedar ⁽⁴⁾	RC	1-5	943	936	929	922	915
		6	705	698	691	684	677
Ponderosa Pine ⁽⁵⁾	PP	1-6	222	215	208	201	194
Red Alder	RA	1-5	466	459	452	445	438
Black Cottonwood	BC	1-5	54	47	40	33	26
Other Hardwood	OH	1-5	280	273	266	259	252
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	840	833	826	819	812
Western Redcedar Poles	RCL	1-5	1378	1371	1364	1357	1350
		6	935	928	921	914	907
Chipwood ⁽⁶⁾	CHW	1-5	6	5	4	3	2
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	30	29	28	27	26
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-6	178	171	164	157	150
Posts ⁽⁸⁾	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-6	0.50	0.50	0.50	0.50	0.50
Douglas-fir ⁽²⁾	DF	1	\$494	\$487	\$480	\$473	\$466
		2	496	489	482	475	468
		3	423	416	409	402	395
		4	533	526	519	512	505
		5	447	440	433	426	419
6	271	264	257	250	243		
Western Hemlock and Other Conifer ⁽³⁾	WH	1	428	421	414	407	400
		2	437	430	423	416	409
		3	392	385	378	371	364
		4	386	379	372	365	358
		5	408	401	394	387	380
		6	260	253	246	239	232
Western Redcedar ⁽⁴⁾	RC	1-5	1001	994	987	980	973
		6	693	686	679	672	665
Ponderosa Pine ⁽⁵⁾	PP	1-6	228	221	214	207	200
Red Alder	RA	1-5	481	474	467	460	453

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Black Cottonwood	BC	1-5	75	68	61	54	47
Other Hardwood	OH	1-5	339	332	325	318	311
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	876	869	862	855	848
Western Redcedar Poles	RCL	1-5	1453	1446	1439	1432	1425
		6	944	937	930	923	916
Chipwood ⁽⁶⁾	CHW	1-5	8	7	6	5	4
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	25	24	23	22	21
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-5	289	282	275	268	261
Posts ⁽⁸⁾	LPP	1-5	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-5	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-5	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, Lodgepole Pine, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage Value per 8 lineal feet or portion thereof.
- (9) Stumpage Value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

- (a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.
- (b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.
- (c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.
- (d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chip-

wood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ~~((July))~~ January 1 through ~~((December 31, 2014))~~ June 30, 2015:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, and 5

~~((July))~~ January 1 through ~~((December 31, 2014))~~ June 30, 2015

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$50.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

TABLE 10—Harvest Adjustment Table Stumpage Value Area 6

((July)) January 1 through ((December 31, 2014)) June 30, 2015

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVA's 1 through 5 only:	\$((4.00)) <u>2.00</u>

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before

the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

WSR 14-22-077

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Community Services Division)

[Filed November 3, 2014, 12:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-09-111.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-412-0015, 388-450-0185, 388-450-0190, 388-478-0060, 388-450-0195, and 388-470-0005.

Hearing Location(s): Office Building 2, Lookout Room, 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>), on December 9, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 10, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 9, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by November 25, 2014, TTY (360) 664-6178, or (360) 664-6092, or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments increase the Basic Food standard deductions for one to three persons to \$155, four persons to \$165, five persons to \$193, and six or more persons to \$221; Basic Food minimum allotment to \$16; state-funded FAP minimum allotment to \$12; standard utility allowance to \$415; limited utility allowance to \$336; maximum shelter deduction to \$490; maximum gross monthly income and maximum net monthly income limits for households that are not categorically eligible (CE) for Basic Food; one hundred sixty-five percent federal poverty level standard; and Basic Food resource limit to \$2,250 for households without elderly or disabled members.

Reasons Supporting Proposal: The amendments support the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), per supplemental nutrition assistance program (SNAP) Administrative Notice 14-48: SNAP - Fiscal Year (FY) 2015 cost-of-living adjustments (COLAS) dated August 4, 2014; update Basic Food standards for federal FY 2015; update the Basic Food standard utility allowance (SUA) and limited utility allowance (LUA) used when determining Basic Food benefits, to implement SNAP 10-6-WA-SUA dated July 24, 2014; and update the Basic Food resource limit adjustments for federal FY 2015 in accordance with USDA FNS, SNAP Administrative Notice 14-56 – FY 2015 resource limit adjustments.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Rule is necessary because of federal law, 7 C.F.R. 273.9 (d)(iii)(B); 7 C.F.R. 273.9 (d)(6)(iii); and 7 C.F.R. 273.9 (d)(6).

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Holly St. John, community services division, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

October 30, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-04-050, filed 1/27/14, effective 2/27/14)

WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington Basic Food program, food assistance

program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) programs is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) How we determine monthly allotments:

(a) We calculate your monthly allotment for federally funded Basic Food as described under WAC 388-450-0162;

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

(3) Maximum allotment:

(a) The maximum allotment for the number of people in your AU eligible for federally funded Basic Food benefits is described under WAC 388-478-0060.

(b) The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

(4) Prorated benefits in the first month - If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a thirty-day month:

(a) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

(5) Combined allotment for first and second month's benefits - If you apply for benefits on or after the sixteenth of the month, and we determine you are eligible for food assistance, we issue both the first and second months benefits in one allotment if you are eligible for both months.

(6) Minimum allotment - Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) ~~(Fifteen)~~ Sixteen dollars if your AU has one or two members, and at least one person is eligible for federally funded Basic Food.

(b) ~~(Eleven)~~ Twelve dollars if your AU has one or two members, and all members of your AU are eligible for state-funded FAP.

(7) Use of food assistance benefits - Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

AMENDATORY SECTION (Amending WSR 14-04-050, filed 1/27/14, effective 2/27/14)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to

requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(1) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
1	\$((152)) <u>155</u>
2	\$((152)) <u>155</u>
3	\$((152)) <u>155</u>
4	\$((163)) <u>165</u>
5	\$((191)) <u>193</u>
6 or more	\$((219)) <u>221</u>

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

- (a) Keep work, look for work, or accept work;
- (b) Attend training or education to prepare for employment; or
- (c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 14-04-050, filed 1/27/14, effective 2/27/14)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food? The department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments you make ahead of time as an allowable cost. We count the

following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:
 - (i) AU intends to return to the home;
 - (ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and
 - (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (4) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

- (a) Up to a maximum of four hundred ((~~seventy-eight~~)) ninety dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred ((~~seventy-eight~~)) ninety dollars.

AMENDATORY SECTION (Amending WSR 14-04-050, filed 1/27/14, effective 2/27/14)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food? If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE ((~~11-1-2013~~)) 10/1/2014

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$((1,245)) <u>1,265</u>	\$((958)) <u>973</u>	\$((189)) <u>194</u>	\$((1,580)) <u>1,605</u>
2	((1,681)) <u>1,705</u>	((1,293)) <u>1,311</u>	((347)) <u>357</u>	((2,133)) <u>2,163</u>
3	((2,116)) <u>2,144</u>	((1,628)) <u>1,650</u>	((497)) <u>511</u>	((2,686)) <u>2,722</u>

EFFECTIVE ~~((11-1-2013))~~ 10/1/2014

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
4	((2,552)) 2,584	((1,963)) 1,988	((632)) 649	((3,239)) 3,280
5	((2,987)) 3,024	((2,298)) 2,326	((750)) 771	((3,791)) 3,838
6	((3,423)) 3,464	((2,633)) 2,665	((900)) 925	((4,344)) 4,396
7	((3,858)) 3,904	((2,968)) 3,003	((995)) 1,022	((4,897)) 4,955
8	((4,294)) 4,344	((3,303)) 3,341	((1,137)) 1,169	((5,450)) 5,513
9	((4,730)) 4,784	((3,638)) 3,680	((1,279)) 1,315	((6,003)) 6,072
10	((5,166)) 5,224	((3,973)) 4,019	((1,421)) 1,461	((6,556)) 6,631
Each Additional Mem- ber	+ ((436)) 440	+ ((335)) 339	+ ((142)) 146	+ ((553)) 559

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

~~((g))~~ Garbage/trash collection; and
~~((f))~~ ~~((h))~~ Telephone service.

(3) We use the amounts below if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than twenty dollars in Low Income Home Energy Assistance Act (LIHEAA) benefits each year, you get a standard utility allowance (SUA) of four hundred ~~((nine))~~ fifteen dollars.

(b) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (2) of this section, you get a limited utility allowance (LUA) of three hundred thirty six dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of sixty-five dollars.

~~((4))~~ If your AU receives Basic Food on March 9, 2014, you receive the SUA through October 2014 regardless of your household's utility expenses unless you have a lapse in your Basic Food benefits.)

AMENDATORY SECTION (Amending WSR 14-12-085, filed 6/3/14, effective 7/4/14)

WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASH-CAP benefits? (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive WASHCAP; or

(b) Shelter cost income deduction under WAC 388-450-0190 for Basic Food.

(2) For Basic Food, "utilities" include the following:

(a) Heating or cooling fuel;

(b) Electricity or gas;

(c) Water ~~((and sewer))~~;

(d) Sewer;

~~((e))~~ Well ~~((or septic tank))~~ installation/maintenance;

~~((e))~~ ~~((f))~~ Septic tank installation/maintenance;

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance and Basic Food? (1) The following definitions apply to this chapter:

(a) "We" means the department of social and health services.

(b) "You" means a person applying for or getting benefits from the department.

(c) "Fair market value (FMV)" means the price at which you could reasonably sell the resource.

(d) "Equity value" means the FMV minus any amount you owe on the resource.

(e) **"Community property"** means a resource in the name of the husband, wife, or both.

(f) **"Separate property"** means a resource of a married person that one of the spouses:

(i) Had possession of and paid for before they were married;

(ii) Acquired and paid for entirely out of income from separate property; or

(iii) Received as a gift or inheritance.

(2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or Basic Food when:

(a) It is a resource we must count under WAC 388-470-0045 and 388-470-0055;

(b) You own the resource. We consider you to own a resource if:

(i) Your name is on the title to the property; or

(ii) You have property that doesn't have a title; and

(c) You have control over the resource, which means the resource is actually available to you; and

(d) You could legally sell the resource or convert it into cash within twenty days.

(3) For cash assistance, you must try to make your resources available even if it will take you more than twenty days to do so, unless:

(a) There is a legal barrier; or

(b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

(a) The date of your interview, if you are required to have an interview; or

(b) The date of your application, if you are not required to have an interview.

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance, we use the equity value as the value of your resources.

(a) Applicants can have countable resources up to one thousand dollars.

(b) Recipients of cash assistance can have an additional three thousand dollars in a savings account.

(7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for Basic Food.

(8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for Basic Food:

(a) Three thousand two hundred fifty dollars if your AU has either an elderly or disabled individual; or

(b) Two thousand two hundred fifty dollars for all other AUs.

(9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For Basic Food, we count the entire amount unless you can prove that the entire amount is not available to you.

(10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household; or

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of the resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

WSR 14-22-085

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed November 3, 2014, 3:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-07-088.

Title of Rule and Other Identifying Information: WAC 458-20-153 Funeral directors, this rule explains the application of business and occupation (B&O), retail sales, and use taxes to the business activities of funeral establishment[s] and the application of tax to income from prearrangement funeral service contracts.

WAC 458-20-154 Cemeteries, crematories, columbaria, this rule explains the application of B&O, retail sales, and use taxes to the business activities of cemeteries, the application of tax to income from prearrangement contracts, and the tax treatment of amounts placed into and taken out of endowment care funds.

Hearing Location(s): Capital Plaza Building, 1st Floor Appeal Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 17, 2014, at 10:00 a.m. *Call-in option can be provided upon request no later than three days before the hearing date.* Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: December 23, 2014.

Submit Written Comments to: Richard Cason, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail RichardC@dor.wa.gov, by December 17, 2014.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-20-153, the purpose of the proposed changes is to include a discussion of the taxability of prearrangement funeral service contracts and when income from such contracts is taxable. The changes also include a few examples.

WAC 458-20-154, the purpose of the proposed changes is to include a discussion of the taxability of prearrangement contracts (commonly referred to as "preneed" or "prepaid" arrangements), the sale of interment rights, merchandise, services, and amounts placed into and subsequently received from endowment care funds for cemetery care and maintenance. The changes also include a few examples.

Reasons Supporting Proposal: To update rule to address current industry practices.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Cason, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1577; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

November 3, 2014

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 83-07-033, filed 3/15/83)

WAC 458-20-153 Funeral ((directors)) establishments. ((Funeral directors commonly quote a lump sum price for a standard funeral service, which includes the furnishing of a casket, professional services, care of remains, funeral coach, floral car and the securing of permits.

Business and Occupation Tax

Retailing. ~~The gross amount subject to the retail sales tax as outlined below, is taxable under the retailing classification of the business and occupation tax except that there may be deducted, for purposes of the business tax only, amounts received as reimbursement for expenditures for goods or services supplied by others who are not persons employed by, affiliated, or associated with the funeral home, when such amounts were advanced by the funeral home as an accommodation to the person paying for a funeral; but this deduction is allowed only if such expenditures advanced are billed to the person paying for the funeral at the exact amount of the~~

~~expenditure advanced and such amounts are separately itemized in the billing statement to such person.~~

~~**Service and other business activities.** That portion of the gross income derived from engaging in business as a funeral director which is not taxable under the retailing classification is taxable as service and other business activities.~~

Retail Sales Tax

~~Where the funeral director quotes a lump sum price for a standard funeral service, which includes both the sale of tangible personal property and a charge for the rendering of service, the retail sales tax is collected upon one-half of such lump sum price. Clothing, outside case (a concrete or metal box into which the casket is placed) and other tangible personal property furnished in addition to the casket must be billed separately and the retail sales tax collected thereon.~~

~~The retail sales tax is not applicable to sales made to funeral directors of tangible personal property which is resold separate and apart from the rendition of professional services, provided the vendor receives from the funeral director a resale certificate in the usual form. The property so purchased includes the casket, clothing, outside case and acknowledgment cards.~~

~~The retail sales tax is applicable to sales to funeral directors of tangible personal property which is consumed in the rendition of professional services. The property so purchased includes all preparation room supplies (embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, cotton, etc.). The sales tax is also applicable to sales to such persons of tools and equipment.~~

Use Tax

~~The use tax applies upon the use within this state of all articles of tangible personal property used in the performance of professional services when such articles have been purchased or acquired under conditions whereby the Washington retail sales tax has not been paid:)) (1) **Introduction.** This rule explains:~~

~~(a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of funeral establishments; and~~

~~(b) The application of tax to income derived from prearrangement funeral service contracts.~~

~~For the purposes of this rule, the term "funeral establishment" means a person licensed under RCW 18.39.145. Persons operating cemeteries should refer to WAC 458-20-154 (Cemeteries, crematories, columbaria) for tax-reporting information.~~

~~The funeral and cemetery board (board) regulates funeral establishments. For funeral establishments, refer to chapter 18.39 RCW and chapters 308-47, 308-48, and 308-49 WAC for information on the laws and administrative rules governing their business activities.~~

~~(2) **General tax reporting responsibilities.** The gross proceeds attributable to funeral services are subject to tax under the service and other activities classification of the B&O tax. The gross proceeds from the retail sales of tangible personal property such as urns, caskets, clothing, outside casket cases, floral arrangements, plants, and acknowledgment cards are subject to tax under the retailing classification of the~~

B&O tax. Funeral establishments are also responsible for collecting and remitting to the department of revenue retail sales tax on retail sales of tangible personal property unless specifically exempt by law.

Funeral establishments commonly quote a lump sum price for a standard funeral service, which includes the furnishing of funeral services and tangible personal property. Where the funeral establishment quotes a lump sum price for a standard funeral service, which includes both the sale of tangible personal property and a charge for the rendering of service, the retail sales tax is collected upon one-half of such lump sum price. Clothing, outside case (a concrete or metal box into which the casket is placed) and other tangible personal property furnished in addition to the casket must be billed separately and the retail sales tax collected thereon.

(a) **Reimbursement for accommodation expenditures.** Amounts received by a funeral establishment as reimbursement for goods or services provided by persons not employed by, affiliated, or associated with the funeral establishment may be deducted from the measure of the B&O tax if these amounts have been reported as gross income on the funeral establishment's excise tax return. These amounts are deductible if advanced to accommodate the customer and separately itemized on the billing statement or invoice in the exact amount of the expenditure. See RCW 82.04.4296.

(b) **In-state services with out-of-state interment.** A funeral establishment may perform funeral services or other services such as preparing the remains of a deceased person and placing the remains in a casket within Washington, with the remains subsequently removed to another state for interment. In these cases, the B&O and retail sales taxes generally apply to the income received from the sale of funeral merchandise and services as explained in this subsection. The merchandise (e.g., casket or urn) is delivered to the buyer within Washington when the merchandise is used in performing these services, even if interment subsequently occurs outside the state.

Neither B&O nor retail sales taxes apply to the sale of tangible personal property without intervening use and delivered by the seller to the buyer at an out-of-state location. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for more information regarding the delivery requirements for out-of-state sales of tangible personal property.

(c) **Sales to the federal government.** Sales directly to the federal government are exempt from the retail sales tax, though the seller remains subject to B&O tax unless a specific exemption applies. Sales to other persons, whether paid with federal funds or through a reimbursement arrangement, are fully subject to the retail sales tax. For additional information about the taxability of sales to the federal government, refer to WAC 458-20-190 (Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments).

(3) **Funeral establishments purchasing tangible personal property.** Generally, retail sales tax is due when purchasing items used or consumed by funeral establishments when providing professional services. These items generally include, but are not limited to, equipment, tools, furniture, and all preparation room supplies such as embalming fluid

and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, and cotton.

(a) **Items purchased for resale.** Tangible personal property purchased for resale without intervening use is not subject to retail sales tax. Property commonly purchased for resale by funeral establishments includes, but is not limited to, urns, caskets, clothing, outside casket cases, flowers, plants, and acknowledgment cards. A funeral establishment purchasing tangible personal property for resale must provide to the seller, a reseller permit to document the wholesale nature of a sale as provided in WAC 458-20-102 (Reseller permits).

(b) **Deferred sales and use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. For detailed information regarding use tax, refer to WAC 458-20-178 (Use tax).

(4) **Prearrangement contracts and trusts.** Funeral establishments often enter into prearrangement contracts requiring them to provide funeral services and merchandise at some future date. Unless otherwise exempt, the law requires funeral establishments to place a portion of the cash purchase price of the contract (at least ninety percent as of the effective date of this section), excluding retail sales tax, into one or more prearrangement funeral service trusts. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See chapter 18.39 RCW.

(a) **When does tax liability arise?**

(i) **Accrual method accounting.** Amounts subject to B&O and retail sales taxes must be reported to the department at the time that the funeral establishment becomes legally entitled to receive the consideration or enters as a charge against the purchaser the amount of the consideration agreed upon, whether payable immediately or at a definitely determined future time. See WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods).

(ii) **Cash method accounting.** Amounts not placed in a prearrangement trust are subject to B&O and retail sales taxes at the time that the funeral establishment receives payment. Amounts placed in a prearrangement trust are subject to B&O and retail sales taxes upon withdrawal from the trust and acceptance by the funeral establishment. See WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods).

(b) **Prearrangement funeral service trust accounts.** If retail sales tax paid by the buyer is not placed into a prearrangement funeral service trust account, the tax must be reported on the excise tax return for the current reporting period and remitted to the department.

Upon cancellation of a prearrangement contract, a refund of retail sales tax remitted by a funeral establishment to the department, rather than being placed in the trust account, is subject to the time limitations on refunds in RCW 82.32.060. For example, the law prohibits the department from refunding retail sales tax to a funeral establishment for a prearrangement contract that is canceled five years after the retail sales tax associated with the contract is remitted to the department. See WAC 458-20-229 (Refunds).

(c) **Contract cancellation and trust administration fees.** Amounts retained by the funeral establishment when a prearrangement funeral service contract is canceled are subject to the service and other activities B&O tax, except that any amounts allocable to a retail sale of merchandise are subject to retailing B&O and retail sales taxes. Administration fees deducted from a prearrangement funeral service trust by the administrator are also subject to the service and other activities B&O tax.

(5) **Sourcing.** In general, the place of sale occurs where the body is placed in the casket. For other sourcing information, refer to WAC 458-20-145.

(6) **Examples.** The following examples identify a number of facts and state a conclusion regarding the taxability of funeral establishments. The tax results of other situations must be determined after a review of all of the facts and circumstances. Use these examples only as a general guide.

(a) John and Jane Doe contracted with ABC Funeral Home (ABC) for the funeral of a deceased relative. John and Jane also purchased a casket from ABC. Funeral services purchased from ABC included preparing the body of the deceased for viewing, arranging for the final disposition, providing facilities for the visitation and funeral service, and transporting the deceased and the mourners to the place of final disposition.

(i) ABC owes service and other activities B&O tax for the funeral services charge.

(ii) The charge for the casket is subject to retailing B&O and retail sales taxes.

(b) John and Jane Doe entered into a prearrangement funeral service contract with ABC for the purchase of funeral merchandise and services to be provided upon their deaths. John and Jane made a down payment when signing the contract and agreed to pay the balance in sixty monthly installments. The merchandise and services John and Jane purchased include a casket, preparing the body of the deceased for viewing, arranging for the final disposition, providing facilities for the visitation and funeral service, and transporting the deceased and the mourners to the place of final disposition. The contract itemizes retail sales tax and provides for a finance charge on the unpaid balance of the contract. ABC places all receipts under the contract, including finance charges, into a prearrangement funeral service trust account.

ABC uses the cash method of accounting and does not enter as a charge against the purchaser the amount of the consideration agreed upon until they deliver the merchandise and perform the services.

ABC must report:

(i) The charges for funeral services and the finance charges under the service and other activities B&O tax classification at the time they perform the services; and

(ii) The charge for the casket is subject to retailing B&O and retail sales tax at the time it is used.

(c) The facts are the same as in the previous example except that ABC maintains its books of account on the accrual basis. Except for the finance charges, ABC charged John and Jane for the merchandise and services when the parties signed the contract. In other words, the income was recognized at the time the parties signed the contract.

ABC must report:

(i) The charges for funeral services under the service and other activities B&O tax classification in the reporting period that the contract was signed;

(ii) Retailing B&O and retail sales taxes on the sale of the casket in the reporting period that the contract was signed; and

(iii) The finance charge under the service and other activities B&O tax classification at the time that it becomes legally entitled to receive the finance charge or enters the charge against John and Jane Doe in its books of account.

AMENDATORY SECTION (Amending WSR 78-06-083, filed 6/1/78)

WAC 458-20-154 Cemeteries, crematories, columbaria.

~~((Business and Occupation Tax~~

~~**Retailing.** The gross proceeds derived from the sale of tangible personal property taxable under the retail sales tax are also taxable under the retailing classification.~~

~~**Service and other business activities.** Income derived from rendition of interment services is taxable under the service and other business activities classification. Sales or transfers of plots, crypts, and niches for interment of human remains, irrespective of whether the document of transfer is called a deed or certificate of ownership, are charges for the right of interment, an interest similar to a license to use real estate, and the entire gross income therefrom is taxable under the service and other activities classification without any deduction for amounts set aside to funds for perpetual care.~~

Retail Sales Tax

~~Cemeteries, crematories and columbaria are subject to the provisions of the retail sales tax with respect to retail sales of boxes, urns, markers, vases, plants, shrubs, flowers, and other tangible personal property.~~

~~Revised June 1, 1978.~~

~~Effective July 1, 1978:)) (1) **Introduction.** This rule explains:~~

~~(a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of cemeteries;~~

~~(b) The application of B&O and retail sales taxes to amounts derived by cemeteries from prearrangement contracts (commonly referred to as "preneed" or "prepaid" arrangements) for the sale of interment rights, merchandise, and services; and~~

~~(c) The tax treatment of amounts placed into and subsequently received from endowment care funds for cemetery care and maintenance.~~

~~For purposes of this rule, the term "cemeteries" includes cemeteries, burial parks, crematories, columbaria, and mausoleums. Refer to WAC 458-20-153 (Funeral establishments) for funeral establishment tax-reporting information.~~

~~The funeral and cemetery board regulates private cemeteries. Refer to Title 68 RCW and Title 98 WAC for information on the laws and administrative rules governing cemeteries.~~

(2) General tax reporting responsibilities.**(a) Sales of interment services and interment rights.**

Amounts derived from interment services such as document recording, opening and closing the interment space, and placing grave liners or vaults in the interment space are subject to the service and other activities B&O tax. Sales or transfers of plots, crypts, and niches for the interment of human remains, irrespective of how the document of transfer is described (e.g., deed, certificate of ownership, or certificate of interment rights), are charges for the right of interment, an interest similar to a license to use real estate. Thus, the gross income from sales of interment rights is subject to B&O tax under the service and other activities classification without any deduction for amounts set aside in endowment care trust funds.

(b) Sales of merchandise, including installing, repairing, cleaning, altering, or improving property. The gross proceeds of retail sales of tangible personal property such as monuments, markers, memorials, nameplates, outer burial containers (e.g., vaults or grave liners), boxes, urns, vases, benches, plants, shrubs, and flowers are subject to B&O tax under the retailing classification. Retailing B&O tax also applies to charges by cemeteries for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers. Cemeteries are also responsible for collecting and remitting to the department of revenue (the department) retail sales tax on retail sales of tangible personal property and charges for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers unless specifically exempt by law. Thus, charges for installing markers and monuments are subject to retailing B&O and retail sales taxes.

(c) Sales to the federal government. Sales directly to the federal government are exempt from the retail sales tax, though the seller remains subject to B&O tax unless a specific exemption applies. Sales to other persons, whether paid with federal funds or through a reimbursement arrangement, are fully subject to the retail sales tax. For additional information about the taxability of sales to the federal government, refer to WAC 458-20-190 (Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments).

(3) Cemeteries purchasing tangible personal property. Generally, retail sales tax is due when purchasing tangible personal property such as tools and supplies used or consumed by cemeteries when providing interment services.

(a) Items purchased for resale. Tangible personal property purchased for resale without intervening use is not subject to retail sales tax. Property commonly purchased for resale by cemeteries includes, but is not limited to, monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, benches, plants, shrubs, and flowers. Cemeteries purchasing tangible personal property for resale must provide to the seller, a reseller permit to document the wholesale nature of a sale as provided in WAC 458-20-102 (Reseller permits).

(b) Deferred sales and use tax. If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically

exempt by law. For detailed information about use tax, refer to WAC 458-20-178 (Use tax).

(4) Prearrangement contracts. Cemeteries often enter prearrangement contracts with customers for the purchase of merchandise and services, unconstructed crypts or niches, or undeveloped graves furnished at a future date. Executed contracts are paid in either a lump sum or in installments. Unless otherwise exempt, the law requires cemeteries to place a percentage of all funds collected in payment of each prearrangement contract in a prearrangement trust account. As of the effective date of this section, the amount required in a prearrangement trust account is equal to the greater of (for merchandise) fifty percent of the contract price, or the wholesale cost of the item, (for services) fifty percent of the contract price, or the direct cost of providing the service. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See chapter 68.46 RCW.

(a) When does tax liability arise?

(i) Accrual method accounting. Amounts subject to B&O and retail sales taxes must be reported to the department at the time the cemetery becomes legally entitled to receive the consideration or enters as a charge against the purchaser the amount of the consideration agreed upon, whether payable immediately or at a definitely determined future time. See WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods).

(ii) Cash method accounting. Amounts not placed in a prearrangement trust are subject to B&O and retail sales taxes at the time that the cemetery receives payment. Amounts placed in a prearrangement trust are subject to B&O and retail sales taxes upon withdrawal from the trust and acceptance by the cemetery. See WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods).

(b) Prearrangement trust accounts. If retail sales tax paid by the buyer is not placed into a prearrangement trust account, the tax must be reported on the excise tax return for the current reporting period and remitted to the department.

Upon cancellation of a prearrangement contract, a refund of retail sales tax remitted by a cemetery to the department, rather than being placed in the trust account, is subject to the time limitations on refunds provided by RCW 82.32.060. For example, the law prohibits the department from refunding retail sales tax to a cemetery for a prearrangement contract that is canceled five years after the retail sales tax associated with the contract is remitted to the department. See also WAC 458-20-229 (Refunds).

(c) Contract cancellation and trust administration fees. Amounts retained by a cemetery from a canceled prearrangement contract are subject to service and other activities B&O tax, except that any amount allocable to a retail sale of merchandise is subject to retailing B&O and retail sales taxes. Administration fees deducted from a prearrangement trust fund by the administrator are also subject to the B&O tax under the service and other activities classification.

(5) Endowment care funds. State law requires nonexempt cemeteries to place a portion of the gross sales price of plots sold (ten percent as of the effective date of this section) into an endowment care fund. Cemeteries may only use endowment care funds to generate income used for the care,

maintenance, and embellishment of the cemetery. Amounts placed in an endowment care fund are not deductible from the cemetery's gross income. Such amounts are subject to the service and other activities B&O tax. Amounts received by a cemetery from an endowment care fund to cover costs incurred by the cemetery for endowment care services are not subject to B&O tax to the extent that the amounts qualify as an advance or reimbursement under WAC 458-20-111 (Advances and reimbursements).

(6) Examples. The following examples identify a number of facts and then state a general conclusion regarding the taxability of cemeteries. The tax results of other situations must be determined after a review of all of the facts and circumstances. Use these examples only as a general guide.

(a) John and Jane Doe contracted with ABC Cemetery Association (ABC) for the interment of a deceased relative. The interment rights, merchandise, and services provided by ABC include an interment plot, an outer burial container, burial of the decedent, a marker, and installation of the marker. In addition, ABC charges a document-recording fee. ABC places ten percent of the gross sales price of the interment plot into an endowment care trust fund.

(i) ABC is subject to service and other activities B&O tax on charges for the interment plot (including the required amount in the endowment care trust fund), burial of the decedent, and the document-recording fee.

(ii) The charges for the outer burial container, marker, and marker installation are subject to retailing B&O and retail sales taxes.

(b) John and Jane Doe entered into a prearrangement contract with ABC for the purchase of interment rights, merchandise, and services provided upon their deaths. John and Jane made a down payment when signing the contract and agreed to pay the balance in sixty monthly installments. The interment rights, merchandise, and services purchased by John and Jane include interment plots, outer burial containers, burial of their remains, markers, and installation of the markers. The contract identifies ten percent of the gross sales price of the interment plots as endowment care funds, itemizes retail sales tax and provides for a finance charge on the unpaid balance.

ABC places all receipts under prearrangement contracts, including the finance charges, into a prearrangement trust account. ABC uses the cash method of accounting and does not enter the charge of the amount of the consideration agreed upon until they deliver the merchandise and perform the services. In addition, ABC charges John and Jane a document-recording fee but does not charge the amount agreed upon for the interment rights until they collect a certain percentage of the sales price and until the property is constructed or developed.

ABC must report:

(i) The amounts received for the interment plots (including the endowment care trust fund's required amounts) under the service and other activities B&O tax classification at the time it charges John and Jane Doe for the cost of the plots;

(ii) The amounts received for the burial of remains, the document-recording fee, and the finance charges under the service and other activities B&O tax classification at the time they perform the services; and

(iii) Retailing B&O and retail sales taxes on the sale of the outer burial containers, markers, and marker installation in the reporting period during which they deliver the merchandise and perform the installation.

(c) The facts are the same as in the previous example except that ABC maintains its books of account on the accrual basis. Except for the finance charge, ABC charged John and Jane for the price of the interment plots, merchandise, and services at the time the parties signed the contract. In other words, the income was recognized at the time the parties signed the contract.

ABC must report:

(i) The amounts received for interment plots (including the endowment care trust fund's required amounts), burial of remains, and the document-recording fee under the service and other activities B&O tax classification in the reporting period that the contract was signed;

(ii) Retailing B&O and retail sales taxes on the sale of the outer burial containers, markers, and marker installation in the reporting period that the contract was signed; and

(iii) The finance charge under the service and other activities B&O tax classification at the time that it becomes legally entitled to receive it or charges John and Jane Doe in its books of account.

WSR 14-22-089

WITHDRAWAL OF PROPOSED RULES STUDENT ACHIEVEMENT COUNCIL

(By the Code Reviser's Office)

[Filed November 4, 2014, 10:13 a.m.]

WAC 250-61-010, 250-61-020, 250-61-030, 250-61-040, 250-61-050, 250-61-060, 250-61-063, 250-61-065, 250-61-070, 250-61-080, 250-61-085, 250-61-100, 250-61-110, 250-61-120, 250-61-140, 250-61-160, 250-61-170, 250-61-180, 250-61-190, 250-61-200 and 250-61-210, proposed by the student achievement council in WSR 14-09-049, appearing in issue 14-09 of the Washington State Register, which was distributed on May 7, 2014, is withdrawn by the office of the code reviser 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 14-22-090

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF LICENSING

(By the Code Reviser's Office)

[Filed November 4, 2014, 10:19 a.m.]

WAC 308-14-085, 308-14-090, 308-14-100, 308-14-130 and 308-14-200, proposed by the department of licensing in WSR 14-09-068, appearing in issue 14-09 of the Washington State Register, which was distributed on May 7, 2014, is withdrawn by the office of the code reviser 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

Director of Human Resources
and Legal Affairs

WSR 14-22-091
PROPOSED RULES
LOWER COLUMBIA COLLEGE

[Filed November 4, 2014, 11:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-064.

Title of Rule and Other Identifying Information: Chapter 132M-300 WAC, Discrimination and harassment; WAC 132M-300-001 Nondiscrimination and antiharassment policy; and 132M-300-010 Discrimination and harassment complaint procedure.

Hearing Location(s): Lower Columbia College, Administration Building, Room 100, Heritage Room, 1600 Maple Street, Longview, WA 98632, on December 17, 2014, at 5:00 p.m.

Date of Intended Adoption: December 17, 2014.

Submit Written Comments to: Kendra Sprague, Human Resources, Lower Columbia College, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, e-mail ksprague@lcc.ctc.edu, fax (360) 442-2129, by December 10, 2014.

Assistance for Persons with Disabilities: Contact Kendra Sprague by December 15, 2014, TTY (360) 442-2344, or (360) 442-2121.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is an update of the existing policy and complaint procedure to bring the code into alignment with the current laws regarding violence against women and discrimination/harassment.

Reasons Supporting Proposal: To update discrimination and harassment policy.

Statutory Authority for Adoption: RCW 28B.50.140 and 42.56.040.

Statute Being Implemented: RCW 28B.50.140 and 42.56.040.

Rule is necessary because of federal law, Violence Against Women Act and Title IX of the Civil Rights Act of 1964.

Name of Proponent: Lower Columbia College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kendra Sprague, 1600 Maple Street, HR – ADM, Longview, WA 98632, (360) 442-2121.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule will not impact any entity other than Lower Columbia College.

A cost-benefit analysis is not required under RCW 34.05.328. There is no significant economic impact.

November 4, 2014
Kendra Sprague

Chapter 132M-300 WAC

((GRIEVANCE PROCEDURE—))DISCRIMINATION AND HARASSMENT

AMENDATORY SECTION (Amending WSR 92-09-092, filed 4/17/92, effective 5/18/92)

WAC 132M-300-001 ((Statement of) Nondiscrimination and antiharassment policy. ~~((Lower Columbia College is covered by Title IX of the Education Amendments of 1972 prohibiting sex discrimination in education and Section 504 of the Rehabilitation Act of 1973 prohibiting discrimination on the basis of handicap. It is the policy of Lower Columbia College to provide equal opportunity in all areas of admission, education, application for employment, and employment regardless of sex or handicap status.~~

~~It is also the policy of Lower Columbia College to provide an environment in which members of the college community can work or study free from sexual harassment or sexual intimidation. Sexual harassment is a form of sex discrimination. As such, it is a violation of Title VII of the 1964 Civil Rights Act and Title IX of the 1972 Education Amendments.~~

~~Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:~~

~~(1) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or academic advancement or standing; and/or~~

~~(2) Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual; and/or~~

~~(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment.)) Lower Columbia College provides equal opportunity in education and employment and does not discriminate on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal, as required by Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act, and Washington state law against discrimination, chapter 49.60 RCW and their implementing regulations.~~

(1) Harassment is defined as a form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward an individual because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of

employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs.

(2) Sexual harassment is defined as a form of discrimination consisting of unwelcome, gender-based verbal, written, electronic and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment:

(a) Hostile environment sexual harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs.

(b) Quid pro quo sexual harassment occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

(3) Sexual violence is a form of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(4) The following college officials have been designated to handle inquiries regarding this policy:

Title: Director of Human Resources & Legal Affairs

Title IX/EEO Coordinator Office: Administration Building 122

Contact address: P.O. Box 3010 Longview, WA 98632

Phone: 360-442-2121

E-mail: ksprague@lowercolumbia.edu

Title: Vice President for Student Success

Title IX/EEO Deputy Coordinator

Office: Admissions Center 158

Contact address: P.O. Box 3010 Longview, WA 98632

Phone: 360-442-2300

E-mail: lmatyeedwards@lowercolumbia.edu

(5) College employees, except those statutorily barred from doing so, have a duty to immediately report information related to sexual harassment to the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 92-09-092, filed 4/17/92, effective 5/18/92)

WAC 132M-300-010 ((Grievance)) Discrimination and harassment complaint procedure. (((1) Any applicant for admission, enrolled student, applicant for employment, or employee of Lower Columbia College who believes he/she has been discriminated against on the basis of sex or on the basis of a handicap may lodge a formal institutional grievance according to the following procedure:

(a) Step 1: Informal meeting. In an attempt to informally resolve the concern, the complainant may request a meeting with the individual believed to have committed the discriminatory act or with the appropriate supervisor as determined by the affirmative action officer. The time period in which attempts to informally resolve the concern are made shall not exceed thirty days from the time the complaint is lodged.

(b) Step 2: Official hearing. If not satisfied by the results of the informal meeting or if the informal meeting has been

waived, the complainant may request a meeting with the college affirmative action officer.

(i) The request for an official hearing must be made in writing and must set forth the specific grievance(s) raised by the complainant.

(ii) Within thirty calendar days of receiving the written request, the college affirmative action officer shall arrange a meeting to hear the complaint. It shall be at the discretion of the complainant to determine whether the affirmative action officer will meet with the complainant and the person to whom the complaint has been directed separately or in a single meeting. If the complainant requests a single meeting, the meeting shall be attended by the complainant, the person to whom the complaint is directed, and the affirmative action officer, who shall chair the meeting.

(iii) Following the hearing and within thirty calendar days of receiving the written request, the affirmative action officer will report his/her findings in writing to both the complainant and the person to whom the complaint has been directed.

(e) Step 3: Presidential appeal. If the complaint is not resolved as a result of the hearing conducted by the affirmative action officer, either the complainant or the person to whom the complaint has been directed may request an appeal to the college president.

(i) The request must be made in writing within ten days after receipt of the written results of the official hearing.

(ii) Within fifteen days after receiving the request, the college president or the president's designee will conduct the presidential appeal hearing and report the findings in writing to both the complainant and the person to whom the complaint is directed.

(iii) Attendance at the presidential appeal hearing shall be limited to the college president or his/her designee, the affirmative action officer, the complainant, and the person to whom the complaint is directed unless otherwise mutually agreed by the parties. The college president or his/her designee shall preside.

(iv) Either the complainant or the person to whom the complaint is directed may call witnesses at the discretion of the person presiding.

(v) The written findings of the presidential appeal will be considered final. No further intrainstitutional appeal exists.

(2) If desired, inquiries or appeals beyond the institutional level may be directed to:

(a) Regional Director, Office of Civil Rights, Department of Education, 915 Second Avenue, Room 3310, Seattle, Washington 98174-1099, (206) 553-1636.

(b) Equal Employment Opportunity Commission, 2815 Second Avenue, Suite 500, Seattle, Washington 98121, (206) 442-0968.

(c) Human Rights Commission, 402 Evergreen Plaza Building, M.S. FJ 41, 711 S. Capitol Way, Olympia, Washington 98504)) (1) **Introduction.** Lower Columbia College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orien-

tation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal, as required by Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act, and Washington state law against discrimination, chapter 49.60 RCW and their implementing regulations. To this end, Lower Columbia College has enacted policies prohibiting discrimination against and harassment of members of these protected classes. Any individual found to be in violation of these policies will be subject to disciplinary action up to and including dismissal from the college or from employment.

Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX/EEO coordinator/deputy identified below. If the complaint is against that coordinator/deputy, the complainant should report the matter to the president's office for referral to an alternate designee.

Name: Kendra Sprague

Title: Title IX/EEO Coordinator, Director of Human Resources & Legal Affairs

Office: Administration Building 122

Contact address: P.O. Box 3010 Longview, WA 98632

Phone: 360-442-2121

E-mail: ksprague@lowercolumbia.edu

Name: Lisa Matye Edwards

Title: Title IX/EEO Deputy Coordinator, Vice-President for Student Success

Office: Admissions Center 158

Contact address: P.O. Box 3010 Longview, WA 98632

Phone: 360-442-2300

E-mail: lmatyeedwards@lowercolumbia.edu

(a) The Title IX/EEO coordinator/deputy or designee:

• Will accept all complaints and referrals from college employees, applicants, students, and visitors.

• Will make determinations regarding how to handle requests by complainants for confidentiality.

• Will keep accurate records of all complaints and referrals for the required time period.

• May conduct investigations or delegate and oversee investigations conducted by a designee.

• May impose interim remedial measures to protect parties during investigations of discrimination or harassment.

• Will issue written findings and recommendations upon completion of an investigation.

• May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

(b) The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or orally. For complainants who wish to submit a written complaint, a formal complaint form is available online at:

<http://lcc.ctc.edu/info/policies/admin/pdfs//ADMINISTRATIVE%20POLICIES%20Section%202000.pdf>

and

<http://lcc.ctc.edu/info/policies/admin/pdfs//ADMINISTRATIVE%20POLICIES%20Section%204000.pdf>

(c) Hard copies of the complaint form are available at the following locations on campus: Human resource services, campus safety & security, and the office of the vice president for student success.

(2) Definitions.

(a) Complainant: Employee(s), applicant(s), student(s), or visitors(s) of Lower Columbia College who alleges that she or he has been subjected to discrimination or harassment due to his or her membership in a protected class.

(b) Complaint: A description of facts that allege violation of the college's policy against discrimination or harassment.

(c) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(i) A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(ii) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(d) Discrimination: Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.

(e) Harassment: A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward an individual because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

(i) Epithets, jokes, ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership in a protected class.

(ii) Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.

(iii) Making, posting, e-mailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

(f) Protected class: Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.

(g) Resolution: The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline sanction.

(h) Respondent: Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

(i) Sexual harassment: A form of discrimination consisting of unwelcome, gender-based verbal, written, electronic and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment.

(i) Hostile environment sexual harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs.

(ii) Quid pro quo sexual harassment occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors. Examples of conduct that may qualify as sexual harassment include:

- Persistent comments or questions of a sexual nature.
- A supervisor who gives an employee a raise in exchange for submitting to sexual advances.
- An instructor who promises a student a better grade in exchange for sexual favors.
- Sexually explicit statements, questions, jokes, or anecdotes.
- Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.
- Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences.
- Persistent, unwanted attempts to change a professional relationship to an amorous relationship.
- Direct or indirect propositions for sexual activity.
- Unwelcome letters, e-mails, texts, telephone calls, or other communications referring to or depicting sexual activities.

(j) Sexual violence: Is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without con-

sent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(3) Who may file a complaint. Any employee, applicant, student or visitor of the college may file a complaint. Complaints may be submitted in writing or verbally. The college encourages the timely reporting of any incidents of discrimination or harassment. For complainants who wish to submit a written complaint, a formal complaint form is available online at:

<http://lcc.ctc.edu/info/policies/admin/pdfs//ADMINISTRATIVE%20POLICIES%20Section%20200.pdf>

and

<http://lcc.ctc.edu/info/policies/admin/pdfs//ADMINISTRATIVE%20POLICIES%20Section%20400.pdf>

Hardcopies of the complaint form are available at the following locations on campus: Human resource services, campus safety & security, and the office of the vice president for student success. Any person submitting a discrimination complaint shall be provided with a written copy of the college's antidiscrimination policies and procedures.

(4) Confidentiality and right to privacy.

(a) Lower Columbia College will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Lower Columbia College policies and procedures. Although Lower Columbia College will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX/EEO coordinator/deputy.

(b) Confidentiality requests and sexual violence complaints. The Title IX/EEO coordinator/deputy will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX/EEO coordinator/deputy will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX/EEO coordinator/deputy will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- The seriousness of the alleged sexual violence;
- The age of the complainant;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;
- Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and
- Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

(c) If the college is unable to honor a complainant's request for confidentiality, the Title IX/EEO coordinator/deputy will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

(d) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX/EEO coordinator/deputy will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

(5) Investigation procedure. Upon receiving a discrimination complaint, the college shall commence an impartial investigation. The Title IX/EEO coordinator/deputy shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/EEO coordinator/deputy or his or her designee. If the investigation is assigned to someone other than the Title IX/EEO coordinator/deputy, the Title IX/EEO coordinator/deputy shall inform the complainant and respondent(s) of the appointment of an investigator.

(a) Interim measures. The Title IX/EEO coordinator/deputy may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student conduct

code or the college's employment policies and collective bargaining agreements.

(b) Investigation. Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring exigent circumstances. At the conclusion of the investigation the investigator shall set forth his or her findings and recommendations in writing. If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the Title IX/EEO coordinator/deputy. The Title IX/EEO coordinator/deputy shall consider the findings and recommendations and determine, based on a preponderance of the evidence, whether a violation of the discrimination and harassment policy occurred, and if so, what steps will be taken to resolve the complaint, remedy the effects on any victim(s), and prevent its recurrence. Possible remedial steps may include, but are not limited to, referral for voluntary training/counseling, development of a remediation plan, limited contact orders, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the student conduct code or college employment policies and collective bargaining agreements.

(c) Written notice of decision. The Title IX/EEO coordinator/deputy will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended to resolve the complaint, subject to the following limitations. The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions or recommendations directly relate to the complainant, such as a finding that the complaint is or is not meritorious or a recommendation that the accused not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

(d) Informal dispute resolution. Informal dispute resolution processes, like mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(e) Final decision/reconsideration. Either the complainant or the respondent may seek reconsideration of the decision by the Title IX/EEO coordinator/deputy. Requests for reconsideration shall be submitted in writing to the Title IX/EEO coordinator/deputy within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration.

ation. If no request for reconsideration is received within seven business days, the decision becomes final. If a request for reconsideration is received, the Title IX/EEO coordinator/deputy shall respond within seven business days. The Title IX/EEO coordinator/deputy shall either deny the request or, if the Title IX/EEO coordinator/deputy determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

(6) Publication of antidiscrimination policies and procedures. The policies and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to discrimination in violation of college policy will be provided a copy of these policies and procedures.

(7) Limits to authority. Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Lower Columbia College policies and procedures, and federal, state, and municipal rules and regulations.

(8) Nonretaliation, intimidation, and coercion. Retaliation by, for or against any participant (including complainant, respondent, witness, Title IX/EEO coordinator/deputy, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individuals as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX/EEO coordinator/deputy immediately.

(9) Criminal complaints.

(a) Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

City of Longview Police Department

1351 Hudson Street

Longview, WA 98632

Phone: 360-442-5800

Web site: <http://www.ci.longview.wa.us/index.aspx?page=400>

Cowlitz County Sheriff's Department

312 S.W. 1st Ave.

Kelso, WA 98626

Phone: 360-577-3092

Web site: <http://www.co.cowlitz.wa.us/Index.aspx?NID=267>

(b) The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(10) Other discrimination complaint options. Discrimination complaints may also be filed with the following federal and state agencies.

- Washington State Human Rights Commission,
<http://www.hum.wa.gov/index.html>

- U.S. Dept. of Education Office for Civil Rights,
<http://www2.ed.gov/about/offices/list/ocr/index.html>

- Equal Employment Opportunity Commission,
<http://www.eeoc.gov/>

WSR 14-22-092

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed November 4, 2014, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-049.

Title of Rule and Other Identifying Information: Chapter 365-190 WAC, Minimum guidelines to classify agricultural, forest and mineral lands and critical areas and chapter 365-196 WAC, Procedural criteria for adopting comprehensive plans and development regulations.

Hearing Location(s): Washington State Department of Commerce, 1011 Plum Street S.E., Building 5, Columbia River Room 110, Olympia, WA, on December 11, 2014, at 9:00 a.m. to 10:00 a.m.

Date of Intended Adoption: January 15, 2014 [2015].

Submit Written Comments to: Scott Kuhta, Growth Management Services, Washington State Department of Commerce, P.O. Box 42525, Olympia, WA 98504-2525, e-mail wacupdate@commerce.wa.gov, fax (360) 586-8440, by December 11, 2014, 9 a.m.

Assistance for Persons with Disabilities: Contact Scott Kuhta by December 9, 2014, TTY (360) 586-0772 or (509) 795-6884.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend existing rules to reflect statutory changes adopted between 2011 and 2012. This includes amending three rules to clarify that "critical areas" do not include irrigation and drainage ditches (RCW 36.70A.030); and amending ten rules to reflect new deadlines for counties and cities to comply with required reviews, revisions, and evaluations under the Growth Management Act (GMA) (RCW 36.70A.130 and 36.70A.215).

The following eleven rules were amended to reflect new or amended statutes: WAC 365-190-030, 365-196-200, 365-196-310, 365-196-315, 365-196-325, 365-196-400, 365-196-415, 365-196-425, 365-196-430, 365-196-600, and 365-196-610.

Reasons Supporting Proposal: To bring the rules into conformance with legislative changes to the GMA, chapter 36.70A RCW.

Statutory Authority for Adoption: RCW 36.70A.050 and 36.70A.190.

Statute Being Implemented: Chapter 36.70A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Scott Kuhta, 10 North Post Street, Suite 445, Spokane, WA 99201, (509) 795-6884; Implementation: Jeff Wilson, P.O.

Box 42525, Olympia, WA 98504-2525, (360) 725-3055; and Enforcement: No enforcement authority.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposed changes reflect direct statutory requirements that impose no direct obligations. Chapters 365-190 and 365-196 WAC provide guidance to counties and cities regarding implementation of the GMA. Counties and cities consider these rules, but they are not binding on counties and cities. In choosing how to implement the GMA, using the guidance in the rules, counties and cities may or may not choose to revise their comprehensive plans, development regulations, and other local land use ordinances. The rules are not substantive and if the local government does not follow the rules, they are not subject to any penalty or sanction nor do the rules establish standards for the issuance of a license.

Although the choices made by local governments may result in some impacts to many types and sizes of businesses, these rules do not directly regulate any businesses. Instead, they provide guidance to local governments in developing their plans and regulations. Thus, it can be determined that the rules do not impose more than minor costs on businesses in an industry, and a small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The department of commerce is not listed as one of the agencies to which this section applies and does not wish to make this section voluntarily applicable to the rule per subsection (5)(a)(ii). Therefore, unless subsection (5)(a)(ii) is invoked by the joint administrative rules review committee after the filing of the CR-102, no cost-benefit analysis needs to be prepared for this rule.

November 4, 2014
Nick Demerice
Assistant Director

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-190-030 Definitions. (1) "Agricultural land" is land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production. These lands are referred to in this chapter as agricultural resource lands to distinguish between formally designated lands, and other lands used for agricultural purposes.

(2) "City" means any city or town, including a code city.

(3) "Critical aquifer recharge areas" are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge.

(4) "Critical areas" include the following:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water, referred to in this chapter as critical aquifer recharge areas;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(5) "Erosion hazard areas" are those areas containing soils which, according to the United States Department of Agriculture Natural Resources Conservation Service Soil Survey Program, may experience significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.

(6)(a) "Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Counties and cities may also designate locally important habitats and species.

(b) "Habitats of local importance" designated as fish and wildlife habitat conservation areas include those areas found to be locally important by counties and cities.

(c) "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

(7) "Forest land" is land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. These lands are referred to in this chapter as forest resource lands to distinguish between formally designated lands, and other lands used for forestry purposes.

(8) "Frequently flooded areas" are lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high groundwater forms ponds on the ground surface.

(9) "Geologically hazardous areas" are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Landslide hazard areas" are areas at risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

(11) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possi-

bility of more intense uses of land. Long-term commercial significance means the land is capable of producing the specified natural resources at commercially sustainable levels for at least the twenty-year planning period, if adequately conserved. Designated mineral resource lands of long-term commercial significance may have alternative post-mining land uses, as provided by the Surface Mining Reclamation Act, comprehensive plan and development regulations, or other laws.

(12) "Mine hazard areas" are those areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts.

(13) "Mineral resource lands" means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

(14) "Minerals" include gravel, sand, and valuable metallic substances.

(15) "Natural resource lands" means agricultural, forest and mineral resource lands which have long-term commercial significance.

(16) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(17) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(18) "Seismic hazard areas" are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction, debris flows, lahars, or tsunamis.

(19) "Species of local importance" are those species that are of local concern due to their population status or their sensitivity to habitat alteration or that are game species.

(20) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. Urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) "Volcanic hazard areas" shall include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity.

(22) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands cre-

ated after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands, if permitted by the county or city.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-200 Statutory definitions. The following definitions are contained in chapter 36.70A RCW and provided under this section for convenience. Most statutory definitions included in this section are located in RCW 36.70A.030. Other relevant statutory terms defined elsewhere in chapter 36.70A RCW are also included in this section.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

"Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

(6) "Department" means the department of commerce.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Essential public facilities" includes those facilities that are typically difficult to site, such as airports, state edu-

cation facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(9) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.110, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered:

(a) The proximity of the land to urban, suburban, and rural settlements;

(b) Surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses;

(c) Long-term local economic conditions that affect the ability to manage for timber production; and

(d) The availability of public facilities and services conducive to conversion of forest land to other uses.

(10) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(11) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(12) "Master planned resort" means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

(13) "Minerals" include gravel, sand, and valuable metallic substances.

(14) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(15) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(16) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(17) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(18) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(19) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(20) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.170 (1)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(22) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales,

canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

* RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-310 Urban growth areas. (1)(a) Except as provided in (b) of this subsection, counties and cities may not expand the urban growth area into the one hundred-year flood plain of any river or river segment that:

(i) Is located west of the crest of the Cascade mountains; and

(ii) Has a mean annual flow of one thousand or more cubic feet per second as determined by the department of ecology.

(b) Subsection (1)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a flood plain and lack adjacent buildable areas outside the flood plain;

(ii) Urban growth areas where expansions are precluded outside flood plains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the flood plain; or

(B) Expansions outside the flood plain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the flood plain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the flood plain;

(B) Urban development already exists within a flood plain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects including, but not limited to, habitat enhancement or environmental restoration; storm water facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase storm water runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) Under (a)(i) of this subsection, "one hundred-year flood plain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

(2) Requirements.

(a) Each county planning under the act must designate an urban growth area or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Each county must designate an urban growth area in its comprehensive plan.

(b) Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.

(c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

(d) Based upon the growth management planning population projection selected by the county from within the range provided by the office of financial management, and based on a county-wide employment forecast developed by the county at its discretion, the urban growth areas shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Counties and cities may provide the office of financial management with information they deem relevant to prepare the population projections, and the office shall consider and comment on such information and review projections with cities and counties before they are adopted. Counties and cities may petition the office to revise projections they believe will not reflect actual population growth.

(e) The urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

(f) Counties and cities should facilitate urban growth as follows:

(i) Urban growth should be located first in areas already characterized by urban growth that have existing public facilities and service capacities adequate to serve urban development.

(ii) Second, urban growth should be located in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

(iii) Third, urban growth should be located in the remaining portions of the urban growth area.

(g) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. Recommendations governing the extension of urban services into rural areas are found in WAC 365-196-425.

(h) Each county that designates urban growth areas must review, ~~((at least every ten years,))~~ according to the time schedule specified in RCW 36.70A.130(5), periodically its designated urban growth areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area (see WAC 365-196-610).

(i) The purpose of the urban growth area review is to assess the capacity of the urban land to accommodate population growth projected for the succeeding twenty-year planning period.

~~(ii) This review should be conducted jointly with the affected cities. ((The purpose of the ten-year urban growth area review is to assess the capacity of the urban land to accommodate population growth projected for the succeeding twenty-year planning period.))~~

(iii) In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(3) General procedure for designating urban growth areas.

(a) The designation process shall include consultation by the county with each city located within its boundaries. The adoption, review and amendment of the urban growth area should reflect a cooperative effort among jurisdictions to accomplish the requirements of the act on a regional basis, consistent with the county-wide planning policies and, where applicable, multicounty planning policies.

(b) Each city shall propose the location of an urban growth area.

(c) The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.

(d) If an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated an urban growth area.

(e) As growth occurs, most lands within the urban growth area should ultimately be provided with urban governmental services by cities, either directly or by contract. Other service providers are appropriate within urban growth areas for regional or county-wide services, or for isolated unincorporated pockets characterized by urban growth. Counties and cities should provide for development phasing within each urban growth area to ensure the orderly sequencing of development and that services are provided as growth occurs.

(f) Counties and cities should develop and evaluate urban growth area proposals with the purpose of accommodating projected urban growth through infill and redevelopment within existing municipal boundaries or urban areas. In some cases, expansion will be the logical response to projected urban growth.

(g) Counties, cities, and other municipalities, where appropriate, should negotiate interlocal agreements to coordinate land use management with the provision of adequate public facilities to the urban growth area. Such agreements should facilitate urban growth in a manner consistent with the cities' comprehensive plans and development regulations,

and should facilitate a general transformation of governance over time, through annexation or incorporation, and transfer of nonregional public services to cities as the urban area develops.

(4) Recommendations for meeting requirements.

(a) Selecting and allocating county-wide growth forecasts. This process should involve at least the following:

(i) The total county-wide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area.

(ii) RCW 43.62.035 directs the office of financial management to provide a reasonable range of high, medium and low twenty-year population forecasts for each county in the state, with the medium forecast being most likely. Counties and cities must plan for a total county-wide population that falls within the office of financial management range.

(iii) Consideration of other population forecast data, trends, and implications. In selecting population forecasts, counties and cities may consider the following:

(A) Population forecasts from outside agencies, such as regional or metropolitan planning agencies, and service providers.

(B) Historical growth trends and factors which would cause those trends to change in the future.

(C) General implications, including:

(I) Public facilities and service implications. Counties and cities should carefully consider how to finance the necessary facilities and should establish a phasing plan to ensure that development occurs at urban densities; occurs in a contiguous and orderly manner; and is linked with provision of adequate public facilities. These considerations are particularly important when considering forecasts closer to the high end of the range. Jurisdictions considering a population forecast closer to the low end of the range should closely monitor development and population growth trends to ensure actual growth does not begin to exceed the planned capacity.

(II) Overall land supplies. Counties and cities facing immediate physical or other land supply limitations may consider these limitations in selecting a forecast. Counties and cities that identify potential longer term land supply limitations should consider the extent to which current forecast options would require increased densities or slower growth in the future.

(III) Implications of short term updates. The act requires that twenty-year growth forecasts and designated urban growth areas be updated at a minimum ~~((every ten years))~~ during the periodic review of comprehensive plans and development regulations (WAC 365-196-610). Counties and cities should consider the likely timing of future updates, and the opportunities this provides for adjustments.

(D) Counties and cities are not required to adopt forecasts for annual growth rates within the twenty-year period, but may choose to for planning purposes. If used, annual growth projections may assume a consistent rate throughout the planning period, or may assume faster or slower than average growth in certain periods, as long as they result in

total growth consistent with the twenty-year forecasts selected.

(iv) Selection of a county-wide employment forecast. Counties, in consultation with cities, should adopt a twenty-year county-wide employment forecast to be allocated among urban growth areas, cities, and the rural area. The following should be considered in this process:

(A) The county-wide population forecast, and the resulting ratio of forecast jobs to persons. This ratio should be compared to past levels locally and other regions, and to desired policy objectives; and

(B) Economic trends and forecasts produced by outside agencies or private sources.

(v) Projections for commercial and industrial land needs. When establishing an urban growth area, counties should designate sufficient commercial and industrial land. Although no office of financial management forecasts are available for industrial or commercial land needs, counties and cities should use a county-wide employment forecast, available data on the current and projected local and regional economies, and local demand for services driven by population growth. Counties and cities should consider establishing a county-wide estimate of commercial and industrial land needs to ensure consistency of local plans.

Counties and cities should consider the need for industrial lands in the economic development element of their comprehensive plan. Counties and cities should avoid conversion of areas set aside for industrial uses to other incompatible uses, to ensure the availability of suitable sites for industrial development.

(vi) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(vii) Selection of the densities the community seeks to achieve in relation to its growth goals. Inside the urban growth areas densities must be urban. Outside the urban growth areas, densities must be rural.

(b) General considerations for determining the need for urban growth areas expansions to accommodate projected population and employment growth.

(i) Estimation of the number of new persons and jobs to be accommodated based on the difference between the twenty-year forecast and current population and employment.

(ii) Estimation of the capacity of current cities and urban growth areas to accommodate additional population and employment over the twenty-year planning period. This should be based on a land capacity analysis, which may include the following:

(A) Identification of the amount of developable residential, commercial and industrial land, based on inventories of currently undeveloped or partially developed urban lands.

(B) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern and consistent with any adopted levels of service. See WAC 365-196-335 for additional information.

(C) Identification of the amount of developable urban land needed for the public facilities, public services, and util-

ities necessary to support the likely level of development. See WAC 365-196-320 for additional information.

(D) Based on allowed land use development densities and intensities, a projection of the additional urban population and employment growth that may occur on the available residential, commercial and industrial land base. The projection should consider the portion of population and employment growth which may occur through redevelopment of previously developed urban areas during the twenty-year planning period.

(E) The land capacity analysis must be based on the assumption that growth will occur at urban densities inside the urban growth area. In formulating land capacity analyses, counties and cities should consider data on past development, as well as factors which may cause trends to change in the future. For counties and cities subject to RCW 36.70A.215, information from associated buildable lands reports should be considered. If past development patterns have not resulted in urban densities, or have not resulted in a pattern of desired development, counties and cities should use assumptions aligned with desired future development patterns. Counties and cities should then implement strategies to better align future development patterns with those desired.

(F) The land capacity analysis may also include a reasonable land market supply factor, also referred to as the "market factor." The purpose of the market factor is to account for the estimated percentage of developable acres contained within an urban growth area that, due to fluctuating market forces, is likely to remain undeveloped over the course of the twenty-year planning period. The market factor recognizes that not all developable land will be put to its maximum use because of owner preference, cost, stability, quality, and location. If establishing a market factor, counties and cities should establish an explicit market factor for the purposes of establishing the amount of needed land capacity. Counties and cities may consider local circumstances in determining an appropriate market factor. Counties and cities may also use a number derived from general information if local study data is not available.

(iii) An estimation of the additional growth capacity of rural and other lands outside of existing urban growth areas compared with future growth forecasted, and current urban and rural capacities.

(iv) If future growth forecasts exceed current capacities, counties and cities should first consider the potential of increasing capacity of existing urban areas through allowances for higher densities, or for additional provisions to encourage redevelopment. If counties and cities find that increasing the capacity of existing urban areas is not feasible or appropriate based on the evidence they examine, counties and cities may consider expansion of the urban growth area to meet the future growth forecast.

(c) Determining the appropriate locations of new or expanded urban growth area boundaries. This process should consider the following:

(i) Selection of appropriate densities. For all jurisdictions planning under the act, the urban growth area should represent the physical area where that jurisdiction's urban development vision can be realized over the next twenty years. The urban growth area should be based on densities which

accommodate urban growth, served by adequate public facilities, discourage sprawl, and promote goals of the act. RCW 36.70A.110 requires that densities specified for land inside the urban growth area must be urban densities. See WAC 365-196-300 for recommendations on determining appropriate urban densities.

(ii) The county should attempt to define urban growth areas to accommodate the growth plans of the cities. Urban growth areas should be defined so as to facilitate the transformation of services and governance during the planning period. However, physical location or existing patterns of service make some unincorporated areas which are characterized by urban growth inappropriate for inclusion in any city's potential growth area.

(iii) Identifying the location of any new lands added to the urban growth area. Lands should be included in the urban growth area in the following priority order:

- (A) Existing incorporated areas;
- (B) Land that is already characterized by urban growth and has adequate public facilities and services;
- (C) Land already characterized by urban growth, but requiring additional public facilities and urban services; and
- (D) Lands adjacent to the above, but not meeting those criteria.

(iv) Designating industrial lands. Counties and cities should consult with local economic development organizations when identifying industrial lands to identify sites that are particularly well suited for industry, considering factors such as:

- (A) Rail access;
- (B) Highway access;
- (C) Large parcel size;
- (D) Location along major electrical transmission lines;
- (E) Location along pipelines;
- (F) Location near or adjacent to ports and commercial navigation routes;
- (G) Availability of needed infrastructure; or
- (H) Absence of surrounding incompatible uses.

(v) Consideration of resource lands issues. Urban growth areas should not be expanded into designated agricultural, forest or resource lands unless no other option is available. Prior to expansion of the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance. Designated agricultural or forest resource lands may not be located inside the urban growth area unless a city or county has enacted a program authorizing transfer or purchase of development rights.

(vi) Consideration of critical areas issues. Although critical areas exist within urban areas, counties and cities should avoid expanding the urban growth areas into areas with known critical areas extending over a large area. See RCW 36.70A.110(8) for legislative direction on expansion of urban growth areas into the one hundred-year flood plain of river segments that are located west of the crest of the Cascade mountains and have a mean annual flow of one thousand or more cubic feet per second.

(vii) If there is physically no land available into which a city might expand, it may need to revise its proposed urban

densities or population levels in order to accommodate growth on its existing land base.

(d) Evaluating the feasibility of the overall growth plan. Counties and cities should perform a check on the feasibility of the overall plan to accommodate growth. If, as a result of this evaluation, the urban growth area appears to have been drawn too small or too large, the proposal should be adjusted accordingly. Counties and cities should evaluate:

(i) The anticipated ability to finance the public facilities, public services, and open space needed in the urban growth area over the planning period. When conducting a review of the urban growth areas, counties and cities should develop an analysis of the fiscal impact of alternative land use patterns that accommodate the growth anticipated over the succeeding twenty-year period. This provides the public and decision makers with an estimate of the fiscal consequences of various development patterns. This analysis could be done in conjunction with the analysis required under the State Environmental Policy Act.

(ii) The effect that confining urban growth within the areas defined is likely to have on the price of property and the impact thereof on the ability of residents of all economic strata to obtain housing they can afford.

(iii) Whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(iv) The extent to which the comprehensive plan of the county and of adjacent counties and cities will influence the area needed.

(e) County actions in adopting urban growth areas.

(i) A change to the urban growth area is an amendment to the comprehensive plan and requires, at a minimum, an amendment to the land use element. Counties and cities should also review and update the transportation, capital facilities, utilities, and housing elements to maintain consistency and show how any new areas added to the urban growth area will be provided with adequate public facilities. A modification of any portion of the urban growth area affects the overall urban growth area size and has county-wide implications. Because of the significant amount of resources needed to conduct a review of the urban growth area, and because some policy objectives require time to achieve, frequent, piecemeal expansion of the urban growth area should be avoided. Site-specific proposals to expand the urban growth area should be deferred until the next comprehensive review of the urban growth area.

(ii) Counties and cities that are required to participate in the buildable lands program must first have adopted and implemented reasonable measures as required by RCW 36.70A.215 before considering expansion of an urban growth area.

(iii) Consistent with county-wide planning policies, counties and cities consulting on the designation of urban growth areas should consider the following implementation steps:

(A) Establishment of agreements regarding land use regulations and the provision of services in that portion of the urban growth area outside of an existing city into which it is eventually expected to expand.

(B) Negotiation of agreements for appropriate allocation of financial burdens resulting from the transition of land from county to city jurisdiction.

(C) Provision for an ongoing collaborative process to assist in implementing county-wide planning policies, resolving regional issues, and adjusting growth boundaries.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-315 Buildable lands review and evaluation. (1) Purpose. The review and evaluation program required by RCW 36.70A.215 is referred to as the "buildable lands program." The buildable lands program is intended to determine if urban densities are being achieved within urban growth areas by comparing local planning goals and assumptions with actual development and determining if actual development is consistent with the comprehensive plan. It also determines if there is sufficient commercial, industrial and housing capacity within the adopted urban growth area to accommodate the county's twenty-year planning targets. If, through this evaluation, it is determined that there is an inconsistency between planned and built-out densities or there is insufficient development capacity, counties and cities must adopt and implement measures, other than expanding urban growth areas, that are reasonably likely to increase consistency. These measures are referred to as "reasonable measures." Products derived through the program should be used as a technical resource to local policy makers for subsequent comprehensive plan updates.

(2) Required jurisdictions.

(a) The following counties, and the cities located within those counties, must establish and maintain a buildable lands program as required by RCW 36.70A.215:

- (i) Clark;
- (ii) King;
- (iii) Kitsap;
- (iv) Pierce;
- (v) Snohomish; and
- (vi) Thurston.

(b) If another county or city establishes a program containing features of the buildable lands program, they are not obligated to meet the requirements of RCW 36.70A.215.

(3) County-wide planning policies.

(a) Buildable lands programs must be established in county-wide planning policies.

(b) The buildable lands program must contain policies that establish a framework for implementation and continued administration.

(c) The buildable lands program's framework for implementation and administration may be adopted administratively. The program's framework must contain policies or procedures to:

(i) Provide guidance for the collection and analysis of data;

(ii) Provide for the evaluation of the data ~~((every five years))~~ no later than one year prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, commonly referred to as the buildable lands report;

(iii) Provide for the establishment of methods to resolve disputes among jurisdictions regarding inconsistencies in collection and analysis of data; and

(iv) Provide for the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy inconsistencies identified through the evaluation required by this section, or to bring these policies and plans into compliance with the requirements of the act.

(d) The program's framework for implementation and administration should, in addition to the above, address the following:

(i) Establishment of the lead agency responsible for the overall coordination of the program;

(ii) Establishment of criteria and timelines for each county or city to:

(A) Make a determination as to consistency or inconsistency between what was envisioned in adopted county-wide planning policies, comprehensive plans and development regulations and actual development that has occurred;

(B) Adopt and implement reasonable measures, if necessary;

(C) Report on the monitoring of the effectiveness of reasonable measures that have been adopted and implemented. Such reporting could be included in the subsequent ~~((five-year))~~ buildable lands report;

(D) Transmit copies of any actions taken under (d)(ii)(A), (B) and (C) of this subsection to the department.

(ii) Providing opportunities for the public to review and comment on the following:

(A) Refinement of data collection and analysis methods for the review and evaluation elements of the program;

(B) Determinations as to consistency or inconsistency between what was envisioned in adopted county-wide planning policies, comprehensive plans and development regulations and actual development that has occurred; and

(C) Adoption of reasonable measures, and reports on the monitoring of their effectiveness.

(iv) Public involvement may be accommodated during review and evaluation of a county or city comprehensive plan in consideration of the buildable land report information. This would generally include public review and comment opportunities before the planning commission or legislative body during the normal local government planning process.

(4) Buildable lands program reporting.

(a) ~~((Every five years))~~ No later than one year prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, the buildable lands program must compile and publish an evaluation, known as the buildable lands report. ~~((The first report was due September 1, 2002, and subsequent reports every five years thereafter.))~~ Each buildable lands report must be submitted to the department upon publication.

(b) The buildable lands reports must compare growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred ~~((during the preceding five years))~~ since the last required buildable lands report. The results of this analysis are intended to aid counties and cities in reviewing and adjusting planning strategies.

(c) The publication, "*Buildable Lands Program Guidelines*," available from the department, may be used as a source for suggested approaches for meeting the requirements of the program.

(5) Criteria for determining consistency or inconsistency.

(a) The determination of consistency or inconsistency for each county or city maintaining a buildable lands program must be made under RCW 36.70A.215(3):

(i) Evaluation under RCW 36.70A.215 (3)(a) should determine whether the comprehensive plan and development regulations sufficiently accommodate the population projection established for the county and allocated within the county and between the county and its cities, consistent with the requirements in RCW 36.70A.110.

(ii) Evaluation under RCW 36.70A.215 (3)(b) should compare the achieved densities, type and density range for commercial, industrial and residential land uses with the assumed densities that were envisioned in the applicable county-wide planning policies, and the comprehensive plan.

(iii) Evaluation under RCW 36.70A.215 (3)(c) should determine, based on actual development densities determined in the evaluation under RCW 36.70A.215 (3)(b), the amount of land needed for commercial, industrial and residential uses for the remaining portion of the twenty-year planning period. This evaluation should consider the type and densities of each type of land use as envisioned in the county-wide planning policies, comprehensive plan.

(b) The evaluation used to determine whether there is a consistency or inconsistency should include any additional standards identified in the county-wide planning policies or in other policies that are specifically directed for use in the evaluation.

(6) Measures to address inconsistencies.

(a) The legislative bodies of counties and cities are responsible for the adoption of reasonable measures requiring legislative action to amend their individual comprehensive plans and development regulations. Counties, in consultation with cities, are responsible for amending the county-wide planning policies reasonably likely to increase consistency. Annual monitoring and reporting is the responsibility of the adopting jurisdiction, but may be carried out by either the adopting jurisdiction or other designated agency or person.

(b) If a county or city determines an inconsistency exists, the county or city should establish a timeline for adopting and implementing measures that are reasonably likely to increase consistency ~~((in the succeeding five years))~~ during the succeeding review and evaluation period. The responsible county or city may utilize its annual review under RCW 36.70A.130(2) to make adjustments to its comprehensive plan and development regulations that are necessary to implement reasonable measures. Information regarding the adoption, implementation, and monitoring of reasonable measures should be made available to the public. Counties and cities may not rely on expansion of the urban growth area as a measure to address the inconsistency.

(i) Each county or city is responsible for implementing reasonable measures within its jurisdiction and must adopt measures that are designed to remedy the inconsistency

within the remaining planning horizon of the adopted comprehensive plan;

(ii) Each county or city adopting reasonable measures is responsible for documenting its methodology and expectations for monitoring to provide a basis to evaluate whether the adopted measures have been effective in increasing consistency during the subsequent ~~((five-year))~~ review and evaluation period;

(iii) If the monitoring of reasonable measures fails to show increased consistency relative to adopted policies, plans and development regulations during the subsequent ~~((five-year))~~ review and evaluation period, the county or city should evaluate whether the measures in question should be revised, replaced, supplemented or rescinded;

(iv) If monitoring of reasonable measures demonstrates that such measures have remedied the inconsistency, the adopting county or city may discontinue monitoring;

(v) A copy of any action taken to adopt, amend, or rescind reasonable measures should be submitted to the department.

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-325 Providing sufficient land capacity suitable for development. (1) Requirements.

(a) RCW 36.70A.115 requires counties and cities to ensure that, taken collectively, comprehensive plans and development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable county-wide planning policies and consistent with the twenty-year population forecast from the office of financial management. To demonstrate this requirement is met, counties and cities must conduct an evaluation of land capacity sufficiency that is commonly referred to as a "land capacity analysis."

(b) Counties and cities must ~~((at minimum,))~~ complete a land capacity analysis that demonstrates sufficient land for development or redevelopment to meet their adopted growth allocation targets during the ~~((ten-year))~~ review of urban growth areas required by RCW 36.70A.130 (3)(a). See WAC 365-196-310 for guidance in estimating and providing sufficient land capacity.

(c) Counties and cities subject to RCW 36.70A.215 must determine land capacity sufficiency as part of the buildable lands reporting required ~~((at least every five years))~~ no later than one year prior to the deadline for periodic review of comprehensive plans and development regulations required by RCW 36.70A.130, and adopt and implement measures that are reasonably likely to increase the consistency between land capacity and growth allocations. See WAC 365-196-315 for guidance.

(d) ~~((Although it is not required, counties and cities may elect to conduct a land capacity analysis during the periodic review and update of comprehensive plans required under RCW 36.70A.130(1).))~~

(e)) A complete land capacity analysis is not required to be undertaken for every amendment to a comprehensive plan or development regulation outside of the act's required periodic reviews. However, when considering amendments to the comprehensive plan or development regulations which increase or decrease allowed densities, counties and cities should estimate the degree of increase or decrease in development capacity on lands subject to the amendments, and estimate if the capacity change may affect its ability to provide sufficient capacity of land suitable for development. If so, the county or city should complete a land capacity analysis.

(2) Recommendations for meeting requirement.

(a) Determining land capacity sufficiency. The land capacity analysis is a comparison between the collective effects of all development regulations operating on development and the assumed densities established in the land use element. In order to achieve sufficiency, the development regulations must allow at least the low end of the range of assumed densities established in the land use element. This assures a city or county can meet its obligation to accommodate the growth allocated through the county-wide population allocation process.

(b) Appropriate area for analysis. The focus of the analysis is on the county or city's ability to meet its obligation to accommodate the growth allocated through the county-wide population or employment allocation process. Providing sufficient land capacity for development does not require a county or city to achieve or evaluate sufficiency for every parcel of a future land use designation provided the area as a whole ensures sufficient land capacity for development.

(c) The land capacity analysis should evaluate what the development regulations allow, rather than what development has actually occurred. Many factors beyond the control of counties and cities will control the amount and pace of actual development, what density it is built at and what types and densities of development are financially viable for any set of economic conditions. Counties and cities need not ensure that particular types of development are financially feasible in the context of short term market conditions. Counties and cities should, however, consider available information on trends in local markets to inform its evaluation of sufficient land capacity for the twenty-year planning period.

(d) Development phasing. RCW 36.70A.115 does not create an obligation to ensure that all land in the urban growth area is available for development at the same time. When counties or cities establish mechanisms for development phasing, zoned densities in the short term may be established that are substantially lower than called for in the future land use designations. In these cases, a county or city ensures a sufficient land capacity suitable for development by implementing its development phasing policies to allow development to occur within the twenty-year planning period. Development phasing is described in greater detail in WAC 365-196-330.

(e) The department recommends the following means of implementing the requirements of RCW 36.70A.115.

(i) Periodic evaluation. Counties and cities ensure sufficient land capacity for development by comparing the achieved density of development that has been permitted in each zoning category to the assumed densities established in

the land use element using existing permitting data. If existing permitting data shows that the densities approved are lower than assumed densities established in the land use element, counties and cities should review their development regulations to determine if regulatory barriers are preventing development at the densities as envisioned. This ~~((could occur as part of the seven-year review and update required in RCW 36.70A.130 (1)(a)- (4))~~ evaluation must occur ~~((at a minimum))~~ as part of the ~~((ten-year))~~ urban growth area review required in RCW 36.70A.130 (3)(a) and as part of the buildable lands review and evaluation program conducted under RCW 36.70A.215.

(ii) Flexible development standards. Counties and cities could ensure sufficient land capacity for development by establishing development regulations to allow development proposals that transfer development capacity from unbuildable portions of a development parcel to other portions of the development parcel so the underlying zoned density is still allowed. This may provide for flexibility in some dimensional standards provided development is consistent with state law and all impacts are mitigated.

(iii) Evaluation of development capacity impacts of proposed development regulation amendments. Counties and cities may also consider evaluation of whether proposed amendments to development regulations will have a significant impact on the ability of a county or city to provide sufficient capacity of land for development.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-400 Mandatory elements. (1) Requirements.

(a) The comprehensive plan must include, at a minimum, a future land use map.

(b) The comprehensive plan must contain descriptive text covering objectives, principles, and standards used to develop the comprehensive plan.

(c) The comprehensive plan must be an internally consistent document and all elements shall be consistent with the future land use map.

(d) Each comprehensive plan must include each of the following:

- (i) A land use element;
- (ii) A housing element;
- (iii) A capital facilities plan element;
- (iv) A utilities element;
- (v) A transportation element.

(e) Required elements enacted after January 1, 2002, must be included in each comprehensive plan that is updated under RCW 36.70A.130(1), but only if funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before the applicable review and update deadline in RCW 36.70A.130~~((4))~~ (5). The department will notify counties and cities when funds have been appropriated for this purpose. Elements enacted after January 1, 2002, include:

- (i) An economic development element; and
- (ii) A parks and recreation element.

(f) County comprehensive plans must also include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources.

(g) Additionally, each county and city comprehensive plan must contain:

(i) A process for identifying and siting essential public facilities.

(ii) The goals and policies of the shoreline master program adopted by the county or city, either directly in the comprehensive plan, or through incorporation by reference as described in WAC 173-26-191.

(2) Recommendations for overall design of the comprehensive plan.

(a) The planning horizon for the comprehensive plan must be at least the twenty-year period following the adoption of the comprehensive plan.

(b) The comprehensive plan should include or reference the statutory goals and requirements of the act as guiding the development of the comprehensive plan and should also identify any supplementary goals adopted in the comprehensive plan.

(c) Each county and city comprehensive plan should include, or reference, the county-wide planning policies, along with an explanation of how the county-wide planning policies have been integrated into the comprehensive plan.

(d) Each comprehensive plan must contain a future land use map showing the proposed physical distribution and location of the various land uses during the planning period. This map should provide a graphic display of how and where development is expected to occur.

(e) The comprehensive plan should include a vision for the community at the end of the twenty-year planning period and identify community values derived from the visioning and other citizen participation processes. Goals may be further defined with policies and objectives in each element of the comprehensive plan.

(f) Each county and city should include at the beginning of its comprehensive plan a section which summarizes, with graphics and a minimum amount of text, how the various pieces of the comprehensive plan fit together. A comprehensive plan may include overlay maps and other graphic displays depicting known critical areas, open space corridors, development patterns, phasing of development, neighborhoods or subarea definitions, and other plan features.

(g) Detailed recommendations for preparing each element of the comprehensive plan are provided in WAC 365-196-405 through 365-196-485.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-415 Capital facilities element. (1) Requirements. The capital facilities element of a comprehensive plan must contain at least the following features:

(a) An inventory of existing capital facilities owned by public entities, also referred to as "public facilities," showing the locations and capacities of the capital facilities;

(b) A forecast of the future needs for such capital facilities based on the land use element;

(c) The proposed locations and capacities of expanded or new capital facilities;

(d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and

(e) A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(2) Recommendations for meeting requirements.

(a) Inventory of existing facilities.

(i) Counties and cities should create an inventory of existing capital facilities showing locations and capacities, including the extent to which existing facilities have capacity available for future growth.

(ii) Capital facilities involved should include, at a minimum, water systems, sanitary sewer systems, storm water facilities, reclaimed water facilities, schools, parks and recreational facilities, police and fire protection facilities.

(iii) Capital facilities that are needed to support other comprehensive plan elements, such as transportation, the parks and recreation or the utilities elements, may be addressed in the capital facility element or in the specific element.

(iv) Counties and cities should periodically review and update the inventory. At a minimum this review must occur as part of the ~~(seven-year)~~ periodic update required by RCW 36.70A.130(1). Counties and cities may also maintain this inventory annually in response to changes in the annual capital budget.

(b) Forecast of future needs.

(i) Counties and cities should forecast needs for capital facilities during the planning period, based on the levels of service or planning assumptions selected and consistent with the growth, densities and distribution of growth anticipated in the land use element. The forecast should include reasonable assumptions about the effect of any identified system management or demand management approaches to preserve capacity or avoid the need for new facilities.

(ii) The capital facilities element should identify all capital facilities that are planned to be provided within the planning period, including general location and capacity.

(A) Counties and cities should identify those improvements that are necessary to address existing deficiencies or to preserve the ability to maintain existing capacity.

(B) Counties and cities should identify those improvements that are necessary for development.

(C) Counties and cities may identify any other improvements desired to raise levels of services above locally adopted minimum standards, to enhance the quality of life in the community or meet other community needs not related to growth such as administrative offices, courts or jail facilities. Counties and cities are not required to set level of service standards for facilities that are not necessary for development. Because these facilities are not necessary for development, the failure to fund these facilities as planned would not

require a reassessment of the land use element if funding falls short as required by RCW 36.70A.070 (3)(e).

(c) Financing plan.

(i) The capital facilities element should include creation of at least a six-year capital facilities plan for financing capital facilities needed within that time frame. Counties and cities should forecast projected funding capacities based on revenues available under existing laws and ordinances, followed by the identification of sources of public or private funds for which there is reasonable assurance of availability. Where the services and capital facilities are provided by other entities, these other providers should provide financial information as well. If the funding strategy relies on new or previously untapped sources of revenue, the capital facilities element should include an estimate of new funding that will be supplied. Adoption of the development regulations or other actions to secure these funding sources should be included in the implementation strategy.

(ii) The six-year plan should be updated at least biennially so financial planning remains sufficiently ahead of the present for concurrency to be evaluated. Such an update of the capital facilities element may be integrated with the county's or city's annual budget process for capital facilities.

(d) Reassessment.

(i) Counties and cities must reassess the land use element and other elements of the comprehensive plan if the probable funding falls short of meeting the need for facilities that are determined by a county or city to be necessary for development. Counties and cities should identify a mechanism to periodically evaluate the adequacy of public facilities based on adopted levels of service or other objective standards. The evaluation should determine if a combination of existing and funded facilities are adequate to maintain or exceed adopted level of service standards.

(ii) This evaluation must occur, at a minimum, as part of the periodic review and update required in RCW 36.70A.130 (1)(~~), during the review of urban growth areas required by RCW 36.70A.130~~) and (3) and as major changes are made to the capital facilities element.

(iii) If public facilities are inadequate, local governments must address this inadequacy. If the reassessment identifies a lack of adequate public facilities, counties and cities may use a variety of strategies including, but not limited to, the following:

(A) Reducing demand through demand management strategies;

(B) Reducing levels of service standards;

(C) Increasing revenue;

(D) Reducing the cost of the needed facilities;

(E) Reallocating or redirecting planned population and employment growth within the jurisdiction or among jurisdictions within the urban growth area to make better use of existing facilities;

(F) Phasing growth or adopting other measures to adjust the timing of development, if public facilities or services are lacking in the short term for a portion of the planning period;

(G) Revising county-wide population forecasts within the allowable range, or revising the county-wide employment forecast.

(3) Relationship between the capital facilities element and the land use element.

(a) Providing adequate public facilities is a component of the affirmative duty created by the act for counties and cities to accommodate the growth that is selected and allocated, to provide sufficient capacity of land suitable for development, and to permit urban densities.

(b) The needs for capital facilities should be dictated by the land use element. The future land use map designates sufficient land use densities and intensities to accommodate the population and employment that is selected and allocated. The land uses and assumed densities identified in the land use element determine the location and timing of the need for new or expanded facilities.

(c) A capital facilities element includes the new and expanded facilities necessary for growth over the twenty-year life of the comprehensive plan. Facilities needed for new growth, combined with needs for maintenance and rehabilitation of the existing systems and the need to address existing deficiencies constitutes the capital facilities demand.

(4) Relationship to plans of other service providers or plans adopted by reference. A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system plans or master plans from other service providers are adopted by reference, counties and cities should do the following:

(a) Summarize this information within the capital facilities element;

(b) Synthesize the information from the various providers to show that the actions, taken together, provide adequate public facilities; and

(c) Conclude that the capital facilities element shows how the area will be provided with adequate public facilities.

(5) Relationship between growth and provision of adequate public facilities.

(a) Counties and cities should identify in the capital facility element which types of facilities it considers to be necessary for development.

(i) Counties and cities should identify facilities as necessary for development if the need for new facilities is reasonably related to the impacts of development.

(ii) Capital facilities must be identified as necessary for development if a county or city imposes an impact fee as a funding strategy for those facilities.

(ii) In urban areas, all facilities necessary to achieve urban densities must be identified as necessary for development.

(b) For those capital facilities deemed necessary for development, adequate public facilities may be maintained as follows:

(i) Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may adopt a concurrency mechanism for other facilities that are deemed necessary for development. See WAC 365-196-840.

(ii) Counties and cities should determine which capital facilities will be required as a condition of project approval, but not subject to concurrency. These may include, for example: Capital facilities required to ensure adequate water avail-

ability, capital facilities necessary to handle wastewater, and capital facilities necessary to manage storm water.

(iii) For capital facilities that are necessary for development, but not identified in subsection (2)(b)(i)(A) or (B) of this section, counties and cities should set a minimum level of service standard, or provide some other objective basis for assessing the need for new facilities or capacity. This standard must be indicated as the baseline standard, below which the jurisdiction will not allow service to fall. Policies must require periodic analysis to determine if the adopted level of service is being met consistent with this section.

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-425 Rural element. Counties must include a rural element in their comprehensive plan. This element shall include lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.

(1) Developing a written record. When developing the rural element, a county may consider local circumstances in establishing patterns of rural densities and uses, but must develop a written record explaining how the rural element harmonizes the planning goals in the act and meets the requirements of the act. This record should document local circumstances the county considered and the historic patterns of development in the rural areas.

(2) Establishing a definition of rural character.

(a) The rural element shall include measures that apply to rural development and protect rural character. Counties must define rural character to guide the development of the rural element and the implementing development regulations.

(b) The act identifies rural character as patterns of land use and development that:

(i) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(ii) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(iii) Provide visual landscapes that are traditionally found in rural areas and communities;

(iv) Are compatible with the use of land by wildlife and for fish and wildlife habitat;

(v) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(vi) Generally do not require the extension of urban governmental services; and

(vii) Are consistent with protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(c) Counties should adopt a locally appropriate definition of rural character. Rural areas are diverse in visual character and in density, across the state and across a particular county. Rural development may consist of a variety of densities and uses. It may, for example, include clustered residential development at levels consistent with the preservation of rural character. Counties should define rural development both in terms of its visual character and in terms of the den-

sity and intensity of uses. Defining rural development in this way allows the county to use its definition of rural development both in its future land use designations and in its development regulations governing rural development.

(3) Rural densities.

(a) The rural element should provide for a variety of densities that are consistent with the pattern of development established in its definition of rural character. The rural comprehensive plan designations should be shown on the future land use map. Rural densities are a range of densities that:

(i) Are compatible with the primary use of land for natural resource production;

(ii) Do not make intensive use of the land;

(iii) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(iv) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(v) Provide visual landscapes that are traditionally found in rural areas and communities;

(vi) Are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(vii) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(viii) Generally do not require the extension of urban governmental services;

(ix) Are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas; and

(x) Do not create urban densities in rural areas or abrogate the county's responsibility to encourage new development in urban areas.

(b) Counties should perform a periodic analysis of development occurring in rural areas, to determine if patterns of rural development are protecting rural character and encouraging development in urban areas. This analysis should occur (~~at least every ten years,~~) along with the (~~ten-year~~) urban growth area review required in RCW 36.70A.130 (3)(a). The analysis may include the following:

(i) Patterns of development occurring in rural areas.

(ii) The percentage of new growth occurring in rural versus urban areas.

(iii) Patterns of rural comprehensive plan or zoning amendments.

(iv) Numbers of permits issued in rural areas.

(v) Numbers of new approved wells and septic systems.

(vi) Growth in traffic levels on rural roads.

(vii) Growth in public facilities and public services costs in rural areas.

(viii) Changes in rural land values and rural employment.

(ix) Potential build-out at the allowed rural densities.

(x) The degree to which the growth that is occurring in the rural areas is consistent with patterns of rural land use and development established in the rural element.

(4) Rural governmental services.

(a) Rural governmental services are those public facilities and services historically and typically delivered at intensities usually found in rural areas, and may include the following:

- (i) Domestic water system;
- (ii) Fire and police protection;
- (iii) Transportation and public transportation; and
- (iv) Public utilities, such as electrical, telecommunications and natural gas lines.

(b) Rural services do not include storm or sanitary sewers. Urban governmental services that pass through rural areas when connecting urban areas do not constitute an extension of urban services into a rural area provided those public services are not provided in the rural area. Sanitary sewer service may be provided only if it:

- (i) Is necessary to protect basic public health and safety and the environment;
- (ii) Is financially supportable at rural densities; and
- (iii) Does not permit urban development.

(c) When establishing levels of service in the capital facilities and transportation element, each county should establish rural levels of service, for those rural services that are necessary for development, to determine if it is providing adequate public facilities. Counties are not required to use a single level of service for the entire rural area and may establish varying levels of service for public services in different rural areas. Where private purveyors or other public entities provide rural services, counties should coordinate with them to establish and document appropriate levels of service.

(d) Rural areas typically rely on natural systems to adequately manage storm water and typically rely on on-site sewage systems to treat wastewater. Development in rural areas also typically relies on individual wells, exempt wells or small water systems for water. Counties should ensure the densities it establishes in rural areas do not overwhelm the ability of natural systems to provide these services without compromising either public health or the vitality of the surrounding ecosystem.

(e) Rural road systems are not typically designed to handle large traffic volumes. Local conditions may influence varying levels of service for rural road system, and level of service standards for rural arterials should be set accordingly. Generally, level of service standards should reflect the expectation that high levels of local traffic and the associated road improvements are not usually associated with rural areas.

(f) Levels of public services decrease, and corresponding costs increase when demand is spread over a large area. This is especially true for public safety services and both school and public transportation services. Counties should provide clear expectations to the public about the availability of rural public services. Counties should ensure the densities it establishes in rural areas do not overwhelm the capacity of rural public services.

(5) Innovative zoning techniques.

(a) Innovative zoning techniques allow greater flexibility in rural development regulations to create forms of development that are more consistent with rural character than forms of development generated by conventional large-lot zoning. Innovative zoning techniques may allow forms of rural development that:

- (i) Result in rural development that is more visually compatible with the surrounding rural areas;
- (ii) Maximize the availability of rural land for either resource use or wildlife habitat;

- (iii) Increase the operational compatibility of the rural development with use of the land for resource production;
- (iv) Decrease the impact of the rural development on the surrounding ecosystem;
- (v) Does not allow urban growth; and
- (vi) Does not require the extension of urban governmental services.

(b) Rural clusters. One common form of innovative zoning technique is the rural cluster. A rural cluster can create smaller individual lots than would normally be allowed in exchange for open space that preserves a significant portion of the original parcel.

(i) When calculating the density of development for zoning purposes, counties should calculate density based on the number of dwelling units over the entire development parcel, rather than the size of the individual lots created.

(ii) The open space portion of the original parcel should be held by an easement, parcel or tract for open space or resource use. This should be held in perpetuity, without an expiration date.

(iii) If a county allows bonus densities in a rural cluster, the resulting density after applying the bonus must be a rural density.

(iv) Rural clusters may not create a pattern of development that relies on or requires urban governmental services. Counties should establish a limit on the size of the residential cluster so that a cluster does not constitute urban growth in a rural area. A very large project may create multiple smaller clusters that are separated from each other and use a different access point to avoid creating a pattern of development that would constitute urban growth.

(v) Development regulations governing rural clusters should include design criteria that preserve rural visual character.

(6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDs.

(a) LAMIRDs serve the following purposes:

(i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;

(ii) To allow for small-scale commercial uses that rely on a rural location;

(iii) To allow for small-scale economic development and employment consistent with rural character; and

(iv) To allow for redevelopment of existing industrial areas within rural areas.

(b) An existing area or existing use is one that was in existence on the date the county became subject to all of the provisions of the act:

(i) For a county initially required to fully plan under the act, on July 1, 1990.

(ii) For a county that chooses to fully plan under the act, on the date the county adopted the resolution under RCW 36.70A.040(2).

(iii) For a county that becomes subject to all of the requirements of the act under RCW 36.70A.040(5), on the

date the office of financial management certifies the county's population.

(c) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facilities and services that are appropriate and necessary to serve LAMIRDS subject to the following requirements:

(i) Type 1 LAMIRDS - Isolated areas of existing more intense development. Within these areas, rural development consists of infill, development, or redevelopment of existing areas. These areas may include a variety of uses including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) Development or redevelopment in LAMIRDS may be both allowed and encouraged provided it is consistent with the character of the existing LAMIRD in terms of building size, scale, use, and intensity. Counties may allow new uses of property within a LAMIRD, including development of vacant land.

(B) When establishing a Type I LAMIRD, counties must establish a logical outer boundary. The purpose of the logical outer boundary is to minimize and contain the areas of more intensive rural development to the existing areas. Uses, densities or intensities not normally allowed in a rural area may be allowed inside the logical outer boundary consistent with the existing character of the LAMIRD. Appropriate and necessary levels of public facilities and services not otherwise provided in rural areas may be provided inside the logical outer boundary.

(C) The logical outer boundary must be delineated primarily by the built environment as it existed on the date the county became subject to the planning requirements of the act.

(I) Some vacant land may be included within the logical outer boundary provided it is limited and does not create a significant amount of new development within the LAMIRD.

(II) Construction that defines the built environment may include above or below ground improvements. The built environment does not include patterns of vesting or preexisting zoning, nor does it include roads, clearing, grading, or the inclusion within a sewer or water service area if no physical improvements are in place. Although vested lots and structures built after the county became subject to the act's requirements should not be considered when identifying the built environment, they may be included within the logical outer boundary as infill.

(III) The logical outer boundary is not required to strictly follow parcel boundaries. If a large parcel contains an existing structure, a county may include part of the parcel in the LAMIRD boundary without including the entire parcel, to avoid a significant increase in the amount of development allowed within the LAMIRD.

(D) The fundamental purpose of the logical outer boundary is to minimize and contain the LAMIRD. Counties should favor the configuration that best minimizes and contains the LAMIRD to the area of existing development as of the date the county became subject to the planning requirements of the act. When evaluating alternative configurations of the logical outer boundary, counties should determine how much

new growth will occur at build out and determine if this level of new growth is consistent with rural character and can be accommodated with the appropriate level of public facilities and public services. Counties should use the following criteria to evaluate various configurations when establishing the logical outer boundary:

(I) The need to preserve the character of existing natural neighborhoods and communities;

(II) Physical boundaries such as bodies of water, streets and highways, and land forms and contours;

(III) The prevention of abnormally irregular boundaries; and

(IV) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

(E) Once a logical outer boundary has been adopted, counties may consider changes to the boundary in subsequent amendments. When doing so, the county must use the same criteria used when originally designating the boundary. Counties should avoid adding new undeveloped parcels as infill, especially if doing so would add to the capacity of the LAMIRD.

(ii) Type 2 LAMIRDS - Small-scale recreational uses. Counties may allow small-scale tourist or recreational uses in rural areas. Small-scale recreational or tourist uses rely on a rural location and setting and need not be principally designed to serve the existing and projected rural population.

(A) Counties may allow small-scale tourist or recreational uses through redevelopment of an existing site, intensification of an existing site, or new development on a previously undeveloped site, but not new residential development. Counties may allow public services and facilities that are limited to those necessary to serve the recreation or tourist uses and that do not permit low-density sprawl. Small-scale recreational or tourist uses may be added as accessory uses for resource-based industry. For accessory uses on agricultural lands of long-term commercial significance, see WAC 365-196-815.

(B) Counties are not required to designate Type 2 LAMIRDS on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 2 LAMIRD. Conditions must assure that Type 2 LAMIRDS:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Rely on a rural location or a natural setting;

(V) Do not include new residential development;

(VI) Do not require services and facilities beyond what is available in the rural area; and

(VII) Are operationally compatible with surrounding resource-based industries.

(iii) Type 3 LAMIRDS - Small-scale businesses and cottage industries. Counties may allow isolated small-scale businesses and cottage industries that are not principally designed to serve the existing and projected rural population and non-residential uses, but do provide job opportunities for rural

residents, through the intensification of development on existing lots or on undeveloped sites.

(A) Counties may allow the expansion of small-scale businesses in rural areas as long as those small-scale businesses are consistent with the rural character of the area as defined by the county in the rural element. Counties may also allow new small-scale businesses to use a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area. Any public services and public facilities provided to the cottage industry or small-scale business must be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl.

(B) Counties are not required to designate Type 3 LAMIRDS on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 3 LAMIRD. Conditions must assure that Type 3 LAMIRDS:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Do not include new residential development;

(V) Do not require public services and facilities beyond what is available in the rural area; and

(VI) Are operationally compatible with surrounding resource-based industries.

(d) Major industrial developments and master planned resorts governed by other requirements. Counties may not use the provisions of RCW 36.70A.070 (5)(d)(iii) to permit a major industrial development or a master planned resort. These types of development must comply with the requirements of RCW 36.70A.360 through 36.70A.368. For more information about major industrial developments, see WAC 365-196-465. For more information about master planned resorts, see WAC 365-196-460.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-430 Transportation element. (1) Requirements. Each comprehensive plan shall include a transportation element that implements, and is consistent with, the land use element. The transportation element shall contain at least the following subelements:

(a) Land use assumptions used in estimating travel;

(b) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(c) Facilities and services needs, including:

(i) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airports facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the county's or city's jurisdictional boundaries;

(ii) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(iii) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's ten-year investment program. The concurrency requirements of RCW 36.70A.070 (6)(b) do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in RCW 36.70A.070 (6)(b);

(iv) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(v) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(vi) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(d) Finance, including:

(i) An analysis of funding capability to judge needs against probable funding resources;

(ii) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(iii) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(e) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(f) Demand-management strategies;

(g) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles;

(h) The transportation element, and the six-year plan required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and the ten-year plan required by RCW 47.05.030 for the state, must be consistent.

(2) Recommendations for meeting element requirements.

(a) Consistency with the land use element, regional and state planning.

(i) RCW 36.70A.070(6) requires that the transportation element implement and be consistent with the land use element. Counties and cities should use consistent land use assumptions, population forecasts, and planning periods for both elements.

(ii) Counties and cities should refer to the statewide multimodal transportation plan produced by the department of transportation under chapter 47.06 RCW to ensure consistency between the transportation element and the statewide multimodal transportation plan. Local transportation elements should also reference applicable department of transportation corridor planning studies, including scenic byway corridor management plans.

(iii) Counties and cities should refer to the regional transportation plan developed by their regional transportation planning organization under chapter 47.80 RCW to ensure the transportation element reflects regional guidelines and principles; is consistent with the regional transportation plan; and is consistent with adopted regional growth and transportation strategies. Considering consistency during the development and review of the transportation element will facilitate the certification of transportation elements by the regional transportation planning organization as required by RCW 47.80.023(3).

(iv) Counties and cities should develop their transportation elements using the framework established in county-wide planning policies, and where applicable, multicounty planning policies. Using this framework ensures their transportation elements are coordinated and consistent with the comprehensive plans of other counties and cities sharing common borders or related regional issues as required by RCW 36.70A.100 and 36.70A.210.

(v) Counties and cities should refer to the six-year transit plans developed by municipalities or regional transit authorities pursuant to RCW 35.58.2795 to ensure their transportation element is consistent with transit development plans as required by RCW 36.70A.070 (6)(c).

(vi) Land use elements and transportation elements may incorporate commute trip reduction plans to ensure consistency between the commute trip reduction plans and the comprehensive plan as required by RCW 70.94.527(5). Counties and cities may also include transportation demand management programs for growth and transportation efficiency centers designated in accordance with RCW 70.94.528.

(b) The transportation element should contain goals and policies to guide the development and implementation of the

transportation element. The goals and policies should be consistent with statewide and regional goals and policies. Goals and policies should address the following:

(i) Roadways and roadway design that provides safe access and travel for all users, including motorists, transit vehicles and riders, bicyclists, and pedestrians;

(ii) Public transportation, including public transit and passenger rail, intermodal transfers, and multimodal access;

(iii) Bicycle and pedestrian travel;

(iv) Transportation demand management, including education, encouragement and law enforcement strategies;

(v) Freight mobility including port facilities, truck, air, rail, and water-based freight;

(vi) Transportation finance including strategies for addressing impacts of development through concurrency, impact fees, and other mitigation; and

(vii) Policies to preserve the functionality of state highways within the local jurisdiction such as policies to provide an adequate local network of streets, paths, and transit service so that local short-range trips do not require single-occupant vehicle travel on the state highway system; and policies to mitigate traffic and storm water impacts on state-owned transportation facilities as development occurs.

(c) Inventory and analysis of transportation facilities. RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities. The inventory defines existing capital facilities and travel levels as a basis for future planning. The inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries. Counties and cities should identify transportation facilities which are owned or operated by others. For those facilities operated by others, counties and cities should refer to the responsible agencies for information concerning current and projected plans for transportation facilities and services. Counties, cities, and agencies responsible for transportation facilities and services should cooperate in identifying and resolving land use and transportation compatibility issues.

(i) Air transportation facilities.

(A) Where applicable, counties and cities should describe the location of facilities and services provided by any general aviation airport within or adjacent to the county or city, and should reference any relevant airport planning documents including airport master plans, airport layout plans or technical assistance materials made available by the Washington state department of transportation, aviation division.

(B) Counties and cities should identify supporting transportation infrastructure such as roads, rail, and routes for freight, employee, and passenger access, and assess the impact to the local transportation system.

(C) Counties and cities should assess the compatibility of land uses adjacent to the airport and discourage the siting of incompatible uses in the land use element as directed by RCW 36.70A.510 and WAC 365-196-455.

(ii) Water transportation facilities.

(A) Where applicable, counties and cities should describe or map any ferry facilities and services, including ownership, and should reference any relevant ferry planning

documents. The inventory should identify if a ferry route is subject to concurrency under RCW 36.70A.070 (6)(b). A ferry route is subject to concurrency if it serves counties consisting of islands whose only connection to the mainland are state highways or ferry routes.

(B) Counties and cities should identify supporting infrastructure such as parking and transfer facilities, bicycle, pedestrian, and vehicle access to ferry terminals and assess the impact on the local transportation system.

(C) Where applicable, counties and cities should describe marine and inland waterways, and related port facilities and services. Counties and cities should identify supporting transportation infrastructure, and assess the impact to the local transportation system.

(iii) Ground transportation facilities and services.

(A) Roadways. Counties and cities must include a map of roadways owned or operated by city, county, and state governments.

(I) Counties and cities may describe the general travel market (i.e., commuter, tourist, farm to market, etc.) served by the transportation network. The inventory may include information such as: Traffic volumes, truck volumes and classification, functional classification, strategic freight corridor designation, preferred freight routes, scenic and recreational highway designation, and ownership.

(II) For state highways, counties and cities should coordinate with the regional office of the Washington state department of transportation to identify designated high occupancy vehicle or high occupancy toll lanes, access classification, roadside classification, functional classification, and whether the highway is a state-designated highway of statewide significance, or state scenic and recreational highway designated under chapter 47.39 RCW. These designations may impact future development along state highway corridors. If these classifications impact future land use, this information should be included in the comprehensive plan along with reference to any relevant corridor planning documents.

(B) Public transportation and rail facilities and services.

(I) RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of transit alignments. Where applicable, counties and cities must inventory existing public transportation facilities and services. This section should reference transit development plans that provide local services. The inventory should contain a description of regional and intercity rail, and local, regional, and intercity bus service, paratransit, or other services. Counties and cities should include a map of local transit routes. The inventory should also identify locations of passenger rail stations and major public transit transfer stations for appropriate land use.

(II) Where applicable, such as where a major freight transfer facility is located, counties and cities should include a map of existing freight rail lines, and reference any relevant planning documents. Counties and cities should assess the adequacy of supporting transportation infrastructure such as roads, rail, and navigational routes for freight, employee, and passenger access, and the impact on the local transportation system.

(d) If the planning area is within a National Ambient Air Quality Standards nonattainment area, compliance with the

Clean Air Act Amendments of 1990 is required. Where applicable, the transportation element should include: A map of the area designated as the nonattainment area for ozone, carbon monoxide, and particulate matter (PM10 and PM2.5); a discussion of the severity of the violation(s) contributed by transportation-related sources; and a description of measures that will be implemented consistent with the state implementation plan for air quality. Counties and cities should refer to chapter 173-420 WAC, and to local air quality agencies and metropolitan planning organizations for assistance.

(e) Level of service standards. Level of service standards serve to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between city, county and state transportation investment programs.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all locally owned arterials. Counties and cities may adopt level of service standards for other locally owned roads or travel modes at their discretion.

(ii) RCW 36.70A.070 (6)(a)(iii)(C) requires level of service standards for highways, as reflected in chapters 47.06 and 47.80 RCW, to gauge the performance of the transportation system. The department of transportation, in consultation with counties and cities, establishes level of service standards for state highways and ferry routes of statewide significance. Counties and cities should refer to the state highway and ferry plans developed in accordance with chapter 47.06 RCW for the adopted level of service standards.

(iii) Regional transportation planning organizations and the department of transportation jointly develop level of service standards for all other state highways and ferry routes. Counties and cities should refer to the regional transportation plans developed in accordance with chapter 47.80 RCW for the adopted level of service standards.

(iv) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all transit routes. To identify level of service standards for public transit services, counties and cities should include the established level of service or performance standards from the transit provider and should reference any relevant planning documents.

(v) Adopted level of service standards should reflect access, mobility, mode-split, or capacity goals for the transportation facility depending upon the surrounding development density and community goals, and should be developed in consultation with transit agencies serving the planning area.

(vi) The measurement methodology and standards should vary based on the urban or rural character of the surrounding area. The county or city should also balance the desired community character, funding capacity, and traveler expectations when selecting level of service methodologies and standards. A county or city may select different ways to measure travel performance depending on how a county or city balances these factors and the characteristics of travel in their community. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). Counties and cities may also measure perfor-

mance at different geographic scales (intersections, road or route segments, travel corridors, or travel zones), or in terms of the supply of multimodal capacity available in a corridor.

(vii) In urban areas RCW 36.70A.108 encourages the use of methodologies analyzing the transportation system from a comprehensive, multimodal perspective. Multimodal levels of service methodologies and standards should consider the needs of travelers using the four major travel modes (motor vehicle, public transportation, bicycle, and pedestrian), their impacts on each other as they share the street, and their mode specific requirements for street design and operation. For example, bicycle and pedestrian level of service standards should emphasize the availability of facilities and safety levels for users.

(f) Travel forecasts. RCW 36.70A.070 (6)(a)(iii)(E) requires forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth. Counties and cities must include at least a ten-year travel forecast in the transportation element. The forecast time period and underlying assumptions must be consistent with the land use element. Counties and cities may forecast travel for the twenty-year planning period. Counties and cities may include bicycle, pedestrian, and/or planned transit service in a multimodal forecast. Travel forecasts should be based on adopted regional growth strategies, the regional transportation plan, and comprehensive plans within the region to ensure consistency.

(g) Identify transportation system needs.

(i) RCW 36.70A.070 (6)(a)(iii)(D) requires that the transportation element include specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below established level of service standards.

(ii) System needs are those improvements needed to meet and maintain adopted levels of service over at least the required ten-year forecasting period. If counties and cities use a twenty-year forecasting period, they should also identify needs for the entire twenty-year period.

(iii) RCW 47.80.030(3) requires identified needs on regional facilities or services to be consistent with the regional transportation plan and the adopted regional growth and transportation strategies. RCW 36.70A.070 (6)(a)(iii)(F) requires identified needs on state-owned transportation facilities to be consistent with the statewide multimodal transportation plan.

(iv) Counties and cities should cooperate with public transit providers to analyze projected transit services and needs based on projected land use assumptions, and consistent with regional land use and transportation planning. Coordination may also include identification of mixed use centers, and consider opportunities for intermodal integration and appropriate multimodal access, particularly bicycle and pedestrian access.

(v) Counties and cities must include state transportation investments identified in the statewide multimodal transportation plan required under chapter 47.06 RCW and funded in the Washington state department of transportation's ten-year improvement program. Identified needs must be consistent with regional transportation improvements identified in

regional transportation plans required under chapter 47.80 RCW. The transportation element should also include plans for new or expanded public transit and be coordinated with local transit providers.

(vi) The identified transportation system needs may include: Considerations for repair, replacement, enhancement, or expansion of vehicular, transit, bicycle, and pedestrian facilities; enhanced or expanded transit services; system management; or demand management approaches.

(vii) Transportation system needs may include transportation system management measures increasing the motor vehicle capacity of the existing street and road system. They may include, but are not limited to signal timing, traffic channelization, intersection reconfiguration, exclusive turn lanes or turn prohibitions, bus turn-out bays, grade separations, removal of on-street parking or improving street network connectivity.

(viii) When identifying system needs, counties and cities may identify a timeline for improvements. Identification of a timeline provides clarity as to when and where specific transportation investments are planned and provides the opportunity to coordinate and cooperate in transportation planning and permitting decisions.

(ix) Counties and cities should consider how the improvements relate to adjacent counties or cities.

(h) Local impacts to state transportation facilities. RCW 36.70A.070 (6)(a)(ii) requires counties and cities to estimate traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the Washington state department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities. Traffic impacts should include the number of motor vehicle, and, as information becomes available, bicycle, public transit, and pedestrian trips estimated to use the state highway and ferry systems throughout the planning period.

(i) Transportation demand management.

(i) RCW 36.70A.070 (6)(a)(vi) requires that the transportation element include transportation demand management strategies. These strategies are designed to encourage the use of alternatives to single occupancy travel and to reduce congestion, especially during peak times.

(ii) Where applicable, counties and cities may include the goals and relevant strategies of employer-based commute trip reduction programs developed under RCW 70.94.521 through 70.94.555. All other counties and cities should consider strategies which may include, but are not limited to ridesharing, vanpooling, promotion of bicycling, walking and use of public transportation, transportation-efficient parking and land use policies, and high occupancy vehicle subsidy programs.

(j) Pedestrian and bicycle component. RCW 36.70A.070 (6)(a)(vii) requires the transportation element to include a pedestrian and bicycle component that includes collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(i) Collaborative efforts may include referencing local, regional, and state pedestrian and bicycle planning documents, if any. Designated shared use paths, which are part of bicycle and pedestrian networks, should be consistent with those in the parks, recreation and open space element.

(ii) To identify and designate planned improvements for bicycle facilities and corridors, the pedestrian and bicycle component should include a map of bicycle facilities, such as bicycle lanes, shared use paths, paved road shoulders. This map should identify state and local designated bicycle routes, and describe how the facilities link to those in adjacent jurisdictions.

(iii) To identify and designate planned improvements for pedestrian facilities and corridors, the pedestrian and bicycle component should include a map of pedestrian facilities such as sidewalks, pedestrian connectors, and other designated facilities, especially in areas of high pedestrian use such as designated centers, major transit routes, and route plans designated by school districts under WAC 392-151-025.

(iv) The pedestrian and bicycle component should plan a network that connects residential and employment areas with community and regional destinations, schools, and public transportation services.

(v) The pedestrian and bicycle component should also review existing pedestrian and bicycle collision data to plan pedestrian facilities that improve pedestrian and bicycle safety.

(k) Multiyear financing plan.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires that the transportation element include a multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which develop a financing plan that addresses all identified transportation facilities and strategies throughout the twenty-year planning period. The identified needs shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should reflect regional improvements identified in regional transportation plans required under chapter 47.80 RCW and be coordinated with the ten-year investment program developed by the Washington state department of transportation as required by RCW 47.05.030;

(ii) The horizon year for the multiyear plan should be the same as the time period for the travel forecast and identified needs. The financing plan should include cost estimates for new and enhanced locally owned roadway facilities including new or enhanced bicycle and pedestrian facilities to estimate the cost of future facilities and the ability of the local government to fund the improvements.

(iii) Sources of proposed funding may include:

(A) Federal or state funding.

(B) Local funding from taxes, bonds, or other sources.

(C) Developer contributions, which may include:

(D) Impact or mitigation fees assessed according to chapter 82.02 RCW, or the Local Transportation Act (chapter 39.92 RCW).

(II) Contributions or improvements required under SEPA (RCW 43.21C.060).

(III) Concurrency requirements implemented according to RCW 36.70A.070 (6)(b).

(D) Transportation benefit districts established under RCW 35.21.225 and chapter 36.73 RCW.

(iv) RCW 36.70A.070 (6)(a)(iv)(A) requires an analysis of funding capability to judge needs against probable funding resources. When considering the cost of new facilities, counties and cities should consider the cost of maintaining facilities in addition to the cost of their initial construction. Counties and cities should forecast projected funding capacities based on revenues that are reasonably expected to be available, under existing laws and ordinances, to carry out the plan. If the funding strategy relies on new or previously untapped sources of revenue, the financing plan should include a realistic estimate of new funding that will be supplied.

(I) Reassessment if probable funding falls short.

(i) RCW 36.70A.070 (6)(a)(iv)(C) requires reassessment if probable funding falls short of meeting identified needs. Counties and cities must discuss how additional funding will be raised or how land use assumptions will be reassessed to ensure that level of service standards will be met.

(ii) This review must take place, at a minimum, as part of the ((seven-year)) periodic review and update required in RCW 36.70A.130 (1)((-during the review of urban growth areas required by RCW 36.70A.130)) and (3), and as major changes are made to the transportation element.

(iii) If probable funding falls short of meeting identified needs, counties and cities have several choices. For example, they may choose to:

(A) Seek additional sources of funding for identified transportation improvements;

(B) Adjust level of service standards to reduce the number and cost of needed facilities;

(C) Revisit identified needs and use of transportation system management or transportation demand management strategies to reduce the need for new facilities; or

(D) Revise the land use element to shift future travel to areas with adequate capacity, to lower average trip length or to avoid the need for new facilities in undeveloped areas;

(E) If needed, adjustments should be made throughout the comprehensive plan to maintain consistency.

(m) Implementation measures. Counties and cities may include an implementation section that broadly defines regulatory and nonregulatory actions and programs designed to proactively implement the transportation element. Implementation measures may include:

(i) Public works guidelines to reflect multimodal transportation standards for pedestrians, bicycles and transit; or adoption of Washington state department of transportation standards or the American Association of State Highway and Transportation Officials standards for bicycle and pedestrian facilities;

(ii) Transportation concurrency ordinances affecting development review;

(iii) Parking standards, especially in urban centers, to reduce vehicle parking requirements and include bicycle parking;

(iv) Commute trip reduction ordinances and transportation demand management programs;

- (v) Access management ordinances;
- (vi) Nonmotorized transportation funding programs;
- (vii) Maintenance procedures and pavement management systems to include bicycle, pedestrians and transit considerations;
- (viii) Subdivision standards to reflect multimodal goals; and
- (ix) Transit compatibility policies and rules to guide development review procedures to incorporate review of bicycle, pedestrian and transit access to sites.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-600 Public participation. (1) Requirements.

(a) Each county and city planning under the act must establish procedures for early and continuous public participation in the development and amendment of comprehensive plans and development regulations. The procedures are not required to be reestablished for each set of amendments.

(b) The procedures must provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

(c) Errors in exact compliance with the established procedures do not render the comprehensive plan or development regulations invalid if the spirit of the procedures is observed.

(2) Record of process.

(a) Whenever a provision of the comprehensive plan or development regulation is based on factual data, a clear reference to its source should be made part of the adoption record.

(b) The record should show how the public participation requirement was met.

(c) All public hearings should be recorded.

(3) Recommendations for meeting public participation requirements. These recommendations are a list of suggestions for meeting the public participation requirement.

(a) Designing the public participation program.

(i) Implementation of the act requires a series of interrelated steps, including: Development of the initial comprehensive plan, evaluating amendments as part of the docket cycle, conducting the ~~((seven-year))~~ periodic update and reviewing the urban growth boundaries, amending development regulations, and conducting subarea planning. Each of these has different levels of significance and different procedural requirements.

(ii) Counties and cities are not required to establish individual public participation programs for each individual amendment. Counties and cities may wish to consider establishing a public program for annual amendments, and establishing separate or updated programs for major periodic updates. When developing a public participation plan for a project not covered by the existing public participation plan, a county or city should develop a public participation plan tailored to the type of action under consideration. This public participation plan should be focused on the type of public involvement appropriate for that type of action.

(iii) The public participation plan should identify which procedural requirements apply for the type of action under consideration and how the county or city intends to meet those requirements.

(iv) To avoid duplication of effort, counties and cities should integrate public involvement required by the State Environmental Policy Act, chapter 43.21C RCW, and rules adopted thereunder, into the overall public participation plan.

(v) Where a proposed amendment involves shorelines of the state, a county or city should integrate the public participation requirements of the Shoreline Management Act, chapter 90.58 RCW, into its public participation plan, as appropriate.

(vi) Once established, the public participation plan must be broadly disseminated.

(b) Visioning. When developing a new comprehensive plan or a significant update to an existing comprehensive plan, counties and cities should consider using a visioning process. The public should be involved, because the purpose of a visioning process is to gain public input on the desired features of the community. The comprehensive plan can then be designed to achieve these features.

(c) Planning commission. The public participation program should clearly describe the role of the planning commission, ensuring consistency with requirements of chapter 36.70, 35.63, or 35A.63 RCW.

(4) Each county or city should try to involve a broad cross-section of the community, so groups not previously involved in planning become involved.

(5) Counties and cities should take a broad view of public participation. The act contains no requirements or qualifications that an individual must meet in order to participate in the public process. If an individual or organization chooses to participate, it is an interested party for purposes of public participation.

(6) Providing adequate notice.

(a) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet web sites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(b) Counties and cities must provide effective notice. In order to be effective, notice must be designed to accomplish the following:

(i) Notice must be timely, reasonably available and reasonably likely to reach interested persons. Notice of all events where public input is sought should be broadly disseminated at least one week in advance of any public hearing. Newspaper or online articles do not substitute for the requirement that jurisdictions publish the action taken. When appropriate, notices should announce the availability of relevant draft documents and how they may be obtained.

(ii) Broad dissemination means that a county or city has made the documents widely available and provided information on how to access the available documents and how to provide comments. Examples of methods of broad dissemination may include:

(A) Posting electronic copies of draft documents on the county and city official web site;

(B) Providing copies to local libraries;

(C) Providing copies as appropriate to other affected counties and cities, state and federal agencies;

(D) Providing notice to local newspapers; and

(E) Maintaining a list of individuals who have expressed an interest and providing them with notice when new materials are available.

(iii) Certain proposals may also require particularized notice to specific individuals if required by statute or adopted local policy.

(iv) The public notice must clearly specify the nature of the proposal under consideration and how the public may participate. Whenever public input is sought on proposals and alternatives, the relevant drafts should be available. The county or city must make available copies of the proposal that will be available prior to the public hearing so participants can comment appropriately. The notice should specify the range of alternatives considered or scope of alternatives available for public comment in accordance with RCW 36.70A.035 (2)(b)(i) and (ii).

(7) Receiving public comment.

(a) Public meetings on draft comprehensive plans. Once a comprehensive plan amendment or other proposal is completed in draft form, or as parts of it are drafted, the county or city may consider holding a series of public meetings or workshops at various locations throughout the jurisdiction to obtain public comments and suggestions.

(b) Public hearings. When the final draft of the comprehensive plan is completed, at least one public hearing should be held prior to the presentation of the final draft to the county or city legislative authority adopting it.

(c) Written comment. At each stage of the process when public input is sought, opportunity should be provided to make written comment.

(d) Attendance for all meetings and hearings to which the public is invited should be free and open. At hearings all persons desiring to speak should be allowed to do so. A county or city may establish a reasonable time limitation on spoken presentations during meetings or public hearings, particularly if written comments are allowed.

(8) Continuous public involvement.

(a) Consideration of and response to public comments. All public comments should be reviewed. Adequate time should be provided between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate and respond to public comments. The county or city should provide a written summary of all public comments with a specific response and explanation for any subsequent action taken based on the public comments. This written summary should be included in the record of adoption for the plan.

(b) Ending the opportunity for comment prior to deliberation. After the end of public comment, the local government legislative body may hold additional meetings to deliberate on the information obtained in the public hearing.

(c) Additional meetings may be necessary if the public hearings provided the county or city with new evidence or information they wish to consider. If during deliberation, the

county or city legislative body identifies new information for consideration after the record of adoption has been closed, then it must provide further opportunity for public comment so this information can be included in the record.

(9) Considering changes to an amendment after the opportunity for public review has closed.

(a) If the county or city legislative body considers a change to an amendment, and the opportunity for public review and comment has already closed, then the county or city must provide an opportunity for the public to review and comment on the proposed change before the legislative body takes action.

(b) The county or city may limit the opportunity for public comment to only the proposed change to the amendment.

(c) Although counties and cities are required to provide an opportunity for public comment, alternatives to a scheduled public hearing may suffice. Adequate notice must be provided indicating how the public may obtain information and offer comments.

(d) A county or city is not required to provide an additional opportunity for public comment under (a) of this subsection if one of the following exceptions applies (see RCW 36.70A.035 (2)(a)):

(i) An environmental impact statement has been prepared under chapter 43.21C RCW, and the proposal falls within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the range of alternatives available for public comment. When initiating the public participation process, a county or city should consider defining the range of alternatives under consideration;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to an ordinance or resolution enacting a moratorium or interim control adopted in compliance with RCW 36.70A.390.

(e) If a county or city adopts an amendment without providing an additional opportunity for public comment as described under (a) of this subsection, the findings of the adopted ordinance or resolution should identify which exception under RCW 36.70A.035 (2)(b) applies.

(10) Any amendment to the comprehensive plan or development regulation must follow the applicable procedural requirements and the county or city public participation plan. A county or city should not enter into an agreement that is a de facto amendment to the comprehensive plan accomplished without complying with the statutory public participation requirements. Examples of a de facto amendment include agreements that:

(a) Obligate the county or city, or authorizes another party, to act in a manner that is inconsistent with the comprehensive plan;

(b) Authorize an action the comprehensive plan prohibits; or

(c) Obligate the county or city to adopt a subsequent amendment to the comprehensive plan.

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. (1) Requirements.

(a) Counties and cities must periodically take legislative action to review and, if necessary, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the act. This review and revision, required under RCW 36.70A.130(1), is referred to in this section as the periodic update.

(b) Deadlines for periodic update. Comprehensive plans and development regulations are subject to periodic update ~~((every seven years))~~ on a schedule established in RCW 36.70A.130~~((4))~~ (5).

(i) Deadlines for completion of periodic review are as follows:

Table WAC 365-196-610.1
Deadlines for Completion of Periodic Review
~~((2010 - 2024))~~ 2015 - 2018

Update must be complete by ((December 1)) <u>June 30</u> of:	Affected counties and the cities within:
((2014/2021)) <u>2015/2023</u>	((Clallam, Clark, Jefferson,)) King, ((Kitsap,)) Pierce, Snohomish, ((Thurston, Whatcom))
((2015/2022)) <u>2016/2024</u>	((Cowlitz)) Clallam, Clark, Island, ((Lewis)) Jefferson, Kitsap, Mason, San Juan, Skagit, ((Skamania)) Thurston, <u>Whatcom</u>
((2016/2023)) <u>2017/2025</u>	Benton, Chelan, <u>Cowlitz</u> , Douglas, ((Grant,)) Kittitas, <u>Lewis, Skamania</u> , Spokane, Yakima
((2017/2024)) <u>2018/2026</u>	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, <u>Grant</u> , Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend ((Oreille)) <u>Oreille</u> , Stevens, Wahkiakum, Walla Walla, Whitman

(ii) Certain smaller, slower-growing counties and cities may take up to an additional ~~((three))~~ two years to complete the update.

(A) The eligibility of a county for the ~~((three-year))~~ two-year extension does not affect the eligibility of the cities within the county.

(B) A county is eligible if it has a population of less than fifty thousand and a growth rate of less than seventeen percent.

(C) A city is eligible if it has a population of less than five thousand, and either a growth rate of less than seventeen

percent or a total population growth of less than one hundred persons.

(D) Growth rates are measured using the ten-year period preceding the due date listed in RCW 36.70A.130~~((4))~~ (5).

(E) If a city or county qualifies for the extension on the statutory due date, they remain eligible for the entire ~~((three-year))~~ extension period, even if they no longer meet the criteria due to population growth.

(c) Taking legislative action.

(i) The periodic update must be accomplished through legislative action. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing including, at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.

(ii) Legislative action includes two components. It includes a review of the comprehensive plan and development regulations and it includes the adoption of any amendments necessary to bring the comprehensive plan and development regulations into compliance with the requirements of the act.

(d) What must be reviewed.

(i) Counties and cities that plan under RCW 36.70A.040 must review and, if needed, revise their comprehensive plans and development regulations for compliance with the act. This includes the critical areas ordinance.

(ii) Counties and cities that do not plan under RCW 36.70A.040 must review and, if needed, revise their resource lands designations and their development regulations designating and protecting critical areas.

(e) The required scope of review. The purpose of the review is to determine if revisions are needed to bring the comprehensive plan and development regulation into compliance with the requirements of the act. The update process provides the method for bringing plans into compliance with the requirements of the act that have been added or changed since the last update and for responding to changes in land use and in population growth. This review is necessary so that comprehensive plans are not allowed to fall out of compliance with the act over time through inaction. This review must include at least the following:

(i) Consideration of the critical areas ordinance;

(ii) Analysis of ~~((the population allocated to a city or county from the most recent ten-year))~~ urban growth area review required by RCW 36.70A.130(3) (see WAC 365-196-310);

(iii) Review of mineral resource lands designations and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060; and

(iv) Changes to the act or other applicable laws since the last review that have not been addressed in the comprehensive plan and development regulations.

(2) Recommendations for meeting requirements.

(a) Public participation program.

(i) Counties and cities should establish a public participation program that includes a schedule for the periodic update and identifies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan

and clearly identify the scope of the review. Notice of the update process should be broadly disseminated as required by RCW 36.70A.035.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. For example, if an established public participation program included one public hearing on all actions having to do with the ~~((seven-year))~~ periodic update process, the public participation program could be adjusted later to provide additional public hearings to accommodate strong public interest.

(b) Review of relevant statutes and local information and analysis of whether there is a need for revisions.

(i) Amendments to the act. Counties and cities should first review amendments to the act that have occurred since the initial adoption or previous periodic update, and determine if local amendments are needed to maintain compliance with the act. The department will maintain a comprehensive list of legislative amendments and a checklist to assist counties and cities with this review.

(ii) Review and analysis of relevant plans, regulations and information. Although existing comprehensive plans and development regulations are considered compliant, counties and cities should consider reviewing development and other activities that have occurred since adoption to determine if the comprehensive plans and development regulations remain consistent with, and implement, the act. This should include at least the following:

(A) Analysis of the population allocated to a city or county during the most recent ~~((ten-year))~~ urban growth area review (see WAC 365-196-310);

(B) Consideration of critical areas and resource lands ordinances;

(C) Review of mineral resource lands designations and development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060;

(D) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the ten-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

(E) Land use element;

(F) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

(G) Basic assumptions underlying key calculations and conclusions in the existing comprehensive plan. If recent data demonstrates that key existing assumptions are no longer appropriate for the remainder of the twenty-year plan, counties and cities should consider updating them as part of the ~~((seven-year))~~ periodic update ~~((, or the ten-year urban growth area update))~~ (see WAC 365-196-310). Counties and cities required to establish a review and evaluation program under RCW 36.70A.215, should use that information in this review (see WAC 365-196-315); and

(H) Inventories. Counties and cities should review required inventories and to determine if new data or analysis is needed. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2
Inventories Required by the Act

Requirement	RCW Location	WAC Location
Housing Inventory	36.70A.070(2)	365-196-430
Inventory and analyze existing and projected housing needs, identifying the number of housing units necessary to manage project growth.		
Capital Facilities	36.70A.070(3)	365-196-445
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.		
Transportation	36.70A.070(6)	365-196-455
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries.		

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. Cities and counties may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a city or county conducts a comprehensive plan docket cycle in the

year in which the review of the comprehensive plan is completed, it must be combined with the ~~((seven-year))~~ periodic review process. Cities and counties may not conduct the ~~((seven-year))~~ periodic review and a docket of amendments as separate processes in the same year.

(b) ~~((Relationship to the ten-year))~~ Urban growth area (UGA) review. ~~((i) At least every ten years;))~~ As part of the periodic review, cities and counties must review the areas and densities contained in the urban growth area and, if necessary, revise their comprehensive plan to accommodate the growth projected to occur in the county for the succeeding twenty-year period, as required in RCW 36.70A.130(3) (see WAC 365-196-310). ~~((This is referred to in this section as the ten-year urban growth area review.~~

~~(ii) The ten-year urban growth area review and the seven-year periodic update may be combined or may occur separately. The seven-year periodic update requires an assessment of the most recent twenty-year population forecast by the office of financial management, but does not require that land use plans or urban growth areas be updated to accommodate existing or future growth forecasts, which must be undertaken as part of the ten-year UGA review. Counties and cities may consider the most recent forecast from the office of financial management, and the adequacy of existing land supplies to meet their existing growth forecast allocations, in determining when to initiate the ten-year urban growth area review.))~~

WSR 14-22-104

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 4, 2014, 3:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-017.

Title of Rule and Other Identifying Information: WAC 392-121-182 Alternative learning experience requirements.

Hearing Location(s): Office of the Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 South Washington, Olympia, WA, on December 9, 2014, at 11:00 a.m.

Date of Intended Adoption: December 10, 2014.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by December 9, 2014.

Assistance for Persons with Disabilities: Contact Catherine Slagle by December 2, 2014, TTY (360) 664-3631, or (360) 725-6130.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 392-121-182 requires updating to clarify school district's responsibilities for nonresident students.

Reasons Supporting Proposal: The 2013 legislature, in ESSB 5946, directed OSPI to create a standard form for school districts to use when releasing a student from their res-

ident district to a nonresident district for the purpose of enrolling in an online school program. With the implementation of this new standardized transfer system, OSPI updated the expectations for districts around the responsibility for nonresident students who leave the nonresident district prior to the expiration of the transfer. The proposed rule change aligns the alternative learning experience rules with the updated policy as outlined in OSPI Bulletin B008-14.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact; no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

November 4, 2014

Randy Dorn

State Superintendent

AMENDATORY SECTION (Amending WSR 13-22-076, filed 11/5/13, effective 12/6/13)

WAC 392-121-182 Alternative learning experience requirements. (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means a course, or for grades kindergarten through eight, grade-level course

work, that is a delivery method for the program of basic education and is:

(A) Provided in whole or in part independently from a regular classroom setting or schedule, but may include some components of direct instruction;

(B) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or under contract as permitted by applicable rules; and

(C) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's policy and this chapter.

(ii) The categories of alternative learning experience courses are:

(A) "Online course" means an alternative learning experience course that has the same meaning as provided in RCW 28A.250.010.

(B) "Remote course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for less than twenty percent of the total weekly time for the course.

(C) "Site-based course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for at least twenty percent of the total weekly time for the course.

(b) "Alternative learning experience program" is a school or a program within a school that offers alternative learning experience courses or course work((-));

(c) "Certificated teacher" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:

(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Must be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(e) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher. At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which contact with a certificated teacher is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(h) "Satisfactory progress" means a determination made in accordance with subsection (4)(c) that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory;

(i) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that includes at least three days when a district's schools are in session;

(j) "School-based support staff" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate;

(k) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(l) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive online, voice, or video communication technology. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan.

(m) "Total weekly time" means the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan(=);

(n) "Written student learning plan" means a written plan for learning that includes at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district.

(4) Alternative learning experience program requirements:

(a) Each student participating in an alternative learning experience must have a written student learning plan devel-

oped and approved by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact with a certificated teacher at least once a school week until the student completes all course objectives or otherwise meets the requirements of the learning plan:

(i) Direct personal contact; or

(ii) In-person instructional contact; or

(iii) Synchronous digital instructional contact.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section. The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communicate the progress evaluation to the student. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher.

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts must not claim funding for the subsequent month for a student who was not evaluated within that time frame.

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and

performance objectives defined in the written student learning plan.

(vi) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory. School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress. The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

(vii) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student. An intervention plan is not required if the evaluation is delivered within the last five school days of the school year.

(viii) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district.

(5) Required school district board policies for alternative learning experiences: The board of directors of a school district claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) responsible for overseeing the district's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

(6) Alternative learning experience implementation requirements:

(a) School districts that offer alternative learning experience courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience courses or course work for

special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experience courses or course work is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience course or course work unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience course or course work.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experience courses or course work must be consistent in quality with those available to the district's overall student population.

(g) Instructional materials used in alternative learning experience courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience courses or course work if the purchase is consistent with the district's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's regular instructional program. Items so purchased remain the property of the school district upon program completion.

(i) School districts are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's regular instructional program. This prohibition extends to a district's contracted providers of alternative learning experience programs, and each district shall be responsible for monitoring the compliance of its contracted providers. Nothing herein shall:

(i) Prohibit school districts from contracting with school district employees to provide services or experiences to students; or

(ii) Prohibit school districts from contracting with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW; or

(iii) Require school districts that contract with school district employees to provide services or experiences to stu-

dents, or with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW, to provide substantially similar experiences and services under this subsection.

(j)(i) A school district that provides alternative learning experience courses or course work to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district and made available for audit.

(ii) In the event a school district cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district or the school district contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

(n) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences. ~~((School districts enrolling such students in alternative learning experiences are subject to all school district duties and liabilities pertaining to such students for the full school year, including ensuring the student's compulsory attendance pursuant to chapter 28A.225 RCW, until such time as the student has actually enrolled in another school district, or has otherwise met the mandatory attendance requirements specified by RCW 28A.225.010.))~~

(o) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the alternative learning experience program or is otherwise no longer enrolled.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) High school alternative learning experience courses must be offered for high school credit. Courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(r) Beginning in the 2013-14 school year and continuing through the 2016-17 school year, school districts offering or contracting to offer alternative learning experience courses must pay costs associated with a biennial measure of student outcomes and financial audit of the district's alternative learning experience courses by the office of the state auditor.

(7) Enrollment reporting procedures: Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district in the subsequent month's enrollment count.

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation

in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan includes an ending date that is the last school day in May.

(f) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May.

(ii) The students' written student learning plan includes an end date that is the last day of school for graduating students in May.

(g) School districts claiming alternative learning experiences students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

(8) Assessment requirements:

(a) All students enrolled in alternative learning experience courses or course work must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent

in any one month through the January count date must be included by the school district in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident alternative learning experience courses or course work who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, arranging for any allowable testing accommodations, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

(9) Reporting requirements:

(a) Each school district offering alternative learning experience courses or course work must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences as well as information about the resident and serving districts of such students.

(b) Each school district offering alternative learning experience courses or course work must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's regular instructional program.

(c) Each school district offering alternative learning experience courses or course work must annually report the following to the superintendent of public instruction:

(i) The number of certificated instructional staff full-time equivalent assigned to each alternative learning experience program; and

(ii) Separately identify alternative learning experience enrollment of students where instruction is provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(d) Each school district offering alternative learning experience courses must report all required information to the office of superintendent of public instruction's *Comprehensive Education Data and Research System* under RCW 28A.300.500. Beginning with the 2013-14 school year, school districts must designate alternative learning experi-

ence courses as such when reporting course information to the *Comprehensive Education Data and Research System*.

(10) **Documentation and record retention requirements:** School districts claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection (9) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of weekly contact required by subsection (4) of this section.

(i) For students participating in regularly scheduled classes, including in-person instructional contact and synchronous digital instructional contact, evidence may include classroom attendance records.

(ii) For students who are not participating in regularly scheduled classes, evidence of contact must include the date of the contact, the method of communication by which the contact was accomplished, and documentation to support the subject of the communication.

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; and

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section.

WSR 14-22-106

PROPOSED RULES

DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed November 5, 2014, 6:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-031.

Title of Rule and Other Identifying Information: WAC 246-808-150 Commission approved continuing education, amending the continuing education (CE) requirements for Washington state licensed chiropractors.

Hearing Location(s): Department of Health, Point Plaza East, Rooms 152/153, 310 Israel Road, Tumwater, WA 98504, on December 11, 2014, at 10:00 a.m.

Date of Intended Adoption: December 11, 2014.

Submit Written Comments to: Billie Jo Dale, Program Representative, Department of Health, Chiropractic Pro-

gram, P.O. Box 47858, Olympia, WA 98504-7858, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by December 1, 2014.

Assistance for Persons with Disabilities: Contact Leann Yount by December 1, 2014, TTY (800) 833-6388, or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 2315 (chapter 71, Laws of 2014), requires chiropractors to obtain one-time training of three or six hours in suicide assessment, screening, and referral. The commission has determined that the training should include only screening and referral elements as appropriate based on the chiropractic scope of practice, so only three hours of CE in suicide training should be required. The commission has also reviewed the current CE requirements against the current practice standards and determined that additional changes are needed to the rule. The commission is proposing amendments to the rule to add CE categories, describe acceptable documentation to verify completion, and expand the multimedia options for obtaining CE. The proposed rules also amend the number of CE hours that may be obtained for some categories.

Reasons Supporting Proposal: The proposed rule implements ESHB 2315 within the chiropractic profession. Based on the chiropractic scope of practice, which does not allow treating patients to manage suicidal thoughts or ideation, the commission chose to require three hours of CE instead of six hours. The commission has also reviewed the current continuing education requirements and determined that changes and updates are needed to keep current with practice standards and enhance competency.

Statutory Authority for Adoption: RCW 18.25.0171, 18.25.070; ESHB 2315 (chapter 71, Laws of 2014).

Statute Being Implemented: RCW 18.25.070; ESHB 2315 (chapter 71, Laws of 2014).

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

Name of Proponent: Department of health, chiropractic quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Billie Jo Dale, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-2868.

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 Billie Jo Dale, Program Representative, Department of Health, Chiropractic Program, P.O. Box 47858, Olympia, WA 98504-7858, phone (360) 236-2868, fax (360) 236-2901, e-mail billiejo.dale@doh.wa.gov.

November 5, 2014

Leann Yount

Program Manager

AMENDATORY SECTION (Amending WSR 06-03-057, filed 1/11/06, effective 2/11/06)

WAC 246-808-150 Commission approved continuing education. (1) Chiropractors must complete twenty-five

hours of continuing education per year under RCW 18.25.-070 and chapter 246-12 WAC, Part 7.

(2) The commission approves the following subject material for continuing chiropractic education credit:

- (a) Diagnosis and treatment of the spine or (~~immediate~~) extremity articulations within the scope of practice;
- (b) X-ray/diagnostic imaging;
- (c) Adjustive technique;
- (d) Detection of a subluxation;
- (e) Physical examination;
- (f) Hygiene;
- (g) Symptomatology;
- (h) Neurology;
- (i) Pathology;
- (j) Orthopedics;
- (k) Patient/case management, documentation, coding;
- (l) Impairment within the scope of practice;
- (m) CPR (not to exceed a total of four hours);
- (n) Dietary and nutrition advice; (~~and~~)
- (o) Chiropractic philosophy (~~(and business management (not to exceed a total of eight hours))~~); and
- (p) Governmental regulations relevant to chiropractic and public health (not to exceed a total of twelve hours).

(3) Beginning June 12, 2014, as part of the continuing education, chiropractors are required to obtain three hours in suicide screening and referral from a qualified suicide prevention training program. This is a one-time suicide prevention training that must be completed no later than the first full reporting period after June 12, 2014 or the first full continuing education reporting period after initial licensure, whichever is later.

(a) A qualified training program in suicide screening and referral must be at least three hours in length which may be provided in one or more sessions.

(b) The hours spent completing a training program in suicide screening and referral under this section count toward meeting any applicable continuing education requirements.

(c) Nothing in this subsection is intended to expand or limit the chiropractic scope of practice.

(4) Subject matter not approved for continuing education credit:

(a) Subject matter not directly relating to the chiropractic clinical scope of practice; and

(b) Conduct prohibited by Washington state statutes or rules governing chiropractic practice.

~~((4))~~ (5) A chiropractor may earn a maximum of twelve hours for:

(a) Completing a multimedia chiropractic education program, which includes, but is not limited to, the internet, tele-seminars, employer led training offering continuing education hours, and video presentations.

(b) Serving as teachers or lecturers in continuing education programs approved under subsection (2) of this section. A chiropractor may receive credit on the same basis as (~~the~~ ~~doctors~~) those attending the program.

~~((5) The individual or organization responsible for a continuing education presentation must provide documentation of attendance to participants, including course content and number of hours.)~~

(6) A chiropractor must provide acceptable documentation of attendance upon commission request or audit. Acceptable forms of documentation include:

(a) Transcripts;

(b) Letters from the course instructors;

(c) Certificate of completion; or

(d) Other formal documentation which includes:

(i) Participant's name;

(ii) Course title;

(iii) Course content;

(iv) Date(s) of course;

(v) Provider's name(s); and

(vi) Signature of the program sponsor or course instructor. Multimedia courses are exempt from the signature requirement.

(7) Chiropractors in active status who reside and practice outside Washington must meet all the requirements (~~(of this section)~~).

WSR 14-22-108

PROPOSED RULES

DEPARTMENT OF

EARLY LEARNING

[Filed November 5, 2014, 9:11 a.m.]

Continuance of WSR 14-21-043.

Preproposal statement of inquiry was filed as WSR 14-16-106.

Title of Rule and Other Identifying Information: WAC 170-295-1060 What initial and ongoing state training and registry systems (STARS) training is required for child care center staff?

Hearing Location(s): Department of Early Learning (DEL), Olympia Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on December 1, 2014, at 12 p.m.

Date of Intended Adoption: Not earlier than December 1, 2014.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by December 1, 2014.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by November 17, 2014, (360) 407-1999.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To continue the November 27, 2014, hearing date specified in WSR 14-21-043, which falls on a federal holiday, to December 1, 2014.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Matt Judge, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1999; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

November 5, 2014
Elizabeth M. Hyde
Director

WSR 14-22-109
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed November 5, 2014, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-17-107.

Title of Rule and Other Identifying Information: WAC 182-531-0100 Scope of coverage for physician-related services, 182-531-0150 Noncovered physician-related services, 182-531-0250 Who can provide and bill for physician-related services, 182-531-0800 Laboratory and pathology physician-related services, 182-531-0950 Office and other outpatient physician-related services, 182-531-1025 Oral health care services provided by dentists for clients age twenty-one and older—General, 182-531-1050 Osteopathic manipulative treatment, 182-531-1400 Psychiatric physician-related services, 182-531-1710 Alcohol and substance misuse counseling, and 182-531-1720 Tobacco cessation counseling.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on December 9, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than December 10, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on December 9, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by December 1, 2014, TTY (800) 848-5429, or (360) 725-1307, or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are necessary to:

- Add habilitative services under covered services.
- Remove bilateral cochlear implantation from noncovered list.
- Add vaccines recommended or required for the sole purpose of international travel to the noncovered list.
- Remove oral health care services for emergency conditions for clients twenty-one and older from the covered section as a result of adult dental benefit restoration in chapter 182-535 WAC.

- Remove routine or nonemergency medical and surgical dental services for clients twenty-one years of age and older from the noncovered section.
- Update who can bill for physician-related and health care professional services.
- Add naturopathic physicians to list of who can bill for osteopathic manipulative treatment.
- Remove limitations on the number of mental health visits for kids and adults and expands the list of qualified providers for adults.
- Add new sections for coverage of alcohol and substance misuse counseling through screening, brief intervention, and referral to treatment and for tobacco cessation counseling for pregnant clients.

Statutory Authority for Adoption: Patient Protection and Affordable Care Act (Public Law 111-148), 3ESHB [3ESSB] 5034 (chapter 4, Laws of 2013), and RCW 41.05.021 and 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Barcus, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1306; Implementation and Enforcement: Lisa Humphrey, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

November 5, 2014
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-035, filed 8/28/13, effective 9/28/13)

WAC 182-531-0100 Scope of coverage for physician-related and health care professional services—General and administrative. (1) The medicaid agency covers health care services, equipment, and supplies listed in this chapter, according to agency rules and subject to the limitations and requirements in this chapter, when they are:

(a) Within the scope of an eligible client's ((~~medical assistance~~)) Washington apple health program. Refer to WAC 182-501-0060 and 182-501-0065; and

(b) Medically necessary as defined in WAC 182-500-0070.

(2) The agency evaluates a request for a service that is in a covered category under the provisions of WAC ((~~182-501-0065~~)) 182-501-0165.

(3) The agency evaluates requests for covered services that are subject to limitations or other restrictions and

approves such services beyond those limitations or restrictions as described in WAC 182-501-0169.

(4) The agency covers the following physician-related services and health care professional services, subject to the conditions in subsections (1), (2), and (3) of this section:

(a) Alcohol and substance misuse counseling (refer to WAC 182-531-1710);

(b) Allergen immunotherapy services;

~~((b))~~ (c) Anesthesia services;

~~((c))~~ (d) Dialysis and end stage renal disease services (refer to chapter 182-540 WAC);

~~((d))~~ (e) Emergency physician services;

~~((e))~~ (f) ENT (ear, nose, and throat) related services;

~~((f))~~ (g) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC 182-534-0100);

~~((g))~~ (h) Habilitative services (refer to WAC 182-545-400);

(i) Reproductive health services (refer to chapter 182-532 WAC);

~~((h))~~ (j) Hospital inpatient services (refer to chapter 182-550 WAC);

~~((i))~~ (k) Maternity care, delivery, and newborn care services (refer to chapter 182-533 WAC);

~~((j))~~ (l) Office visits;

~~((k))~~ (m) Vision-related services (refer to chapter 182-544 WAC for vision hardware for clients twenty years of age and younger);

~~((l))~~ (n) Osteopathic treatment services;

~~((m))~~ (o) Pathology and laboratory services;

~~((n))~~ (p) Physiatry and other rehabilitation services (refer to chapter 182-550 WAC);

~~((o))~~ (q) Foot care and podiatry services (refer to WAC 182-531-1300);

~~((p))~~ (r) Primary care services;

~~((q))~~ (s) Psychiatric services~~(, provided by a psychiatrist);~~

~~((r))~~ (t) Psychotherapy services~~(for children as provided in)~~ (refer to WAC 182-531-1400);

~~((s))~~ (u) Pulmonary and respiratory services;

~~((t))~~ (v) Radiology services;

~~((u))~~ (w) Surgical services;

~~((v))~~ Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects from birth, illness, or physical trauma, or for mastectomy reconstruction for post cancer treatment;

~~((w))~~ Oral health care services for emergency conditions for clients twenty-one years of age and older, except for clients of the division of developmental disabilities (refer to WAC 182-531-1025); and

~~((x))~~ Other outpatient physician services; (x) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects (e.g., congenital or as a result of illness or physical trauma), or for mastectomy reconstruction for post cancer treatment;

(y) Telemedicine (refer to WAC 182-531-1730);

(z) Tobacco cessation counseling (refer to WAC 182-531-1720);

(aa) Vaccines;

(bb) Other outpatient physician services.

(5) The agency covers physical examinations for ~~((medical assistance))~~ Washington apple health clients only when the physical examination is for one or more of the following:

(a) A screening exam covered by the EPSDT program (see WAC 182-534-0100);

(b) An annual exam for clients of the division of developmental disabilities; or

(c) A screening pap smear, mammogram, or prostate exam.

(6) By providing covered services to a client eligible for ~~((a medical assistance program))~~ Washington apple health, a provider who meets the requirements in WAC 182-502-0005(3) accepts the agency's rules and fees which includes federal and state law and regulations, billing instructions, and ~~((agency issuances))~~ provider notices.

AMENDATORY SECTION (Amending WSR 13-16-008, filed 7/25/13, effective 9/1/13)

WAC 182-531-0150 Noncovered physician-related and health care professional services—General and administrative. (1) Except as provided in WAC 182-531-0100 and subsection (2) of this section, the medicaid agency does not cover the following:

(a) Acupuncture, massage, or massage therapy;

(b) Any service specifically excluded by statute;

(c) Care, testing, or treatment of infertility, frigidity, or impotency. This includes procedures for donor ovum, sperm, womb, and reversal of vasectomy or tubal ligation;

(d) Hysterectomy performed solely for the purpose of sterilization;

(e) Cosmetic treatment or surgery, except ~~((for medically necessary reconstructive surgery to correct defects attributable to trauma, birth defect, or illness))~~ as provided in WAC 182-531-0100 (4)(x);

(f) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 182-501-0165;

(g) Hair transplantation;

(h) Marital counseling or sex therapy;

(i) More costly services when the medicaid agency determines that less costly, equally effective services are available;

(j) Vision-related services as follows:

(i) Services for cosmetic purposes only;

(ii) Group vision screening for eyeglasses; and

(iii) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens correction. This refractive surgery does not include intraocular lens implantation following cataract surgery.

(k) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 182-531-1750;

(l) Physician-supplied medication, except those drugs which the client cannot self-administer and therefore are administered by the physician in the physician's office;

(m) Physical examinations or routine checkups, except as provided in WAC 182-531-0100;

(n) Foot care, unless the client meets criteria and conditions outlined in WAC 182-531-1300, as follows:

(i) Routine foot care, such as but not limited to:

- (A) Treatment of tinea pedis;
- (B) Cutting or removing warts, corns and calluses; and
- (C) Trimming, cutting, clipping, or debriding of nails.

(ii) Nonroutine foot care, such as, but not limited to treatment of:

- (A) Flat feet;
- (B) High arches (cavus foot);
- (C) Onychomycosis;
- (D) Bunions and tailor's bunion (hallux valgus);
- (E) Hallux malleus;
- (F) Equinus deformity of foot, acquired;
- (G) Cavovarus deformity, acquired;
- (H) Adult acquired flatfoot (metatarsus adductus or pes planus);

(I) Hallux limitus.

(iii) Any other service performed in the absence of localized illness, injury, or symptoms involving the foot;

(o) Except as provided in WAC 182-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services((-));

(p) Nonmedical equipment;

(q) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas; and

(r) ~~((Bilateral cochlear implantation; and~~

~~(s) Routine or nonemergency medical and surgical dental services provided by a doctor of dental medicine or dental surgery for clients twenty-one years of age and older, except for clients of the developmental disabilities administration in the department of social and health services)) Vaccines recommended or required for the sole purpose of international travel. This does not include routine vaccines administered according to current centers for disease control (CDC) advisory committee on immunization practices (ACIP) immunization schedule for adults and children in the United States.~~

(2) The medicaid agency covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:

(a) The EPSDT program;

(b) A ~~((medicaid))~~ Washington apple health program for qualified **medicare** beneficiaries (QMBs); or

(c) A waiver program.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-0250 Who can provide and bill for physician-related and health care professional services.

~~((1) The following enrolled providers are eligible to provide and bill for physician-related and health care professional services which they provide to eligible clients:~~

- ~~(a) Advanced registered nurse practitioners (ARNP);~~
- ~~(b) Federally qualified health centers (FQHCs);~~
- ~~(c) Health departments;~~

~~(d) Hospitals currently licensed by the department of health;~~

~~(e) Independent (outside) laboratories ~~CLIA~~ certified to perform tests. See WAC 388-531-0800;~~

~~(f) Licensed marriage and family therapists, only as provided in WAC 388-531-1400;~~

~~(g) Licensed mental health counselors, only as provided in WAC 388-531-1400;~~

~~(h) Licensed radiology facilities;~~

~~(i) Licensed social workers, only as provided in WAC 388-531-1400 and 388-531-1600;~~

~~(j) Medicare-certified ambulatory surgery centers;~~

~~(k) Medicare-certified rural health clinics;~~

~~(l) Providers who have a signed agreement with the department to provide screening services to eligible persons in the EPSDT program;~~

~~(m) Registered nurse first assistants (RNFA); and~~

~~(n) Persons currently licensed by the state of Washington department of health to practice any of the following:~~

~~(i) Dentistry (refer to chapter 388-535-WAC);~~

~~(ii) Medicine and osteopathy;~~

~~(iii) Nursing;~~

~~(iv) Optometry; or~~

~~(v) Podiatry.)) (1) The health care professionals and health care entities listed in WAC 182-502-0002 and enrolled with the agency can bill for physician-related and health care professional services that are within their scope of practice.~~

~~(2) The ((department)) agency does not pay for services performed by any of the ((following practitioners:~~

~~(a) Acupuncturists;~~

~~(b) Christian Science practitioners or theological healers;~~

~~(c) Counselors, except as provided in WAC 388-531-1400;~~

~~(d) Herbalists;~~

~~(e) Homeopaths;~~

~~(f) Massage therapists as licensed by the Washington state department of health;~~

~~(g) Naturopaths;~~

~~(h) Sanipractors;~~

~~(i) Social workers, except those who have a master's degree in social work (MSW), and:~~

~~(i) Are employed by an FQHC;~~

~~(ii) Who have prior authorization to evaluate a client for bariatric surgery; or~~

~~(iii) As provided in WAC 388-531-1400.~~

~~(j) Any other licensed or unlicensed practitioners not otherwise specifically provided for in WAC 388-502-0002; or~~

~~(k) Any other licensed practitioners providing services which the practitioner is not:~~

~~(i) Licensed to provide; and~~

~~(ii) Trained to provide)) health care professionals listed in WAC 182-502-0003.~~

~~(3) The ((department)) agency pays ((practitioners listed in subsection (2) of this section)) eligible providers for physician-related services if those services are mandated by, and provided to, clients who are eligible for one of the following:~~

~~(a) The EPSDT program;~~

~~(b) A ((medicaid)) Washington apple health program for qualified medicare beneficiaries (QMB); or~~

(c) A waiver program.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-0800 Laboratory and pathology physician-related services. (1) The ~~((department reimburses))~~ medicaid agency pays providers for laboratory services only when:

(a) The provider is certified according to Title XVII of the Social Security Act (medicare), if required; and

(b) The provider has a clinical laboratory improvement amendment (CLIA) certificate and identification number.

(2) The ~~((department))~~ agency includes a handling, packaging, and mailing fee in the reimbursement for lab tests and does not reimburse these separately.

(3) The ~~((department reimburses only))~~ agency pays for one blood drawing fee per client, per day. The ~~((department))~~ agency allows additional reimbursement for an independent laboratory when it goes to a nursing facility or a private home to obtain a specimen.

(4) The ~~((department reimburses))~~ agency pays for only one catheterization for collection of a urine specimen per client, per day.

(5) The ~~((department reimburses))~~ agency pays for automated multichannel tests done alone or as a group, as follows:

(a) The provider must bill a panel if all individual tests are performed. If not all tests are performed, the provider must bill individual tests.

(b) If the provider bills one automated multichannel test, the ~~((department))~~ agency reimburses the test at the individual procedure code rate, or the internal code maximum allowable fee, whichever is lower.

(c) Tests may be performed in a facility that owns or leases automated multichannel testing equipment. The facility may be any of the following:

- (i) A clinic;
- (ii) A hospital laboratory;
- (iii) An independent laboratory; or
- (iv) A physician's office.

(6) The ~~((department))~~ agency allows a **STAT** fee in addition to the maximum allowable fee when a laboratory procedure is performed STAT.

(a) The ~~((department reimburses))~~ agency pays for STAT charges for only those procedures identified by the clinical laboratory advisory council as appropriate to be performed STAT.

(b) Tests generated in the emergency room do not automatically justify a STAT order, the physician must specifically order the tests as STAT.

(c) Refer to the fee schedule for a list of STAT procedures.

(7) The ~~((department reimburses))~~ agency pays for drug screen charges only when medically necessary and when ordered by a physician as part of a total medical evaluation.

(8) The ~~((department))~~ agency does not ~~((reimburse))~~ pay for drug screens for clients in the division of ~~((alcohol and substance abuse (DASA)-contracted))~~ behavioral health and recovery (DBHR) within the department of social and

health services (DSHS)-contracted methadone treatment programs. These are reimbursed through a contract issued by ~~((DASA))~~ DBHR DSHS.

(9) The ~~((department))~~ agency does not ~~((cover))~~ pay for drug screens to monitor ~~((any of the following:~~

~~((a)))~~ for program compliance in either a residential or outpatient drug or alcohol treatment program((;

~~((b) Drug or alcohol abuse by a client when the screen is performed by a provider in private practice setting; or~~

~~((c) Suspected drug use by clients in a residential setting, such as a group home)).~~

(10) The ~~((department))~~ agency may require a drug or alcohol screen in order to determine a client's suitability for a specific test.

(11) An independent laboratory must bill the ~~((department))~~ agency directly. The ~~((department))~~ agency does not ~~((reimburse))~~ pay a medical practitioner for services referred to or performed by an independent laboratory.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-0950 Office and other outpatient physician-related services. (1) The ~~((department reimburses))~~ medicaid agency pays eligible providers for the following:

(a) Two calls per month for routine medical conditions for a client residing in a nursing facility; and((-))

(b) One call per noninstitutionalized client, per day, for an individual physician, except for valid call-backs to the emergency room per WAC ~~((388-531-0500))~~ 182-531-0500.

(2) The provider must provide justification based on medical necessity at the time of billing for visits in excess of subsection (1) of this section and follow the requirements in WAC 182-501-0169.

(3) See ~~((physician))~~ the agency's physician-related services billing instructions for procedures that are included in the office call and that cannot be billed separately.

(4) Using selected diagnosis codes, the ~~((department))~~ agency reimburses the provider at the appropriate level of physician office call for history and physical procedures in conjunction with dental surgery services performed in an outpatient setting.

(5) The ~~((department))~~ agency may reimburse providers for injection procedures and/or injectable drug products only when:

(a) The injectable drug is administered during an office visit; and

(b) The injectable drug used is from office stock and which was purchased by the provider from a ((pharmacist or) pharmacy, drug manufacturer ((as described in WAC 388-530-1200)), or drug wholesaler.

(6) The ~~((department))~~ agency does not reimburse a prescribing provider for a drug when a pharmacist dispenses the drug.

(7) The ~~((department))~~ agency does not reimburse the prescribing provider for an immunization when the immunization material is received from the department of health; the ~~((department))~~ agency does reimburse an administrative fee. If the immunization is given in a health department and is the

only service provided, the ~~((department))~~ agency reimburses a minimum E&M service.

(8) The ~~((department))~~ agency reimburses immunizations at **estimated acquisition costs (EAC)** when the immunizations are not part of the vaccine for children program. The ~~((department))~~ agency reimburses a separate administration fee for these immunizations. Covered immunizations are listed in the fee schedule. Refer to WAC 182-531-0150 (1)(r) for vaccines recommended or required for the sole purpose of international travel.

(9) The ~~((department))~~ agency reimburses therapeutic and diagnostic injections subject to certain limitations as follows:

(a) The ~~((department))~~ agency does not pay separately for the administration of intra-arterial and intravenous therapeutic or diagnostic injections provided in conjunction with intravenous infusion therapy services. The ~~((department))~~ agency does pay separately for the administration of these injections when they are provided on the same day as an E&M service. The ~~((department))~~ agency does not pay separately an administrative fee for injectables when both E&M and infusion therapy services are provided on the same day. The ~~((department))~~ agency reimburses separately for the drug(s).

(b) The ~~((department))~~ agency does not pay separately for subcutaneous or intramuscular administration of antibiotic injections provided on the same day as an E&M service. If the injection is the only service provided, the ~~((department))~~ agency pays an administrative fee. The ~~((department))~~ agency reimburses separately for the drug.

(c) The ~~((department))~~ agency reimburses injectable drugs at **acquisition cost**. The provider must document the name, strength, and dosage of the drug and retain that information in the client's file. The provider must provide an invoice when requested by the ~~((department))~~ agency. This subsection does not apply to drugs used for chemotherapy; see subsection (11) in this section for chemotherapy drugs.

(d) The provider must submit a manufacturer's invoice to document the name, strength, and dosage on the claim form when billing the ~~((department))~~ agency for the following drugs:

(i) Classified drugs where the billed charge to the ~~((department))~~ agency is over one thousand, one hundred dollars; and

(ii) Unclassified drugs where the billed charge to the ~~((department))~~ agency is over one hundred dollars. This does not apply to unclassified antineoplastic drugs.

(10) The ~~((department))~~ agency reimburses allergen immunotherapy only as follows:

(a) Antigen/antigen preparation codes are reimbursed per dose.

(b) When a single client is expected to use all the doses in a multiple dose vial, the provider may bill the total number of doses in the vial at the time the first dose from the vial is used. When remaining doses of a multiple dose vial are injected at subsequent times, the ~~((department))~~ agency reimburses the injection service (administration fee) only.

(c) When a multiple dose vial is used for more than one client, the provider must bill the total number of doses provided to each client out of the multiple dose vial.

(d) The ~~((department))~~ agency covers the antigen, the antigen preparation, and an administration fee.

(e) The ~~((department))~~ agency reimburses a provider separately for an E&M service if there is a diagnosis for conditions unrelated to allergen immunotherapy.

(f) The ~~((department))~~ agency reimburses for RAST testing when the physician has written documentation in the client's record indicating that previous skin testing failed and was negative.

(11) The ~~((department))~~ agency reimburses for chemotherapy drugs:

(a) Administered in the physician's office only when:

(i) The physician personally supervises the E&M services furnished by office medical staff; and

(ii) The medical record reflects the physician's active participation in or management of course of treatment.

(b) At established maximum allowable fees that are based on the medicare pricing method for calculating the estimated acquisition cost (EAC), or maximum allowable cost (MAC) when generics are available;

(c) For unclassified antineoplastic drugs, the provider must submit the following information on the claim form:

(i) The name of the drug used;

(ii) The dosage and strength used; and

(iii) The national drug code (~~((NCD))~~ ~~(NDC))~~ (NDC).

(12) Notwithstanding the provisions of this section, the ~~((department))~~ agency reserves the option of determining drug pricing for any particular drug based on the best evidence available to the ~~((department))~~ agency, or other good and sufficient reasons (e.g., fairness/equity, budget), regarding the actual cost, after discounts and promotions, paid by typical providers nationally or in Washington state.

(13) The ~~((department))~~ agency may request an invoice as necessary.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-1050 ((Osteopathic)) Manipulative ((treatment)) therapy. (1) The ~~((department))~~ agency reimburses ~~((osteopathic))~~ medicaid agency pays for manipulative therapy ~~((OMT))~~ only when ~~((OMT is))~~:

(a) Provided by an osteopathic physician licensed under chapter 18.71 RCW((-

~~((2))~~ ~~The department reimburses OMT only when the provider bills)) or naturopathic physicians licensed under chapter 18.36A RCW; and~~

(b) Billed using the appropriate CPT codes that involve the number of body regions involved.

~~((3))~~ (2) The ~~((department))~~ agency allows an osteopathic physician or naturopathic physician to bill the ~~((department))~~ agency for an evaluation and management (E&M) service in addition to the ~~((OMT))~~ manipulative therapy when one of the following apply:

(a) The physician diagnoses the condition requiring manipulative therapy and provides it during the same visit;

(b) The existing related diagnosis or condition fails to respond to manipulative therapy or the condition significantly changes or intensifies, requiring E&M services beyond those included in the manipulation codes; or

(c) The physician treats the client during the same encounter for an unrelated condition that does not require manipulative therapy.

~~((4)) (3) The ((department limits reimbursement)) agency pays for ten manipulations ((to ten)) per client, per calendar year. ((Reimbursement)) The agency evaluates a request for manipulations that is in excess of the limitations or restrictions according to WAC 182-501-0169. Payment for each manipulation includes a brief evaluation as well as the manipulation.~~

~~((5)) (4) The ((department)) agency does not ((reimburse)) pay for physical therapy services performed by osteopathic physicians or naturopathic physicians.~~

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services.

~~((1) The mental health services covered in the medical benefits described in this section are separate from the mental health services covered by the mental health managed care system administered under the authority of the mental health division pursuant to chapter 388-865 WAC. The department covers outpatient mental health services with the following limitations:~~

~~(a) For clients eighteen years of age and younger:~~

~~(i) The department pays for only one hour per day, per client, up to a total of twenty hours per calendar year, including the psychiatric diagnostic evaluation and family therapy visits that are medically necessary to the client's treatment;~~

~~(ii) The department limits medication management services to one per day, but this service may be billed by psychiatrists and psychiatric advanced registered nurse practitioners (ARNP) in conjunction with the diagnostic interview examination, or when a psychiatrist or psychiatric ARNP performs medication management services on the same day as a different licensed mental health practitioner renders another billable mental health service; and~~

~~(iii) The mental health services must be provided in an outpatient setting by a psychiatrist, psychologist, psychiatric ARNP, social worker, marriage and family therapist, or mental health counselor who must:~~

~~(A) Be licensed, in good standing and without restriction, by the department of health under their appropriate licensure; and~~

~~(B) Have a minimum of two years experience in the diagnosis and treatment of clients eighteen years of age and younger and their families, including a minimum one year under the supervision of a mental health professional trained in child and family mental health. A licensed psychiatrist may provide these services and bill the department without meeting this requirement.~~

~~(b) For clients nineteen years of age and older:~~

~~(i) The department pays for only one hour per day, per client, up to a total of twelve hours per calendar year, including family or group therapy visits;~~

~~(ii) The department limits medication management services to one per day, but this service may be billed by psychiatrists and psychiatric ARNPs in conjunction with the diag-~~

~~nostic interview examination, or when a psychiatrist or psychiatric ARNP performs medication management services on the same day as a different licensed mental health practitioner renders another billable mental health service; and~~

~~(iii) The mental health services must be provided by a psychiatrist in an outpatient setting.~~

~~(2) The department covers inpatient mental health services with the following limitations:~~

~~(a) Must be provided by a psychiatrist;~~

~~(b) Only the total time spent on direct psychiatric client care during each visit; and~~

~~(c) One hospital call per day for direct psychiatric client care, including making rounds. Making rounds is considered direct client care and includes any one of the following:~~

~~(i) Individual psychotherapy up to one hour;~~

~~(ii) Family/group therapy; or~~

~~(iii) Electroconvulsive therapy.~~

~~(3) With the exception of medication management, the department covers other mental health services described in this section with the limitation of one per client, per day regardless of location or provider type.~~

~~(4) The department pays psychiatrists when the client receives a medical physical examination in the hospital in addition to a psychiatric diagnostic or evaluation interview examination.~~

~~(5) The department covers psychiatric diagnostic interview evaluations at the limit of one per provider, per calendar year unless a significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the department.~~

~~(6) The department does not cover psychiatric sleep therapy.~~

~~(7) The department covers electroconvulsive therapy and narcoanalysis only when performed by a psychiatrist.~~

~~(8) The department pays psychiatric ARNPs only for mental health medication management and diagnostic interview evaluations provided to clients nineteen years of age and older.~~

~~(9) The department covers interactive, face-to-face visits at the limit of one per client, per day, in an outpatient setting. Interactive, face-to-face visits may be billed only for clients age twenty and younger.~~

~~(10) The client or licensed health care provider may request a limitation extension only when the client exceeds the total hour limit described in subsection (1) of this section, and for no other limitation of service in this section. The department will evaluate these requests in accordance with WAC 388-501-0169.~~

~~(11) DSHS providers must comply with chapter 388-865 WAC for hospital inpatient psychiatric admissions, and must follow rules adopted by the mental health division or the appropriate regional support network (RSN).~~

~~(12) Accepting payment under more than one contract or agreement with the department for the same service for the same client constitutes duplication of payment. If a client is provided services under multiple contracts or agreements, each provider must maintain documentation identifying the type of service provided and the contract or agreement under which it is provided to ensure it is not a duplication of service.)) (1) The mental health services covered in this section~~

are different from the mental health services covered under chapter 388-865 WAC. Community mental health and involuntary treatment programs, administered by the division of behavioral health and recovery within the department of social and health services.

(2) Inpatient and outpatient mental health services not covered under chapter 388-865 WAC, may be covered by the agency according to this section.

Inpatient mental health services

(3) For hospital inpatient psychiatric admissions, providers must comply with the rules of the department of social and health services in chapter 388-865 WAC, Community mental health and involuntary treatment programs.

(4) The agency covers professional inpatient mental health services as follows:

(a) When provided by a psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), or psychiatric mental health nurse practitioner-board certified (PMHNP-BC);

(b) The agency pays only for the total time spent on direct psychiatric client care during each visit, including services rendered when making rounds. The agency considers services rendered during rounds to be direct client care services and may include, but are not limited to:

(i) Individual psychotherapy up to one hour;

(ii) Family/group therapy; or

(iii) Electroconvulsive therapy.

(c) One electroconvulsive therapy or narcosynthesis per client, per day, and only when performed by a psychiatrist.

Outpatient mental health services

(5) The agency covers outpatient mental health services when provided by the following licensed health care professionals who are in good standing with the agency and who are without restriction by the department of health under their appropriate licensure:

(a) Psychiatrists;

(b) Psychologists;

(c) Psychiatric advanced registered nurse practitioners (ARNP) or psychiatric mental health nurse practitioners-board certified (PMHNP-BC);

(d) Mental health counselors;

(e) Independent clinical social workers;

(f) Advanced social workers; or

(g) Marriage and family therapists.

(6) With the exception of licensed psychiatrists and psychologists, qualified health care professionals who treat clients eighteen years of age and younger must have a minimum of two years' experience in the diagnosis and treatment of clients eighteen years of age and younger, including one year of supervision by a mental health professional trained in child and family mental health.

(7) The agency does not limit the total number of outpatient mental health visits a licensed health care professional can provide.

(8) The agency covers outpatient mental health services with the following limitations. The agency evaluates a request for outpatient mental health services that is in excess

of the limitations or restrictions according to WAC 182-501-0169:

(a) One psychiatric diagnostic evaluation, per provider, per client, per calendar year, unless significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the agency.

(b) One individual or family/group psychotherapy visit, with or without the client, per day, per client.

(c) One psychiatric medication management service, per client, per day, in an outpatient setting when performed by one of the following:

(i) Psychiatrist;

(ii) Psychiatric advanced registered nurse practitioner (ARNP); or

(iii) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC).

(9) Clients enrolled in the alternative benefits plan (defined in WAC 182-500-0010) are eligible for outpatient mental health services when used as a habilitative service to treat a qualifying condition in accordance with WAC 182-545-400.

(10) The agency requires mental health services be provided in the appropriate place of service. The provider is responsible for referring the client to the regional support network (RSN) to assess whether the client meets the RSN access to care standards.

(11) If anytime during treatment the provider suspects the client meets the RSN access to care standards, an assessment must be conducted. This assessment may be completed by either a health care professional listed in subsection (5) of this section or a representative of the RSN.

(12) After the client completes fifteen outpatient mental health visits under this benefit, the agency may request a written attestation that the client has been assessed for meeting access to care standards. This written attestation assures the mental health services are being provided in the appropriate place of service. This provider must respond to this request.

(13) To support continuity of care, the client may continue under the care of the provider until an RSN can receive the client.

(14) To be paid for providing mental health services, providers must bill the agency using the agency's published billing instructions.

(15) The agency considers a provider's acceptance of multiple payments for the same client for the same service on the same date to be a duplication of payment. Duplicative payments may be recouped by the agency under WAC 182-502-0230. Providers must keep documentation identifying the type of service provided and the contract or agreement under which it is provided.

NEW SECTION

WAC 182-531-1710 Alcohol and substance misuse counseling. (1) The medicaid agency covers alcohol and substance misuse counseling through screening, brief intervention, and referral to treatment (SBIRT) services when delivered by, or under the supervision of, a qualified licensed phy-

sician or other qualified licensed health care professional within the scope of their practice.

(2) SBIRT is a comprehensive, evidence-based public health practice designed to identify, reduce and prevent problematic use, abuse, and dependence on alcohol and illicit drugs. SBIRT can be used to identify people who are at risk for or have some level of substance use disorder which can lead to illness, injury, or other long-term morbidity or mortality. SBIRT services are provided in a wide variety of medical and community health care settings such as primary care centers, hospital emergency rooms, and trauma centers.

(3) The following health care professionals are eligible to become qualified SBIRT providers to deliver SBIRT services or supervise qualified staff to deliver SBIRT services:

(a) Advanced registered nurse practitioners, in accordance with chapters 18.79 RCW and 246-840 WAC;

(b) Chemical dependency professionals, in accordance with chapters 18.205 RCW and 246-811 WAC;

(c) Licensed practical nurses, in accordance with chapters 18.79 RCW and 246-840 WAC;

(d) Mental health counselors, in accordance with chapters 18.225 RCW and 246-809 WAC;

(e) Marriage and family therapists, in accordance with chapters 18.225 RCW and 246-809 WAC;

(f) Independent and advanced social workers, in accordance with chapters 18.225 RCW and 246-809 WAC;

(g) Physicians, in accordance with chapters 18.71 RCW and 246-919 WAC;

(h) Physician assistants, in accordance with chapters 18.71A RCW and 246-918 WAC;

(i) Psychologists, in accordance with chapters 18.83 RCW and 246-924 WAC;

(j) Registered nurses, in accordance with chapters 18.79 RCW and 246-840 WAC;

(k) Dentists, in accordance with chapters 18.260 and 246-817; and

(l) Dental hygienists, in accordance with chapters 18.29 and 246-815 WAC.

(4) To become a qualified SBIRT provider, eligible licensed health care professionals must:

(a) Complete a minimum of four hours of SBIRT training; and

(b) Mail or fax the SBIRT training certificate or other proof of training completion to the agency.

(5) The agency pays for SBIRT as follows:

(a) Screenings, which are included in the reimbursement for the evaluation and management code billed;

(b) Brief interventions, limited to four sessions per client, per provider, per calendar year; and

(c) When billed by one of the following qualified SBIRT health care professionals:

(i) Advanced registered nurse practitioners;

(ii) Mental health counselors;

(iii) Marriage and family therapists;

(iv) Independent and advanced social workers;

(v) Physicians;

(vi) Psychologists;

(vii) Dentists; and

(viii) Dental hygienists.

(6) The agency evaluates a request for additional sessions in excess of the limitations or restrictions according to WAC 182-501-0169.

(7) To be paid for providing alcohol and substance misuse counseling through SBIRT, providers must bill the agency using the agency's published billing instructions.

NEW SECTION

WAC 182-531-1720 Tobacco cessation counseling.

(1) The medicaid agency covers tobacco cessation counseling when delivered by qualified providers through the agency contracted quitline or during face-to-face office visits for tobacco cessation for pregnant clients.

(2) The agency pays for face-to-face office visits for tobacco cessation counseling for pregnant clients with the following limits:

(a) When provided by physicians, advanced registered nurse practitioners (ARNPs), physician assistants-certified (PA-Cs), naturopathic physicians, and dentists;

(b) Two cessation counseling attempts (or up to eight sessions) are allowed every twelve months. An attempt is defined as up to four cessation counseling sessions.

(3) To be paid for tobacco cessation counseling through SBIRT, providers must bill the agency using the agency's published billing instructions.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-531-1025 Oral health care services provided by dentists for clients age twenty-one and older—General.

WSR 14-22-110

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed November 5, 2014, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-118 on May 21, 2013.

Title of Rule and Other Identifying Information: The Washington department of fish and wildlife (WDFW) is considering rule amendments relating to the commercial harvest of hagfish in the hagfish pot trial fishery, WAC 220-20-039 Live fish—Import and transfer.

Hearing Location(s): WDFW Region 6 Office, 48 Devonshire Road, Montesano, WA 98563, on December 9, 2014, at 10:00 a.m.

Date of Intended Adoption: On or after December 10, 2014.

Submit Written Comments to: Lorna Wargo, WDFW Region 6 Office, 48 Devonshire Road, Montesano, WA 98563, e-mail Lorna.Wargo@dfw.wa.gov, fax (360) 249-1229, by December 2, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by December 2, 2014, TTY 1-800-833-6388, or (360) 902-2207.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to exempt hagfish from the ban on possession, transport, or sale of live fish. Under current regulation it is unlawful to transport, possess, transfer or sell hagfish in a live state (i.e. alive). The effect of this proposed rule change is to allow a live fishery for hagfish and thereby expand potential opportunity in the hagfish pot trial fishery as there are separate markets for live and frozen hagfish. The ban on live fish transport or sales is intended to protect against the introduction of exotic disease and for resource conservation purposes. Hagfish are indigenous to the ocean and coastal marine waters of Washington and conservation measures are being achieved through active fishery management actions.

Reasons Supporting Proposal: There is market demand for live hagfish and this proposal could increase sales opportunities for fishers and dealers. The value per volume of catch for live hagfish may be higher than frozen product. Individuals will only be able to possess live hagfish if they have a department permit under the rule proposal, so the department will still be able to ensure proper fishery management.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lorna Wargo, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1221; and **Enforcement:** Steve Crown, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

This proposed rule change authorizes the transport, transfer, or sale of live hagfish taken in the coastal (ocean) commercial hagfish pot trial fishery. Markets exist for both dead (fresh frozen) and live hagfish. The requirements for reporting or recordkeeping are the same for hagfish sold live or dead.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: There are no professional service requirements for a small business to comply with the requirements.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: There is no cost to compliance as this rule authorizes the possession, transfer or sale of live hagfish but does not impose any additional or new requirements upon commercial fishers or dealers to participate in the coastal hagfish pot trial fishery. The proposed changes only require a fisher who wishes to possess live hagfish to obtain a permit from the department allowing such possession.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No. The proposed rule does not require commercial fishers or dealers to participate in the live hagfish fishery. Authorizing a live hagfish fishery may increase sales opportunity.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

The costs to comply per one hundred dollars of sales are negligible. Fishers and dealers already must document fishing and sales activity on fishery logbooks and fish receiving tickets. The live condition of the hagfish does not change costs.

Small businesses engaged in commercial fish and wild-life activities may incur penalty-related costs if they fail to comply with department requests and are cited with a violation. A violation is punishable under RCW 77.15.253, 77.15.290, or 77.15.750, depending on the species, value of the species, and the circumstances underlying the violation.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: As costs are negligible and the requirements already apply to small businesses, there is no need for the agency to take steps to reduce costs to small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department has engaged in ongoing discussion with affected small businesses – commercial hagfish fishers and dealers. Affected small businesses have been supportive of the proposed changes.

WDFW sends out a notice of proposed rule-making projects after the proposed rule changes are filed to people who notified the department that they are interested in the department's rule-making activities. This notice directs those people to information on how they can participate in the rule-making process and comment on proposed changes.

8. A List of Industries That Will Be Required to Comply with the Rule: Commercial fishers, commercial fish processors, and people who choose to engage in commercial activity involving live hagfish must obtain a permit to do so and comply with permit requirements relating to the transport, transfer, or sale of live hagfish.

A copy of the statement may be obtained by contacting Lorna Wargo, WDFW Region 6 Office, 48 Devonshire Road, Montesano, WA 98563, phone (360) 249-1221, fax (360) 249-1229, e-mail Lorna.Wargo@dfw.wa.gov.

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

November 5, 2014

Joanna M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-02-043, filed 12/21/12, effective 1/21/13)

WAC 220-20-039 Live fish—Import and transfer. (1)

It is unlawful for any person, group, corporation, association, or government entity to import into, transport, transfer, sell, or possess within the state of Washington live fish and/or the viable sexual products of fish without first obtaining a permit to do so from the director. The only exceptions ((is)) to the permit requirement are for aquarium fish, game fish, indigenous marine baitfish, indigenous hagfish species and mosquito fish (genus *Gambusia*) when used by agencies authorized by chapter 17.28 RCW. The permit must accompany the fish and/or sexual products at all times within the state of Washington and must be presented to department employees on demand.

(2) For any permit issued under subsection (1) of this section, the director may impose conditions as necessary to ensure the protection of food fish populations from infectious, contagious, or communicable diseases and pests.

(3) It is unlawful to violate the terms and conditions imposed on any permit issued under subsection (1) of this section. In addition to penalties provided by law, violation of the permit terms and conditions may result in the suspension and/or revocation of the permit.

(4) A violation of this section is punishable under RCW 77.15.253, 77.15.290, or 77.15.750, depending on the species, value of the species, and the circumstances underlying the violation.

WSR 14-22-115
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed November 5, 2014, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-11-099 on May 21, 2014.

Title of Rule and Other Identifying Information: Rules for recreational marine and freshwater fishing: WAC 220-55-220 Two-pole endorsement, 220-56-105 River mouth definitions, 220-56-210 Fly fishing, 220-56-282 Sturgeon—Areas, seasons, limits and unlawful acts, 220-56-510 Game fish possession limits and size limits, 220-310-175 Freshwater exceptions to statewide rules—General rules, 220-310-185 Freshwater exceptions to statewide rules—Southwest, 220-310-195 Freshwater exceptions to statewide rules—Eastside, and 220-310-200 Freshwater exceptions to statewide rules—Columbia.

Hearing Location(s): Capital Events Center, Tyee Drive S.W., Tumwater, WA 98512, on December 12-13, 2014, at 8:30 a.m.

Date of Intended Adoption: On or after January 9, 2015.

Submit Written Comments to: Charmane Ashbrook, P.O. Box 43138, Olympia, WA 98504, e-mail Charmane.Ashbrook@dfw.wa.gov, fax (360) 586-0739, by December 1, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by December 1, 2014, TTY (360) 902-2207, or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department makes similar adjustments to recreational rules annually to maximize conservation and recreational-fishing opportunity. This proposal makes changes to Columbia Basin recreational fishing regulations and implements "stream strategy" for all water bodies in the eastside and southwest geographical areas. Stream strategy means the river is closed unless specifically listed as open to fishing by rule. The department also proposes reorganizing the sturgeon provisions so that they primarily reside in WAC 220-56-282 and making technical changes to clarify, correct, and update language.

Reasons Supporting Proposal: Adopting stream strategy for eastside and southwest Washington water bodies promotes consistency in the Washington department of fish and wildlife (WDFW) administrative code as it is already in place for Puget Sound and coastal recreational fishing rules. Making recreational fishing regulations consistent across the state will promote better understanding of rules by fishers. Additionally, the changes in this proposal are needed to make necessary adjustments to recreational fishing rules based on department data, public feedback, and changes in fish and shellfish populations. The department also proposes amendments for conservation purposes and to provide greater fishing opportunity. Technical changes are needed to ensure clarity and uniformity in the code and in response to the recent reorganization of freshwater recreational fishing rules.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The public may also submit comments on the proposed rule changes online at http://wdfw.wa.gov/fishing/regulations/rule_proposals/2015-2016/.

Dates related to these proposed rules:

December 1, 2014: Deadline for the public to submit written comments on the rules.

January 9-10, 2015: The department will ask the fish and wildlife commission to adopt the rule changes at the January commission meeting.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Charmane Ashbrook, 1111 Washington Street, Olympia, WA 98501, (360) 586-0734; Implementation: Jim Scott, 1111 Washington Street, Olympia, WA 98501, (360) 902-2736; and Enforcement: Steve Crown, Chief, 1111 Washington Street, Olympia, WA 98501, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule amendments do not affect small business; i.e., there is no direct regulation of small business. The rules apply to recreational fishers.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

November 5, 2014
 Joanna M. Eide
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-16-027, filed 7/25/14, effective 8/25/14)

WAC 220-55-220 Two-pole endorsement. Anglers who possess a valid two-pole endorsement may fish with two lines in all lakes and ponds open to fishing, with the following exceptions:

Water Body	County	
Para-juvenile Lake	Adams	
Headgate Pond	Asotin	
Columbia Park Pond	Benton	
Blackbird Island Pond	Chelan	
Lake Wenatchee	Chelan	
Aldwell Lake	Clallam	
Beaver Lake	Clallam	
Carrie Blake Pond	Clallam	
Dickey Lake	Clallam	
Lake Pleasant	Clallam	
Lincoln Pond	Clallam	
Sutherland Lake	Clallam	
Vancouver Lake	Clark	Includes all other waters west of Burlington-Northern Railroad from Columbia River drawbridge near Vancouver downstream to Lewis River.
Big Four Lake	Columbia	
Dayton Pond	Columbia	
Blue Lake	Cowlitz	
Castle Lake	Cowlitz	
Coldwater Lake	Cowlitz	
Lewis River Power Canal	Cowlitz	Includes old Lewis River streambed between Swift No. 1 powerhouse and Swift No. 2 powerhouse.
Merrill Lake	Cowlitz	
Silver Lake	Cowlitz	
Pit Lake	Douglas	
Ping Pond	Grant	
Mill Creek Pond	Grays Harbor	
Quigg Lake	Grays Harbor	Located at Friends Landing near Montesano.
Vance Creek Pond #1	Grays Harbor	
Gibbs Lake	Jefferson	
Horseshoe Lake	Jefferson	
Teal Lake	Jefferson	
Lake Sammamish	King	Including that portion of Sammamish River from 68th Ave. NE bridge downstream.
Lake Union	King	(Including Lake Union, Portage Bay, and Salmon Bay) Waters east of a north-south line 400' west of the Chittenden Locks to the Montlake Bridge.
Lake Washington	King	
Lake Washington Ship Canal	King	
Mill Pond	King	Auburn.
Old Fishing Hole Pond	King	Kent.
Portage Bay	King	
Salmon Bay	King	
Swans Mill Pond	King	
Koeneman Lake	Kitsap	Formerly Fern Lake.
Kachess Lake	Kittitas	
Keechelus Lake	Kittitas	
Kiwanis Pond	Kittitas	
Naneum Pond	Kittitas	
Cowlitz Falls Reservoir	Lewis	
Mayfield Lake	Lewis	Mayfield Dam to Mossyrock Dam.
Packwood Lake	Lewis	
Scanewa Lake	Lewis	Cowlitz Falls Reservoir.
Walupt Lake	Lewis	
Willame Lake	Lewis	
Cady Lake	Mason	
Cushman Reservoir	Mason	
Prices Lake	Mason	
Stump Lake	Mason	
Silvermail Lake	Okanogan	
Cases Pond	Pacific	
South Bend Mill Pond	Pacific	
Bradley Lake	Pierce	
De Coursey Pond	Pierce	
Ohop Lake	Pierce	
Tanwax Lake	Pierce	
Wapato Lake	Pierce	
Granite Lakes	Skagit	Near Marblemount.
Northern State Hospital Pond	Skagit	
Pass Lake	Skagit	
Vogler Lake	Skagit	
Drano Lake	Skamania	January 1 through April 30 and July 1 through September 14.
Swift Reservoir	Skamania	From dam to Eagle Cliff Bridge.
Ebey Lake	Snohomish	Little Lake.
Fortson Mill Pond #2	Snohomish	
Jennings Park Pond	Snohomish	
Monte Cristo Lake	Snohomish	
North Gissburg Pond	Snohomish	

AMENDATORY SECTION (Amending WSR 14-16-027, filed 7/25/14, effective 8/25/14)

WAC 220-56-105 River mouth definitions. When pertaining to angling, unless otherwise defined, any reference to the mouths of rivers or streams includes those waters of any river or stream, including sloughs and tributaries, upstream and inside of a line projected between the outermost uplands at the mouth. The term "outermost upland" means those lands not covered by water during an ordinary high tide. The following river mouths are hereby otherwise defined:

- Abernathy Creek - Highway 4 Bridge.
- Bear River - Highway 101 Bridge.
- Bone River - Highway 101 Bridge.
- California Creek - Drayton Harbor Road Bridge.
- Chambers Creek - Burlington Northern Railroad Bridge.
- Chehalis River - Highway 101 Bridge in Aberdeen.
- Chelan River - Railroad Bridge.
- Cispus River - Posted markers at the Lewis County P.U.D. kayak launch, approximately 1.5 miles upstream from the confluence of the Cowlitz and Cispus rivers.
- Cowlitz River - A line projected across the river between two fishing boundary markers set on each bank of the river approximately one-half mile downstream from the lowermost railroad bridge crossing the Cowlitz River.
- Dakota Creek - A line from the outermost headland of the south bank to a house at 1285 Runge Avenue, Blaine, Washington, approximately one-quarter mile downstream from the Blaine Road Bridge.
- Deschutes River - A line projected across the river 400 feet below the lower Tumwater Falls fish ladder.
- Drano Lake - Highway 14 Bridge.
- Duwamish River - First Avenue South Bridge.
- Elk River - Highway 105 Bridge.
- Entiat River - Highway 97 Bridge.
- Hawk Creek (Lincoln County) - Falls at the Hawk Creek campground.
- Hoquiam River - Highway 101 Bridge.
- Humptulips River - Mouth of Jessie Slough.
- Johns River - Highway 105 Bridge.
- Kalama River - Boundary markers at mouth.
- Kennedy Creek - An arc 500 yards east of the midpoint of the northbound Highway 101 Bridge.
- Kettle River - Barstow Bridge.
- Lake Washington Ship Canal - A line 400 feet west of the fish ladder at the Chittenden Locks.

- Lewis River - A straight line running from a fishing boundary marker or from the outermost upland at the north shore of the Lewis River mouth, southerly across the Lewis River to a fishing boundary marker near the south shore.
- McLane Creek - A line 100 feet upstream of and parallel to the southernmost Highway 101 Bridge.
- Methow River - Highway 97 Bridge.
- Naselle River - Highway 101 Bridge.
- North Nemah River - Highway 101 Bridge.
- Niawiakum River - Highway 101 Bridge.
- Nisqually River - At the upstream end of Alder Lake, the mouth of the Nisqually River is the Highway 7 Bridge at Elbe.
- North River - Highway 105 Bridge.
- Palix River - Highway 101 Bridge.
- Puyallup River - 11th Street Bridge.
- Samish River - The Samish Island Bridge (Bayview-Edison Road).
- Sammamish River - 68th Avenue NE Bridge.
- Skagit River - A line projected from the terminus of the jetty with McGlenn Island to the white monument on the easterly end of Ika Island, then to a white monument on the westerly end of Craft Island, then to a white monument near the corner of the levee on the westerly side of Dry Slough, and then to a white monument on the easterly side of Tom Moore Slough.
- Skamokawa Creek - Highway 4 Bridge.
- Skookum Creek - A line 400 yards below the old railroad bridge.
- Snohomish River - Burlington Northern Railway Bridges crossing main river and sloughs.
- South Nemah River - Lynn Point 117 degrees true to the opposite shore.
- Spokane River - State Route 25 Bridge.
- Tahuya River - North Shore Rd. Bridge.
- Tucannon River - The water south of a line of sight from a sign with an orange triangle along the shoulder of Highway 261 (the northwest of the Tucannon River), southeast across to the eastern, unsubmerged shoreline of the Tucannon River. (The embayment between the eastern shoreline of the Tucannon River and the rock bluff to the east that has an affixed orange channel navigation marker, along the south shore of the Snake River, is considered part of the Snake River.)
- Wallace River - The furthest downstream railroad bridge.

Washougal River - A straight line from the Crown Zellerbach pumphouse southeasterly across the Washougal River to the east end of the Highway 14 Bridge near the upper end of Lady Island.

Whatcom Creek - A line projected approximately 14 degrees true from the flashing light at the southwest-erly end of the Port of Bellingham North Terminal to the southernmost point of the dike surrounding the Georgia Pacific treatment pond.

Little White Salmon River - At boundary markers on river bank downstream from the Little White Salmon National Fish Hatchery.

White Salmon River - Burlington Northern Railroad Bridge.

Willapa River - City of South Bend boat launch.

Wind River - Boundary line markers at mouth.

Yakima River - Highway 240 Bridge.

AMENDATORY SECTION (Amending WSR 07-05-051, filed 2/16/07, effective 3/19/07)

WAC 220-56-210 Fly fishing. (1) It is unlawful to fish in waters restricted to "fly fishing only" with the use of:

(a) A fixed spool reel.

(b) Fishing line other than conventional fly line or conventional "Tenkara" fly line, except that other line may be used for backing and leader if it is attached to not less than 25 feet of conventional fly line.

(c) Hooks that exceed 1/2 inch when measured from point to shank.

(d) Not more than two flies each with a barbless single hook.

(e) Bait.

(f) Weight attached to the leader or line.

(2) Only knotless nets may be used to land fish in waters restricted to "fly fishing only."

(3) Violation of this subsection is an infraction, punishable under RCW 77.15.160.

It is unlawful to possess fish taken with gear in violation of the provisions of this section. Possession of fish while using gear in violation of the provisions of this section is a rebuttable presumption that the fish were taken with such gear. Possession of such fish is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the fish are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.

(4) "Fly" means a lure on which thread, feathers, hackle, or yarn cover a minimum of half the shank of the hook. Metallic colored tape, tinsel, mylar, or beadeyes may be used as an integral part of the design of the fly pattern.

(5) Notwithstanding the provisions of this section, persons who have a permanent disability that significantly limits the use of one or both upper extremities may use spinning gear and may fish from a floating device equipped with an electric motor in lakes where fishing from a floating device is allowed in fly fishing only waters as provided for in this section.

(a) A fisher with a disability must apply for a fly fishing special use permit by presenting a letter from a physician stating that the fisher's disability is permanent and that, because of the inability to use one or both upper extremities, the fisher is physically incapable of using conventional fly fishing gear.

(b) The fisher will be issued a fly fishing special use permit in the form of a wearable tag. The fisher must have the special use permit in his or her possession at all times while using spin casting gear in fly fishing only waters, and may display the permit on outer clothing.

(c) It is lawful for persons in possession of a fly fishing special use permit to use the following gear:

(i) Fishers may use spin casting gear with a casting bubble.

(ii) Monofilament line is permitted with no limit on the breaking strength of the line.

(iii) Hook size and barb restrictions, fishing fly requirements, and bait and weight prohibitions as provided for in this section apply to both conventional fly fishing and spin-bubble fly fishing.

AMENDATORY SECTION (Amending WSR 14-04-120, filed 2/4/14, effective 3/7/14)

WAC 220-56-282 Sturgeon—Areas, seasons, limits and unlawful acts. (1) It is unlawful to retain green sturgeon.

(2) It is permissible to catch and release white sturgeon in saltwater waterways year-round. However, for freshwater waterways, including freshwater Puget Sound tributaries, it is permissible to catch and release white sturgeon only when the season is open for salmon or game fish, unless otherwise provided.

(3) It is permissible to catch and release, but unlawful to retain, white sturgeon in the following areas:

(a) Coastal waters and tributaries of coastal waters; and

(b) Puget Sound waters and tributaries of Puget Sound.

(4) It is permissible to catch and release, but unlawful to retain, white sturgeon year-round in the following waters, unless otherwise provided by department rule:

(a) The Columbia River and its tributaries below Bonneville Dam;

(b) The mainstem Columbia River and its tributaries downstream from where the river forms the boundary between Oregon and Washington;

(c) The mainstem Columbia and its tributaries from Priest Rapids Dam to Chief Joseph Dam; and

(d) The Snake River and tributaries from ~~((Lower Granite))~~ Ice Harbor Dam upstream.

(5) It is unlawful to fish for sturgeon in the Columbia River and tributaries upstream of Chief Joseph Dam.

(6) The following limits and requirements apply in areas where it is permissible to retain sturgeon:

(a) The daily limit is one white sturgeon.

(b) The possession limit is two daily limits of fresh, frozen, or processed white sturgeon.

(c) The annual personal-use limit for white sturgeon from April 1 through March 31 is two fish, regardless of where the angler takes the sturgeon.

(d) The maximum fork-length is 54 inches.

(e) The minimum fork-length is 38 inches, except the minimum fork-length is 43 inches in:

(i) The mainstem Columbia and its tributaries from The Dalles Dam to Priest Rapids Dam; and

(ii) The Snake River from the Snake River Confluence Protection Area to ~~((Lower Granite))~~ Ice Harbor Dam.

(f) It is unlawful to fail to release undersize or oversize sturgeon immediately.

(g) Once an angler reaches his or her annual limit of white sturgeon, he or she may continue to fish for white sturgeon in the mainstem Columbia River downstream from where the river forms the common boundary between Oregon and Washington, unless otherwise provided by department rule, so long as the angler releases all subsequent sturgeon immediately.

(h) It is unlawful to fish for sturgeon with terminal gear other than bait and one single-point barbless hook.

(i) It is permissible to use artificial scent with bait when fishing for white sturgeon.

(j) It is unlawful to use a gaff or other body-penetrating device while restraining, handling, or landing a sturgeon.

(k) It is unlawful to fish for or possess sturgeon from freshwater, except the Chehalis River, from one hour after official sunset to one hour before official sunrise.

(l) It is unlawful to possess sturgeon eggs in the field without retaining the intact carcass of the fish from which the eggs have been removed.

(7) A violation of this section is an infraction, punishable under RCW 77.15.160, unless the person has harvested sturgeon. If the person has harvested sturgeon, the violation is punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, unless the sturgeon are taken in the amounts or manner to constitute a violation of RCW 77.15.370, Unlawful recreational fishing in the first degree—Penalty.

(8) It is unlawful to possess sturgeon taken with gear in violation of the provisions of this section. Possession of sturgeon while using gear in violation of the provisions of this section is a rebuttable presumption that the sturgeon were taken with such gear. Possession of such sturgeon is punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, unless the sturgeon are taken in the amounts or manner to constitute a violation of RCW 77.15.370, Unlawful recreational fishing in the first degree—Penalty.

[AMENDATORY SECTION (Amending WSR 08-07-003, filed 3/5/08, effective 4/5/08)]

WAC 220-56-510 Game fish possession limits and size limits. It is unlawful to retain or possess game fish taken in excess of the daily, possession, or license year possession limits, or game fish that do not conform to the size limits provided for in this section, unless otherwise provided for in WAC ~~((232-28-619))~~ 220-310-175 through 220-310-200.

(1) Daily game fish possession and size limits:

Species	Daily limit	Size limits
Largemouth Bass	5	Release bass 12 to 17 inches in length. Not more than 1 large-mouth bass 17 inches in length or greater may be retained.
Smallmouth Bass	10	No minimum size. Not more than one smallmouth bass over 14 inches in length or greater may be retained.
Burbot	5	No size restriction.
Channel catfish	5	No size restriction.
Eastern brook trout	Count as part of the 5 trout daily limit in lakes, ponds and reservoirs.	No size restriction.
	Bonus limit in rivers, streams and beaver ponds. Up to 5 trout including Eastern brook trout may be retained, but not more than 2 of which may be trout other than Eastern brook trout.	No size restriction.
Grass carp	Unlawful to retain.	Not applicable.
Tiger Musklunge	1	Minimum size 50 inches in length.
Trout (except Eastern brook trout)	5 from lakes, ponds and reservoirs. 2 from rivers, streams, and beaver ponds.	No size restriction. 8-inch minimum size.
	The daily trout limit is 5 trout, regardless of origin, of which not more than 2 may be steelhead.	

Species	Daily limit	Size limits
Walleye	((5)) 8	((16-inch)) <u>12-inch</u> minimum size. Not more than 1 walleye greater than 22 inches in length may be retained.
Whitefish	15	No size restriction.
All other game fish	No limit.	No size restriction.

(2) Possession limit: The game fish possession limit in the field is two daily limits in fresh, frozen or processed form.

(3) Wild steelhead (~~and~~), Dolly Varden, and bull trout: Except as provided for in this section and WAC ((232-28-619)) 220-310-175 through 220-310-200, it is unlawful to retain wild steelhead (~~or~~), Dolly Varden, or bull trout.

(4) Wild steelhead license year limit: From waters in which wild steelhead may be taken as provided for in WAC ((232-28-619)) 220-310-175 through 220-310-175, the license year limit is one wild steelhead.

(5) Saltwater game fish retention: Game fish taken in saltwater may not be retained, except that up to two hatchery steelhead per day may be retained.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

AMENDATORY SECTION (Amending WSR 14-04-120, filed 2/4/14, effective 3/7/14)

WAC 220-310-175 Freshwater exceptions to state-wide rules—General rules. The following provisions and definitions apply to this section through WAC 220-310-200.

(1) It is unlawful to fish for, take, or possess salmon from freshwater streams and lakes that are not specifically listed as open for salmon fishing.

(2) Waters listed as open during a specific date range that do not reference a particular species are open during the date range for game fish only.

(3) Rivers, streams, and beaver ponds (~~that drain into Puget Sound, the Strait of Juan de Fuca, or the Pacific Ocean (excluding the Columbia River))~~) are closed to fishing unless specifically listed as open.

(4) All limits are daily limits, unless otherwise provided.

(5) Within Puget Sound, beaver ponds located within or adjoining streams that are listed as open to trout and other game fish follow the same rules as the stream, except as otherwise provided.

(6) A "float" or "bobber" means a hookless, floating device that is attached to or slides along the mainline or leader above the hook(s) for the purpose of suspending hook(s) (which are not part of the bait, lure, or fly) off the bottom of the stream or lake and visually signal (from the surface of the water) a fish's strike at the hook(s).

(7) "Lead jig" means a lure consisting of a hook permanently or temporarily attached directly to a lead weight by any method.

(8) "Lead weight" means material constructed of lead and applied to a fishing line or lure and designed to help keep the hook, bait, or lure underwater.

(9) "Unmarked salmon" means salmon without either a clipped ventral fin or a clipped adipose fin as evidenced by a healed scar.

(10) Kokanee/sockeye definitions:

(a) For Lake Washington and the Lake Washington Ship Canal in King County, kokanee and sockeye less than fifteen inches in length are considered kokanee and kokanee and sockeye fifteen inches and over in length are considered sockeye salmon.

(b) For Wenatchee Lake (Chelan County), kokanee and sockeye under sixteen inches are considered kokanee and kokanee and sockeye sixteen inches and over are considered sockeye salmon.

(11)(a) A violation of this section through WAC 220-310-200 is an infraction, punishable under RCW 77.15.160, unless the person has harvested fish. If the person has harvested fish, the violation is punishable under RCW 77.15.-380, Unlawful recreational fishing in the second degree—Penalty, unless the fish are taken in the amounts or manner to constitute a violation of RCW 77.15.370, Unlawful recreational fishing in the first degree—Penalty.

(b) Freshwater terminal gear restrictions:

(i) Terminal gear restrictions apply to all species, including salmon, unless otherwise provided.

(ii) In all waters with freshwater terminal gear restrictions including, but not limited to, night closures, selective gear rules, whitefish gear rules, single-point barbless hooks required, fly-fishing only, and anti-snagging rules, violation of the gear rules is an infraction, punishable under RCW 77.15.160.

(iii) It is unlawful to possess fish taken with gear in violation of the freshwater terminal gear restrictions. Possession of fish while using gear in violation of the freshwater terminal gear restrictions is a rebuttable presumption that the fish were taken with such gear. Possession of such fish is punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, unless the fish are taken in the amounts or manner to constitute a violation of RCW 77.15.-370, Unlawful recreational fishing in the first degree—Penalty.

(12) For sturgeon rules in the Columbia Basin (WAC 220-310-185, 220-310-195, and 220-310-200), see WAC 220-56-282, Sturgeon—Areas, seasons, limits and unlawful acts.

AMENDATORY SECTION (Amending WSR 14-16-027, filed 7/25/14, effective 8/25/14)

WAC 220-310-185 Freshwater exceptions to state-wide rules—Southwest. (1) **Abernathy Creek and all tributaries including Cameron, Slide, and Wiest creeks (Cowlitz County)**:

(a) From the mouth to a point 500 feet downstream from the (~~salmon hatchery~~) Abernathy technology center:

- (i) Barbless hooks are required for steelhead.
- (ii) Open the first Saturday in June through August 31 and November 1 through March 15.
- (iii) Trout: ~~((Release all fish except anglers may retain up to 2 hatchery steelhead.))~~
 - (A) No minimum size.
 - (B) Only adipose clipped trout may be retained.
 - (C) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
- (b) From 200 feet above Abernathy Falls to posted markers 500 feet downstream from ~~((salmon hatchery))~~ the Abernathy fish technology center: Closed.
- (c) From 200 feet above Abernathy Falls upstream to source and all tributaries including Erick and Ordways creeks:
 - (i) Open the first Saturday in June through August 31.
 - (ii) Release all fish except adipose clipped trout with a healed scar.
 - (iii) Trout: No minimum size.
 - (iv) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
 - (v) Selective gear rules apply.
- (2) ~~((Alder Creek (Cowlitz County): Closed.))~~
 - ~~((3))~~ **Battle Ground Lake (Clark County):**
 - (a) Closed the Monday before Thanksgiving Day through Thanksgiving Day.
 - (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
 - (c) Trout: It is unlawful to retain more than 2 fish twenty inches or greater in length.
- ~~((4) Beaver Creek (tributary to Elochoman River) (Wahkiakum County): Closed.))~~
 - ~~((5))~~ **(3) Blue Creek (Lewis County), from the mouth to Spencer Road:**
 - (a) Closed from posted sign above rearing pond outlet to Spencer Road.
 - (b) Anti-snagging rule applies.
 - (c) Night closure in effect.
 - (d) Open June 1 through April 14 for trout only:
 - (i) Limit 5; minimum length 12 inches; it is unlawful to retain more than 2 trout over 20 inches.
 - (ii) Release wild cutthroat.
 - (iii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
 - (iv) Barbless hooks are required for steelhead.
- ~~((6))~~ **(4) Blue Lake (Cowlitz County):**
 - (a) Open the fourth Saturday in April through October 31.
 - (b) Selective gear rules apply.
 - (c) It is unlawful to fish from a floating device equipped with an internal combustion motor.
 - (d) Catch and release only.
- ~~((7))~~ **(6) Butter Creek (Lewis County):**
 - (a) Selective gear rules apply.
 - (b) ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.))~~
 - (e)) Trout: Minimum length 10 inches.

- ~~((8))~~ **(7) Canyon Creek (Clark County):**
 - (a) Open the Saturday before Memorial Day through October 31.
 - (b) Trout: Limit 5.
- (8) Canyon Creek tributaries including Fly, Little Fly, Big Rock, Sorehead, Jakes, and Pelvey creeks (Clark/Skamania counties): Open.**
 - (9) **Carlisle Lake (Lewis County):**
 - (a) Open the fourth Saturday in April through last day in February.
 - (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
 - (c) Landlocked salmon rules apply.
 - (10) **Carson Creek (Skamania County): Selective gear rules apply.**
 - (11) **Castle Lake (Cowlitz County):**
 - (a) Selective gear rules apply.
 - (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
 - (c) Trout: Limit one; minimum length 16 inches.
 - ~~((11))~~ **(12) Cedar Creek (tributary of N.F. Lewis) (Clark County):**
 - (a) From the mouth to Grist Mill Bridge:
 - (i) Open the first Saturday in June through August 31 and November 1 through March 15.
 - (ii) ~~((Barbless hooks are required for steelhead.))~~ Selective gear rules apply.
 - (iii) Release all trout except anglers may retain up to 2 hatchery steelhead.
 - (iv) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
 - (b) From the Grist Mill Bridge to 100 feet upstream of the falls: Closed.
 - (c) From 100 feet upstream of the falls upstream:
 - (i) Open the first Saturday in June through August 31.
 - (ii) ~~((Barbless hooks are required for steelhead.))~~ Selective gear rules apply.
 - (iii) Release all ~~((trout))~~ fish except anglers may retain up to 2 hatchery steelhead.
 - ~~((12))~~ **(iv) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.**
 - (13) **Cedar Creek tributaries including Bitter, Brush, Chelatchie, John, and Pup creeks (Clark County): Selective gear rules apply.**
 - (14) **Chinook River (Pacific County): From the Highway 101 bridge upstream to source, selective gear rules apply.**
 - (15) **Cispus River (Lewis County):**
 - (a) Barbless hooks are required for salmon and steelhead.
 - (b) From the mouth to the North Fork:
 - (i) Open the first Saturday in June through October 31; release cutthroat.
 - (ii) Open from November 1 through the Friday before the first Saturday in June. Release all trout except anglers may retain up to 2 hatchery steelhead.
 - (iii) Salmon:
 - (A) Open year-round.
 - (B) Limit 6; minimum size 8 inches.
 - (C) Release wild coho and wild Chinook.

(D) From January 1 through July 31, anglers may retain up to 2 adults as part of the limit.

(E) From August 1 through December 31, up to 2 of the limit may be adult Chinook.

~~((13))~~ **(16) Cispus River, North Fork (Lewis County):**

(a) Selective gear rules apply.

(b) ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(e))~~ Trout: Release cutthroat.

~~((i) It is unlawful to retain more than one trout over twelve inches in length.~~

~~(ii) Release cutthroat.~~

~~((14))~~ **(17) Coal Creek (Cowlitz County):**

(a) From the mouth to 400 feet below the falls:

~~((b))~~ (i) Open the first Saturday in June through August 31 and November 1 through last day in February.

~~((c) Barbless hooks are required for steelhead.~~

~~((d))~~ (ii) Selective gear rules apply.

(iii) Trout: Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((15))~~ (iv) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the falls to 400 feet downstream: Closed.

(c) From the falls upstream to source including all tributaries: Release all fish except trout.

(18) Coldwater Lake (Cowlitz County):

(a) The Coldwater Lake inlet and outlet streams are closed.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one; minimum length 16 inches.

~~((16))~~ **(19) Connelly Creek and tributaries (Lewis County):** Statewide season, minimum size and daily limits except closed from 400 feet below the city of Morton Dam to the source.

~~((17))~~ **(20) Cougar Creek (tributary to Yale Reservoir) (Cowlitz County):** Open the first Saturday in June through August 31.

~~((18))~~ **(21) Coweeman River (Cowlitz County):**

(a) From the mouth to Baird Creek:

(i) Open the first Saturday in June through August 31 and November 1 through March 15.

(ii) Release all trout, except anglers may retain up to 2 hatchery steelhead.

(iii) Barbless hooks are required for steelhead.

(iv) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From Baird Creek upstream to the source:

(i) Open the first Saturday in June through August 31.

(ii) Release all trout, except anglers may retain up to 2 hatchery steelhead.

(iii) Barbless hooks are required for steelhead.

~~((19))~~ (iv) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(22) Cowlitz Falls Reservoir (Lake Scanewa) (Lewis County):

(a) The upstream boundary of the reservoir in the Cowlitz arm is at the posted Lewis County PUD sign on Peters Road.

(b) The upstream boundary of the reservoir in the Cispus arm is at the posted markers at the Lewis County PUD kayak launch, approximately 1.5 miles upstream from the confluence of the Cowlitz and Cispus arms.

(c) Barbless hooks are required for salmon and steelhead.

(d) Open ~~((June 1 through the last day in February))~~ year-round.

(e) Trout:

(i) ~~((Minimum length 8 inches.))~~ Open June 1 through last day in February.

(ii) Release cutthroat.

(iii) Release rainbow trout, except those with a clipped adipose fin with a healed scar at the site of the clipped fin.

(iv) From September 1 through the last day in February: Limit 10.

(f) Salmon open year-round:

(i) Limit 6; minimum length 8 inches.

(ii) Release wild Chinook and wild coho.

(iii) From January 1 through July 31: No more than 2 adult salmon may be retained.

(iv) From August 1 through December 31: No more than 2 adult hatchery Chinook may be retained.

~~((20))~~ **(23) Cowlitz River (Lewis County):**

(a) From the boundary markers at the mouth to Mayfield Dam:

(i) The following areas are closed:

(A) From 400 feet or posted markers below Cowlitz Salmon Hatchery barrier dam to boundary markers near the Cowlitz Salmon Hatchery water intake approximately 1,700 feet upstream of the Cowlitz Salmon Hatchery barrier dam.

(B) From 400 feet below the Mayfield powerhouse upstream to Mayfield Dam.

(C) Within a 100 foot radius of the new Cowlitz Trout Hatchery outfall structure, except open to anglers with disabilities who permanently use a wheelchair and possess a designated harvester companion card within posted markers when adjacent waters are open.

(ii) Barbless hooks are required for salmon, steelhead, and cutthroat trout, except from June 1 through July 31.

(iii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(iv) From Lexington Bridge Drive in Kelso upstream to the Highway 505 Bridge in Toledo, fishing 2 poles is permissible so long as the angler possesses a two-pole endorsement.

~~((iv))~~ (v) From the mouth to the barrier dam, fishing 2 poles is permissible from June 1 through July 31 so long as the angler possesses a valid two-pole endorsement.

(vi) From the mouth of Mill Creek to the Cowlitz Salmon Hatchery barrier dam:

(A) April 1 through November 30:

(I) Anti-snagging rule applies. Anglers may only retain fish hooked in the mouth when the anti-snagging rule applies.

(II) Night closure in effect.

(B) It is unlawful to fish from a floating device.

(C) May 1 through June 15: It is unlawful to fish from the south side of the river.

~~((v)) (vii) Trout: Open ((the first Saturday in June through March 31:)) year-round.~~

~~(A) ((Trout:~~

~~(H)) From the first Saturday in June through March 31: Limit 5; minimum length 12 inches.~~

~~((H)) (B) Up to two trout over 20 inches may be retained.~~

~~((B)) (C) Release wild cutthroat.~~

~~((vi) Open April 1 through the Friday before the first Saturday in June: Release all fish, except anglers may retain up to 2 hatchery steelhead.~~

~~(vii)) (viii) Salmon:~~

~~(A) Open January 1 through July 31:~~

~~(I) Limit 6; up to 2 hatchery adults may be retained.~~

~~(II) Only hatchery Chinook and hatchery coho may be retained.~~

~~(B) Open August 1 through December 31:~~

~~(I) Limit 6; up to 2 adult hatchery Chinook may be retained.~~

~~(II) Only hatchery Chinook and hatchery coho may be retained.~~

~~((viii)) (ix) Sturgeon: Catch and release only.~~

~~(b) From the posted PUD sign on Peters Road to the mouth of Ohanapecosh River and the mouth of Muddy Fork:~~

~~(i) Barbless hooks are required for salmon and steelhead.~~

~~(ii) September 1 through October 31: Anti-snagging rule applies and night closure in effect. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.~~

~~(iii) Open the first Saturday in June through October 31: Release cutthroat.~~

~~(iv) Open November 1 through the Friday before the first Saturday in June: Release trout except anglers may retain up to 2 hatchery steelhead.~~

~~(v) Salmon:~~

~~(A) Open January 1 through July 31:~~

~~(I) Limit 6; up to 2 adult salmon may be retained.~~

~~(II) Release wild coho and wild Chinook.~~

~~(B) Open August 1 through December 31:~~

~~(I) Limit 6; up to 2 adult hatchery Chinook may be retained.~~

~~(II) Release wild coho and wild Chinook.~~

~~((21)) (24) Cowlitz River, Clear and Muddy Forks (Lewis County):~~

~~(a) Selective gear rules apply.~~

~~(b) ((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(e)) Release cutthroat.~~

~~((22)) (25) Davis Lake (Lewis County): Open the fourth Saturday in April to last day in February.~~

~~((23)) (26) Deep River (Wahkiakum County):~~

~~(a) Game fish: Open year-round.~~

~~(b) Trout: Release all trout except anglers may retain up to 2 hatchery steelhead.~~

~~(c) Sturgeon: Catch and release only.~~

~~(d) Salmon:~~

~~(i) From the mouth to town bridge: Open year-round.~~

~~(ii) January 1 through July 31:~~

~~(A) Limit 6, of which no more than 2 may be adult salmon.~~

~~(B) Release wild Chinook and wild coho.~~

~~(iii) August 1 through December 31:~~

~~(A) Limit 6, of which no more than 2 may be adult Chinook.~~

~~(B) Release chum and wild coho.~~

~~((24)) (27) Delemeter Creek (Cowlitz County):~~

~~(a) Closed from 400 feet below to 200 feet above the temporary weir while the weir is installed in the creek.~~

~~((25)) (b) Release all fish except anglers may retain up to 2 hatchery steelhead or 2 hatchery cutthroat or one of each.~~

~~(c) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.~~

~~(d) Selective gear rules apply.~~

~~(28) Dog Creek (Skamania County): From the falls upstream to the source, release all fish except trout.~~

~~(29) Drano Lake: In the waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Highway 14 Bridge:~~

~~(a) Barbless hooks are required for salmon and steelhead.~~

~~(b) Closed on Wednesdays beginning the second Wednesday in April through June 30.~~

~~(c) Closed from 6 p.m. Tuesdays through 6 p.m. Wednesdays during the month of October.~~

~~(d) March 16 through June 30: Night closure in effect.~~

~~(e) August 1 through December 31: Anti-snagging rule applies.~~

~~(f) May 1 through June 30 and September 15 through December 31:~~

~~(i) Each angler aboard a vessel may deploy salmon/steelhead angling gear until the daily salmon/steelhead limit for all anglers aboard has been achieved.~~

~~(ii) Two-pole fishing for salmon/steelhead is permissible so long as the angler possesses a two-pole endorsement.~~

~~(g) The area west of a line projected from the eastern-most pillar of the Highway 14 Bridge to a posted marker on the north shore is open only to bank fishing from April 16 through June 30.~~

~~(h) ((Game fish other than trout: Open May 1 through March 31:)) Open year-round.~~

~~(i) Trout: Open ((January)) August 1 through March 15; release trout, except anglers may retain up to 2 hatchery steelhead.~~

~~(j) Salmon and steelhead: Open March 16 through December 31:~~

~~(i) From March 16 through July 31: Limit 2 hatchery steelhead or 2 hatchery Chinook, or one of each.~~

~~(ii) From August 1 through December 31: Limit 6; no more than 3 adult salmon, and only 2 hatchery steelhead may be retained.~~

~~((26)) (30) Elochoman River (Wahkiakum County):~~

~~(a) The following areas are closed:~~

~~(i) The waters from 100 feet above the upper hatchery rack downstream to the Elochoman Hatchery Bridge located 400 feet below the upper hatchery rack.~~

~~(ii) The waters from a point 50 feet above to 100 feet below the outlet pipes from the most downstream Elochoman~~

Hatchery rearing pond and extending 30 feet out from the south bank of the river.

(iii) From 200 feet above the department of fish and wildlife temporary weir downstream to Foster (Risk) Road Bridge while the weir is installed in the river.

~~((iv) The mainstem waters from the confluence of the West Fork to the source.))~~

(b) From the mouth to West Fork:

(i) Open the first Saturday in June through March 15.

(ii) August 1 through October 31: Anti-snagging rule, night closure, and stationary gear restriction apply.

(iii) August 1 through March 15: Barbless hooks are required for salmon and steelhead.

(iv) Trout: Release all fish except anglers may retain up to 2 hatchery steelhead.

(v) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(c) From the mouth to the Elochoman Hatchery Bridge located 400 feet below the upper hatchery rack:

(i) Additional opening from the last Saturday in May through the Friday before the first Saturday in June.

(ii) Trout: Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Selective gear rules apply.

(iv) Salmon:

(A) Open the first Saturday in June through December 31.

(B) From the first Saturday in June through July 31: Limit 6 hatchery Chinook, of which no more than 2 may be adults.

(C) From August 1 through December 31:

(I) Limit 6 fish, of which no more than 2 may be adult Chinook.

(II) Release chum, wild coho, and wild Chinook.

~~((27))~~ (d) From West Fork upstream to the source:

(i) Release all fish except anglers may retain up to 2 hatchery steelhead.

(ii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(31) Falls Creek (Cowlitz County): Selective gear rules apply.

(32) Fort Borst Park Pond (Lewis County): Open the fourth Saturday in April through the last day in February, except closed the Monday before Thanksgiving Day through Thanksgiving Day.

~~((28))~~ (33) Franz Lake (Skamania County): Closed.

~~((29))~~ (34) Germany Creek (Cowlitz County) and all tributaries including John and Loper creeks: ((From the mouth to the end of Germany Creek Road (approximately five miles):))

(a) Open the first Saturday in June through August 31 and November 1 through March 15.

(b) ~~((Barbless hooks are required for steelhead.))~~ Selective gear rules apply.

(c) Trout: Release all ~~((fish))~~ trout except anglers may retain up to 2 hatchery steelhead.

~~((30))~~ (d) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(35) Gobar Creek (tributary to Kalama River) (Cowlitz County):

(a) Open the first Saturday in June through March 31.

(b) Selective gear rules apply.

(c) ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(d) Catch and release only.~~

~~(34))~~ Release all fish except adipose clipped trout.

(d) Trout: No minimum size.

(e) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(36) Goble Creek (Cowlitz County):

(a) Release all fish except anglers may retain up to 2 hatchery steelhead.

(b) Selective gear rules apply.

(37) Grays River (Wahkiakum County): From the mouth to South Fork:

(a) Barbless hooks are required for salmon and steelhead.

(b) Open the first Saturday in June through March 15, except closed from Highway 4 Bridge to mouth of South Fork from October 16 through November 30.

(c) Closed from 400 feet below to 200 feet above the temporary weir while the weir is installed in the river.

(d) Anti-snagging rule, night closure and stationary gear restriction apply:

(i) From the mouth to the Highway 4 Bridge August 1 through November 15.

(ii) From the Highway 4 Bridge to the mouth of South Fork August 1 through October 15.

(e) Release all fish except anglers may retain up to 2 hatchery steelhead.

(f) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(g) Salmon:

(i) From the mouth to the Highway 4 Bridge:

(A) Open the first Saturday in June through December 31.

(B) From the first Saturday in June through July 31: Limit 6 hatchery Chinook, of which no more than 2 may be adults.

(C) From August 1 through December 31:

(I) Limit 6, of which no more than 2 may be adult Chinook.

(II) Release chum, wild coho, and unmarked Chinook.

(ii) From the Highway 4 Bridge to the South Fork:

(A) Open the first Saturday in June through October 15 and December 1 through December 31.

(B) From the first Saturday in June through July 31: Limit 6 hatchery Chinook, of which no more than 2 may be adults.

(C) From August 1 through October 15 and December 1 through December 31:

(I) Limit 6 fish, of which no more than 2 may be adult Chinook.

(II) Release chum, wild coho, and unmarked Chinook.

~~((32))~~ (h) From South Fork upstream to source: Selective gear rules apply.

(38) Grays River, East Fork (Wahkiakum County):

(a) Selective gear rules apply.

(b) ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~((e) Trout:))~~ Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((33))~~ (c) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(39) Grays River, South Fork (Wahkiakum County):

(a) Release all fish except anglers may retain up to 2 hatchery steelhead.

(b) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(c) Selective gear rules apply.

(40) Grays River, West Fork (Wahkiakum County):

(a) Downstream from the hatchery intake/footbridge:

~~((a))~~ (i) Barbless hooks are required for salmon and steelhead.

~~((b))~~ (ii) Open the first Saturday in June through March 15, except closed October 16 through November 30 from the posted markers approximately 300 yards below the hatchery road bridge downstream to the mouth.

~~((c))~~ (iii) August 1 through November 15: Anti-snagging rule, night closure and stationary gear restriction apply.

~~((d) October 16))~~ (iv) From the first Sunday in June through March 15: Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((e))~~ (v) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(vi) Salmon: Open from first Saturday in June through December 31.

~~((h))~~ (A) From the first Saturday in June through July 31: Limit 6 hatchery Chinook, of which no more than 2 may be adults.

~~((i))~~ (B) From August 1 through December 31:

~~((A))~~ (I) Limit 6, of which not more than 2 may be adult Chinook.

~~((B))~~ (II) Release chum, wild coho, and unmarked Chinook.

~~((34))~~ (b) From the hatchery intake/footbridge upstream to source:

(i) Open the first Saturday in June through March 15.

(ii) Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(iv) Selective gear rules apply.

(41) Green River (Cowlitz County):

(a) From the mouth to Miner's Creek:

(i) ~~((Barbless))~~ Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(ii) From August 1 through November 30, barbless hooks are required for salmon and steelhead.

~~((i))~~ (iii) The following areas are closed:

(A) All tributaries.

(B) From 400 feet above and 400 feet below the salmon hatchery rack (or from the posted signs above and below the salmon hatchery rack) when the rack is installed in the river.

(C) From 400 feet below to 400 feet above the water intake at the upper end of the hatchery grounds from September 1 through November 30.

(D) From the 2800 Bridge to Miner's Creek.

~~((iii))~~ (iv) September 1 through October 31: Anti-snagging rule applies and night closure in effect from the mouth to 400 feet below the salmon hatchery rack. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

~~((iv))~~ (v) Open the last Saturday in May through November 30:

(A) From the last Saturday in May through the Friday before the first Saturday in June in the waters from the mouth to 400 feet below the Toutle Hatchery water intake:

(I) Selective gear rules apply.

(II) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(B) From the first Saturday in June through November 30: Release all fish, except anglers may retain up to 2 hatchery steelhead.

~~((v))~~ (vi) Salmon:

(A) Open August 1 through November 30.

(B) Limit 6, no more than 2 adult Chinook may be retained.

(C) Release chum, wild coho, and wild Chinook.

(b) From Miner's Creek upstream to the source:

(i) Open from the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Catch and release only.

~~((35))~~ (42) Grizzly Lake (Skamania County): Closed.

~~((36))~~ (43) Hamilton Creek (Skamania County):

(a) ~~((Barbless hooks are required for steelhead:))~~ Selective gear rules apply.

(b) Trout: Release all ~~((fish))~~ trout except anglers may retain up to 2 hatchery steelhead.

(c) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(d) All tributaries downstream from the Highway 14 Bridge: Closed.

~~((37))~~ (44) Hemlock Lake (Trout Creek Reservoir) (Skamania County): Closed.

~~((38))~~ (45) Horseshoe Lake (Clark/Cowlitz counties):

(a) Trout: It is unlawful to retain more than 2 trout 20 inches or more in length.

(b) Landlocked salmon rules apply.

~~((39))~~ (46) Icehouse Lake (Skamania County): It is unlawful to retain more than 2 trout 20 inches or greater in length.

~~((40))~~ (47) Indian Heaven Wilderness Lakes (Skamania County): Trout limit 3.

~~((41))~~ (48) Johnson Creek (Lewis County) (Cowlitz River tributary):

(a) Selective gear rules apply.

(b) ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

(e)) Trout: Minimum length 10 inches.

~~((42))~~ (49) Kalama River (Cowlitz County):

(a) From boundary markers at the mouth upstream to 1,000 feet above the fishway at the upper salmon hatchery:

(i) Open year-round, except the following areas are closed:

(A) From 1,000 feet below to 1,000 feet above the fishway at upper salmon hatchery.

(B) From Modrow Bridge downstream to the markers 1,500 feet below the temporary rack when the rack is installed below Modrow Bridge.

(ii) Barbless hooks are required for salmon and steelhead.

(iii) Release all fish ~~((except anglers may retain up to 2 hatchery steelhead))~~ other than trout.

(iv) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(v) April 1 through October 31: Anti-snagging rule applies and night closure in effect from the railroad bridge below I-5 to the intake at the lower salmon hatchery. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

~~((v))~~ (vi) It is unlawful to fish from a floating device equipped with an internal combustion motor upstream of Modrow Bridge.

~~((vi))~~ (vii) Open September 1 through October 31 for fly fishing only from the natural gas pipeline crossing to the posted deadline at the intake to the lower salmon hatchery.

~~((vii))~~ (viii) From March 16 through the Friday before the first Saturday in June: Release all fish except anglers may retain up to 2 hatchery steelhead.

(ix) From the first Saturday in June through March 15: Release all fish except anglers may retain up to 2 adipose clipped trout. No minimum size.

(x) Salmon:

(A) Open January 1 through April 30:

(I) Limit 6 hatchery Chinook.

(II) No more than one adult hatchery Chinook may be retained.

(B) Open August 1 through December 31:

(I) Limit 6; no more than 2 adult hatchery Chinook may be retained.

(II) Release all salmon other than hatchery Chinook and hatchery coho.

(b) From 1,000 feet above the fishway at the upper salmon hatchery, upstream to Summers Creek:

(i) Open year-round.

(ii) It is unlawful to fish from a floating device equipped with a motor.

(iii) Selective gear rules apply.

(iv) ~~((Release all fish, except anglers may retain up to 2))~~ Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(v) From March 16 through the Friday before the first Saturday in June: Release all fish except anglers may retain up to 2 hatchery steelhead.

(vi) From the first Saturday in June through March 15: Release all fish except anglers may retain up to 2 adipose clipped trout. No minimum size.

(c) From Summers Creek upstream to Kalama Falls:

(i) Closed from the 6420 Road (approximately one mile above the gate at the end of the county road) to Kalama Falls.

(ii) Open the first Saturday in June through March 31 for fly fishing only.

(iii) ~~((It is unlawful to fish from a floating device equipped with a motor.~~

~~((iv))~~ Release all fish, except anglers may retain up to 2 ~~((hatchery steelhead))~~ adipose clipped trout.

~~((43))~~ (A) No minimum size.

(B) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(50) Kanaka Creek (Skamania County): Selective gear rules apply.

(51) Kidney Lake (Skamania County): Open the fourth Saturday in April through last day in February.

~~((44))~~ (52) Klineline Ponds (Clark County):

(a) Closed the Monday before Thanksgiving Day through Thanksgiving Day.

(b) It is unlawful to retain more than 2 trout 20 inches or more in length.

~~((45))~~ (53) Kress Lake (Cowlitz County):

(a) Closed the Monday before Thanksgiving Day through Thanksgiving Day.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) It is unlawful to retain more than 2 trout 20 inches or more in length.

(d) Landlocked salmon rules apply.

~~((46))~~ (54) Lacamas Creek (Clark County):

(a) From the mouth to the footbridge at the lower falls:

(i) Open the first Saturday in June through August 31.

(ii) Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(iv) Selective gear rules apply.

(b) From the footbridge at the lower falls upstream to the source: It is permissible to fish up to the base of Lacamas Lake Dam.

~~((47))~~ (c) From Round Lake upstream to source and all tributaries (Clark County) including Spring Branch, Big Ditch, Fifth Plain Creek, Matney Creek, Buck Creek, David Creek, North Fork and East Fork Lacamas Creek (Clark Co.): Statewide season, minimum size, and daily limits apply.

(55) Lacamas Creek, tributary of Cowlitz River (Lewis County):

(a) ~~((Barbless hooks are required for steelhead.))~~ Selective gear rules apply.

(b) Trout: Release all trout except anglers may retain up to 2 hatchery steelhead or 2 hatchery cutthroat or one of each.

~~((48))~~ (56) Lewis River (Clark County):

(a) Open year-round from the mouth to the mouth of East Fork.

(b) Barbless hooks are required for salmon and steelhead.

(c) Fishing 2 poles is permissible from Railroad Bridge near Kuhns Road upstream to mouth of East Fork Lewis, so long as the angler possesses a two-pole endorsement.

(d) Trout:

(i) Release all trout except anglers may retain up to 2 hatchery steelhead.

(ii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(e) Salmon:

(i) Open January 1 through April 30: Limit 6 hatchery Chinook; no more than one may be an adult.

(ii) Open August 1 through September 30:

(A) Limit 6 hatchery salmon; no more than 2 may be adult hatchery Chinook.

(B) Release all salmon except hatchery Chinook and hatchery coho.

(iii) Open October 1 through December 31:

(A) Limit 6; no more than 2 may be adult Chinook.

(B) Release all salmon except Chinook and hatchery coho.

(f) Sturgeon: Catch and release only.

~~((49))~~ (i) From the mouth of East Fork to Colvin Creek:

(ii) Open year-round except the following areas are closed:

(A) From Johnson Creek upstream May 1 through May 31.

(B) Those waters shoreward of the cable buoy and cork-line at the mouth of the Lewis River Salmon Hatchery fish ladder.

(iii) Barbless hooks are required for salmon and steelhead.

(iv) Fishing 2 poles is permissible from the mouth to Johnson Creek, so long as the angler possesses a valid two-pole endorsement.

(v) Anti-snagging rule applies and night closure in effect from Johnson Creek to Colvin Creek June 1 through November 30 and April 1 through April 30. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(vi) Trout:

(A) Release all trout except anglers may retain up to 2 hatchery steelhead.

(B) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(vii) Salmon:

(A) Open August 1 through April 30.

(B) From August 1 through September 30: Limit 6 hatchery Chinook or hatchery coho, of which no more than 2 may be adult hatchery Chinook.

(C) From October 1 through December 31: Limit 6 Chinook or hatchery coho, of which no more than 2 adult Chinook may be retained.

(D) From January 1 through April 30: Limit 6 hatchery Chinook of which only one may be an adult salmon. Release all other salmon.

(g) Sturgeon: Catch and release only.

(i) From the mouth of Colvin Creek to the overhead powerlines at Merwin Dam:

(ii) Barbless hooks are required for salmon and steelhead.

(iii) Open June 1 through October 31 and December 16 through April 30.

(iv) Anti-snagging rule applies and night closure in effect April 1 through April 30 and June 1 through October 31. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(v) Trout:

(A) Release all fish except anglers may retain up to 2 hatchery steelhead.

(B) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(vi) Salmon:

(A) Open August 1 through October 31 and December 16 through April 30.

(B) From January 1 through April 30: Limit 6 hatchery Chinook of which only one may be an adult salmon.

(C) From August 1 through September 30: Limit 6 hatchery salmon, of which no more than 2 may be adult hatchery Chinook. Release all salmon except hatchery Chinook and hatchery coho.

(D) From October 1 through October 31 and December 16 through December 31: Limit 6 salmon, of which no more than 2 may be adult Chinook. Release all salmon except Chinook and hatchery coho.

(h) Sturgeon: Catch and release only.

(i) From the overhead powerlines below Merwin Dam to Merwin Dam: Closed.

(ii) From the cable crossing 1,300 feet below Yale Dam to Yale Dam: Closed.

(iii) From the old Lewis River streambed between Swift No. 1 Powerhouse and Swift No. 2 Powerhouse and Lewis River Power Canal upstream to fishing pier: Closed.

(iv) Within Lewis River Power Canal from the fishing pier to the access road at Swift Dam:

(A) Open the fourth Saturday in April through October 31.

(B) It is unlawful to fish from a floating device.

(C) Trout: Limit 5; no minimum size.

(D) From Eagle Cliff Bridge to the lower falls, including all tributaries: Selective gear rules apply.

(II) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(III) Catch and release only.

(i) From lower falls upstream and all tributaries including Copper, Alec, Quartz, Straight (tributary of Quartz), Snagtooth (tributary of Quartz), French (tributary of Quartz), Tillicum, Steamboat, Pin, Pass, Swampy, Riley, No Name (tributary of Riley), Big Spring (tributary of Riley), Mutton (tributary of Riley), and Boulder creeks (Skamania Co.): Statewide season, minimum size, and daily limits.

(57) **Lewis River, East Fork (Clark/Skamania counties):**

(a) The following areas are closed:

(i) From the posted markers at the lower end of Big Eddy to 100 feet above Lucia Falls.

(ii) From 400 feet below to 400 feet above (~~Molton~~) Moulton Falls.

(iii) From 400 feet below Horseshoe Falls upstream, including all tributaries above Horseshoe Falls.

(b) From the mouth to 400 feet below Horseshoe Falls:

(i) Open the first Saturday in June through March 15.

(ii) Barbless hooks are required for steelhead.

(iii) Release all trout except anglers may retain up to 2 hatchery steelhead.

(iv) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(c) From the mouth to the top boat ramp at Lewisville Park:

(i) Additional ~~((opening)) hatchery steelhead season~~ from April 16 through the Friday before the first Saturday in June.

(ii) Selective gear rules apply.

~~(iii) ((It is unlawful to fish from a floating device equipped with an internal combustion motor.)) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.~~

(iv) Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((50) Lewis River, North Fork (Clark/Skamania counties):~~

(a) From the mouth to Colvin Creek:

(i) Open year-round except the following areas are closed:

~~(A) From Johnson Creek upstream May 1 through May 31.~~

~~(B) Those waters shoreward of the cable buoy and cork line at the mouth of the Lewis River Salmon Hatchery fish ladder.~~

(ii) Barbless hooks are required for salmon and steelhead.

(iii) Fishing 2 poles is permissible from the mouth to Johnson Creek, so long as the angler possesses a two-pole endorsement.

~~(iv) Anti-snagging rule applies and night closure in effect June 1 through November 30 and April 1 through April 30 from Johnson Creek to Colvin Creek. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.~~

~~(v) Trout: Release all trout except anglers may retain up to 2 hatchery steelhead.~~

~~(vi) Salmon:~~

~~(A) Open August 1 through April 30.~~

~~(B) From August 1 through September 30: Limit 6 hatchery Chinook or hatchery coho, of which no more than 2 may be adult hatchery Chinook.~~

~~(C) From October 1 through December 31: Limit 6 Chinook or hatchery coho, of which no more than 2 adult Chinook may be retained.~~

~~(D) From January 1 through April 30: Limit 6 hatchery Chinook of which only 1 may be an adult salmon. Release all other salmon.~~

~~(vii) Sturgeon: Catch and release only.~~

~~(b) From the mouth of Colvin Creek to the overhead powerlines at Merwin Dam:~~

~~(i) Barbless hooks are required for salmon and steelhead.~~

~~(ii) Open June 1 through October 31 and December 16 through April 30.~~

~~(iii) Anti-snagging rule applies and night closure in effect April 1 through April 30 and June 1 through October 31. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.~~

~~(iv) Trout: Release all fish except anglers may retain up to 2 hatchery steelhead.~~

~~(v) Salmon:~~

~~(A) Open August 1 through October 31 and December 16 through April 30.~~

~~(B) From January 1 through April 30: Limit 6 hatchery Chinook of which only one may be an adult salmon.~~

~~(C) From August 1 through September 30: Limit 6 hatchery salmon, of which no more than 2 may be adult hatchery Chinook. Release all salmon except hatchery Chinook and hatchery coho.~~

~~(D) From October 1 through October 31 and December 16 through December 31: Limit 6 salmon, of which no more than 2 may be adult Chinook. Release all salmon except Chinook and hatchery coho.~~

~~(vi) Sturgeon: Catch and release only.~~

~~(e) From the overhead powerlines below Merwin Dam to Merwin Dam: Closed.~~

~~(d) From the cable crossing 1,300 feet below Yale Dam to Yale Dam: Closed.~~

~~(e) From the old Lewis River streambed between Swift No. 1 Powerhouse and Swift No. 2 Powerhouse and Lewis River Power Canal upstream to fishing pier: Closed.~~

~~(f) Within Lewis River Power Canal from the fishing pier to the access road at Swift Dam:~~

~~(i) Open the fourth Saturday in April through October 31.~~

~~(ii) It is unlawful to fish from a floating device.~~

~~(iii) Trout: Limit 5; no minimum size.~~

~~(g) From Eagle Cliff Bridge to the lower falls, including all tributaries:~~

~~(i) Selective gear rules apply.~~

~~(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(iii) Catch and release only.~~

~~(51)) (58) Little Ash Lake (Skamania County): It is unlawful to retain more than 2 trout 20 inches or more in length.~~

~~((52)) (59) Little Washougal River (Clark County): ((Barbless hooks are required for steelhead.~~

~~(53))~~

~~(a) Release all fish except anglers may retain up to 2 hatchery steelhead.~~

~~(b) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.~~

~~(c) Selective gear rules apply.~~

~~(60) Little White Salmon River (Skamania County) and all tributaries including Rock, Lapham, Lava, Moss, Wilson, Cabbage, Berry, Lusk, Homes, and Beetle creeks:~~

~~(a) Open the Saturday before Memorial Day through October 31, except Little White Salmon River is closed from the orange fishing boundary markers at Drano Lake upstream to the intake near the north boundary of the Little White Salmon National Fish Hatchery.~~

~~(b) Release all fish except trout.~~

~~(c) Trout: Limit 5.~~

~~((54)) (61) Love Lake (Clark County): Closed.~~

~~((55)) (62) Mayfield Lake (Reservoir) (Lewis County):~~

~~(a) Open from the Mayfield Dam to ((Mossyrock Dam)) Onion Rock Bridge.~~

~~(b) From the Tacoma Power safety signs at Onion Rock Bridge to Mossyrock Dam: Closed.~~

~~(c) Trout:~~

~~(i) ((Minimum length 8 inches.~~

~~((ii))~~ Release cutthroat and rainbow trout, except it is permissible to retain rainbow trout with a clipped adipose fin and a healed scar at the site of the clipped fin.

(ii) September 1 through last day in February: Daily limit 10.

(d) Salmon open September 1 through December 31:

(i) Minimum length 8 inches.

(ii) Limit 6, no more than 2 may be adult salmon.

(iii) Release wild coho and wild Chinook.

~~((56))~~ (63) Merrill Lake (Cowlitz County):

(a) Open for fly fishing only.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Catch and release only.

~~((57))~~ (64) Merwin Lake (Reservoir) (Clark/Cowlitz counties):

(a) Landlocked salmon rules apply.

(b) Kokanee: Limit 10; kokanee do not count as part of the trout limit.

~~((58))~~ (65) Merwin Lake (Reservoir) (Clark/Cowlitz counties) tributaries including Marble, Cape Horn, Day, Jim, Indian George, Squaw, Buncombe Hollow, Rock creeks, Speelvai Creek and its tributaries, Brooks, and West Fork creeks (except Canyon Creek): Statewide season, minimum size, and daily limits apply.

(66) Mill Creek (Cowlitz County):

(a) Open the first Saturday in June through August 31 and November 1 through March 15.

(b) ~~((Barbless hooks are required for steelhead.))~~ Selective gear rules apply.

(c) Release all trout except anglers may retain up to 2 hatchery steelhead.

~~((59))~~ (d) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(67) Mill Creek (Lewis County): From the mouth to the hatchery road crossing culvert.

(a) ~~((Barbless hooks are required for steelhead.))~~

~~((b))~~ Open the first Saturday in June through October 31.

~~((c))~~ (b) Open December 1 through December 31 ~~((from the mouth to hatchery road crossing culvert:))~~

~~((i))~~ Anti-snagging rule applies and night closure in effect.

~~((ii))~~ (c) Release all fish except anglers may retain up to 2 hatchery steelhead or 2 hatchery cutthroat or one of each.

~~((60))~~ (68) Mineral Lake (Lewis County): Open the fourth Saturday in April through September 30.

~~((61))~~ (69) Mulholland Creek (Cowlitz County):

(a) Catch and release except anglers may retain up to 2 hatchery steelhead.

(b) Selective gear rules apply.

(70) Nelson Creek (Skamania County): Selective gear rules apply.

(71) Ohanapecosh Creek (tributary to Cowlitz River) (Lewis/Pierce counties):

(a) Selective gear rules apply.

(b) ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.))~~

~~((c))~~ Trout: Minimum length 12 inches.

~~((62))~~ (72) Olequa Creek (Lewis/Cowlitz counties):

(a) Closed from 400 feet below to 200 feet above the temporary weir while the weir is installed in the creek.

(b) Trout: Release all trout except anglers may retain up to 2 hatchery steelhead or 2 hatchery cutthroat or one of each.

(c) ~~((Barbless hooks are required for steelhead.))~~

~~((63))~~ Selective gear rules apply.

(73) Ostrander Creek (Cowlitz County): Selective gear rules apply.

(74) Outlet Creek (Cowlitz County):

(a) First Saturday in June through November 30.

(b) Trout:

(i) Release all trout except anglers may retain up to 2 hatchery steelhead.

(ii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(c) Selective gear rules apply.

(75) Packwood Lake (Lewis County):

(a) Closed: All inlet streams and the outlet from the log boom to the dam.

(b) Open the fourth Saturday in April through October 31.

(c) Selective gear rules apply.

(d) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(e) Trout: Minimum length 10 inches.

~~((64) Panther Creek (tributary to Wind River) (Skamania County):~~ Closed.

~~((65))~~ (76) Plummer Lake (Lewis County): Open the fourth Saturday in April through the last day in February.

~~((66))~~ (77) Rainey Creek (Lewis County):

(a) Open from the mouth to Highway 12.

(b) Trout limit 5; release cutthroat and rainbow trout, except it is permissible to retain rainbow trout that have a clipped adipose fin and a healed scar at the location of the clipped fin.

~~((67))~~ (78) Riffe Lake (Reservoir) (Lewis County):

(a) Open from Mossyrock Dam to Cowlitz Falls Dam, except closed from Cowlitz Falls Dam downstream to the Lewis County PUD safety signs located approximately 800 feet below the dam.

(b) It is permissible to fish up to the base of Swofford Pond Dam.

(c) Landlocked salmon rules apply.

~~((68))~~ (79) Riffe Lake (Reservoir) tributaries (Lewis County) (excluding Rainey Creek), including Sulphur, Simons, Swigert, Shelton, Steel Canyon, Indian, Sand, Landers, Peterson, Goat, and Tumwater creeks: Statewide season, minimum size, and daily limits apply.

(80) Rock Creek (Skamania County):

(a) ~~((Open))~~ From the mouth to the falls at approximately river mile one.

(i) First Saturday in June through March 15.

(ii) Trout:

(A) Release all trout except anglers may retain up to 2 hatchery steelhead.

~~((ii))~~ (B) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(C) Barbless hooks are required for steelhead.

(b) From the falls upstream to source/headwaters(~~(=~~
~~(i) Open the first Saturday in June through March 15.~~
~~(ii) Barbless hooks are required for steelhead.~~
~~(69)) and all tributaries including Spring Creek, Hot Springs, Budweiser Creek, Forest Creek, Steep Creek, North Fork Rock Creek, and Snag Creek: Statewide seasons, minimum size, daily limits apply.~~

(81) Salmon Creek (Clark County): ~~((a))~~ From the mouth to ~~((72nd))~~ 182nd Avenue ~~((N.E.))~~ Bridge:

~~((b))~~ (a) Open the first Saturday in June through March 15.

~~((c))~~ (b) Trout:

(i) Release all ~~((fish))~~ trout except anglers may retain up to 2 hatchery steelhead.

~~((d))~~ (ii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(c) Barbless hooks are required for steelhead.

~~((b))~~ ~~From 72nd Avenue N.E. Bridge upstream: Closed.~~

~~(70))~~ **(82) Salmon Creek (Lewis County):** ~~((Closed from 400 feet below to 200 feet above the temporary weir while the weir is installed in the creek:~~

~~(71))~~

(a) Trout:

(i) Release all fish except anglers may retain up to 2 hatchery steelhead or 2 hatchery cutthroat or one of each.

(ii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Selective gear rules apply.

(83) Silver Lake (Cowlitz County): Crappie limit 10; minimum length 9 inches.

~~((72))~~ **(84) Silver Creek (tributary to Cowlitz River) (Lewis County):**

(a) Open from the mouth to USFS Road 4778.

(b) Selective gear rules apply.

~~(c) ((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~((d))~~ Trout: Minimum length 14 inches.

~~((73))~~ **(85) Skamokawa Creek (Wahkiakum County):**

(a) Open ~~the first Saturday in June~~ ~~((+))~~ through ~~((October))~~ August 31 ~~((from the mouth to the forks just below Oatfield and Middle Valley Road)).~~

(b) Trout:

(i) Release all trout except anglers may retain up to 2 hatchery steelhead.

(ii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

~~((c))~~ ~~(Barbless hooks are required for steelhead.~~

~~(74))~~ Selective gear rules apply.

(86) Skate Creek (tributary to Cowlitz River) (Lewis County):

(a) Release all cutthroat.

~~((75))~~ (b) Selective gear rules apply.

(87) South Lewis County Park Pond (Lewis County): Closed the Monday before Thanksgiving Day through Thanksgiving Day.

~~((76))~~ **(88) Spirit Lake (Skamania County):** Closed.

~~((77))~~ **(89) Stillwater Creek (Lewis County):**

(a) Trout:

(i) Release all trout except anglers may retain up to 2 hatchery steelhead or 2 hatchery cutthroat or one of each.

(ii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Selective gear rules apply.

(90) Swift Reservoir (Skamania County):

(a) Open the first Saturday in June through November 30.

(b) Trout maximum length 15 inches.

(c) From the posted markers approximately 3/8 mile below Eagle Cliff Bridge to the bridge: Selective gear rules apply.

~~((e))~~ (d) From the dam to the markers approximately 3/8 mile below Eagle Cliff Bridge: Trout limit 10 from September 1 through November 30.

~~((f))~~ (e) Salmon:

(i) Open the first Saturday in June through November 30.

(ii) Landlocked salmon rules apply.

(iii) Maximum length 15 inches.

~~((78))~~ **(91) Swift Reservoir tributaries (Skamania County)** including Ole, Swift, Work, Diamond, Marble, Range, Drift, and Camp creeks: Selective gear rules apply.

(92) Swofford Pond (Lewis County): It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((79))~~ **(93) Tilton River (Lewis County):**

(a) Open ~~((the first Saturday in June through March 31))~~ year-round from the mouth to the West Fork.

(b) Barbless hooks are required for steelhead.

(c) First Saturday in June through July 31: Selective gear rules apply.

(d) September 1 through October 31: Anti-snagging rule applies and night closure in effect. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

~~((d))~~ (e) Release all cutthroat.

~~((e))~~ (f) Salmon open August 1 through December 31:

(i) Minimum length 8 inches.

(ii) Limit 6; no more than 2 adult Chinook may be retained.

(iii) Release wild coho and wild Chinook.

~~((80))~~ **(94) Tilton River, East, North, South and West Forks (Lewis County):**

(a) Selective gear rules apply.

~~((b))~~ ~~(It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~((c))~~ Trout: Minimum length 12 inches.

~~((81))~~ **(95) Toutle River (Cowlitz County):**

(a) From the mouth to the forks, and the North Fork from the mouth to the posted deadline below the fish collection facility:

(i) Open the first Saturday in June through November 30.

(ii) September 1 through October 15: Anti-snagging rule applies and night closure in effect on the North Fork from the confluence with the South Fork to the mouth of Green River.

(iii) Barbless hooks are required for salmon and steelhead.

(iv) Gamefish:

(A) Release all fish except anglers may retain up to 2 hatchery steelhead.

(B) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(v) Salmon open August 1 through November 30:

(A) Limit 6, no more than 2 may be adult Chinook.

(B) Release chum, wild coho, and wild Chinook.

(b) From the posted deadline below the fish collection facility upstream to the headwaters, including all tributaries except Castle and Coldwater lakes: Closed.

~~((82))~~ **(96) Toutle River, South Fork (Cowlitz County):**

(a) ~~((All tributaries are closed.~~

~~(b) During all open times,))~~ Release all fish except anglers may retain up to 2 hatchery steelhead.

(b) Trout:

(i) Barbless hooks are required for steelhead from August 1 through November 30.

(ii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(c) From the mouth to 4700 Road Bridge:

(i) Open the last Saturday in May to the Friday before the first Saturday in June.

(ii) Selective gear rules apply.

(d) From the mouth to the 4100 Road Bridge:

(i) Open the first Saturday in June through March 15.

(ii) From December 1 through March 15~~((=~~

~~(A)) selective gear rules apply.~~
~~((B) It is unlawful to fish from a floating device equipped with an internal combustion motor.))~~

(e) From 4100 Road Bridge upstream to source: Open the first Saturday in June through November 30.

~~((83) Trout Creek (tributary to Wind River) (Skamania County): Closed.~~

~~(84))~~ **(97) Tunnel Lake (Skamania County):** It is unlawful to retain more than 2 trout 20 inches or more in length.

~~((85))~~ **(98) Vancouver Lake and all other waters west of Burlington Northern Railroad from the Columbia River drawbridge near Vancouver downstream to Lewis River (Clark County):**

(a) Vancouver Lake flushing channel and the lake shoreline 400 feet east and west of the channel exit: Closed April 1 through May 31.

(b) Chumming is permissible.

(c) Trout: ~~((Limit 2; minimum length 12 inches.))~~
Release all trout except anglers may retain up to 2 hatchery steelhead.

(d) Sturgeon: Catch and release only.

~~((86))~~ **(99) Walupt Lake (Lewis County):**

(a) All inlet streams are closed.

(b) Open the fourth Saturday in April through October 31.

(c) Selective gear rules apply.

(d) Trout: Minimum length 10 inches.

~~((87))~~ **(100) Washougal River (Clark County):**

(a) From the mouth to the bridge at Salmon Falls:

(i) Closed from 200 feet (or posted markers) below to 200 feet above the temporary weir when the weir is installed in the river.

(ii) Open the first Saturday in June through March 15.

(iii) Barbless hooks are required for salmon and steelhead.

(iv) Night closure in effect:

(A) Year-round from the mouth to Mount Norway Bridge.

(B) September 1 through October 31 from Mount Norway Bridge upstream.

(v) Anti-snagging rule applies:

(A) July 1 through October 31 from the mouth to Mount Norway Bridge; and

(B) September 1 through October 31 from Mount Norway Bridge upstream.

(C) When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(vi) Trout:

(A) Release all trout except anglers may retain up to 2 hatchery steelhead.

(B) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(vii) Open from the mouth to Mount Norway Bridge April 16 through the Friday before the first Saturday in June:

(A) Selective gear rules apply.

(B) ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(C))~~ Trout:

(D) Release all trout except anglers may retain up to 2 hatchery steelhead.

(II) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(viii) Salmon:

(A) Open August 1 through December 31.

(B) Limit 6; no more than 2 adults may be hatchery Chinook.

(C) Release chum, wild coho, and wild Chinook.

(b) From the bridge at Salmon Falls to the source, including tributaries: Closed.

~~((88))~~ **(101) Washougal River, West (North) Fork (Clark/Skamania counties):**

(a) From the mouth to the water intake at the department hatchery: Closed.

(b) From the intake at the department hatchery to the source:

(i) Open the first Saturday in June through March 15.

(ii) Trout:

(A) Release all trout except anglers may retain up to 2 hatchery steelhead.

(B) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(iii) Barbless hooks are required for steelhead.

~~((89))~~ **(102) Willame Lake (Lewis County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit 2; minimum length 15 inches.

~~((90))~~ **(103) Wind River (Skamania County):**

(a) Barbless hooks are required for salmon and steelhead.

(b) From the mouth to 100 feet above Shipherd Falls:

(i) Closed from 400 feet below to 100 feet above Shipherd Falls fish ladder, including all tributaries.

(ii) March 16 through June 30: Night closure in effect.

(iii) August 1 through October 31: Anti-snagging rule applies. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(iv) May 1 through June 30:

(A) Anti-snagging rule applies from Burlington Northern Railroad Bridge upstream. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(B) Each angler aboard a vessel may deploy salmon/steelhead angling gear until the daily salmon/steelhead limit for all anglers aboard has been achieved.

(C) Two-pole fishing for salmon/steelhead is permissible so long as the angler possesses a two-pole endorsement.

(v) Open ~~((for game fish, except trout: July 1 through March 15))~~ year-round.

(vi) Trout:

(A) Open August 1 through March 15.

(B) ~~((Minimum length 14 inches.))~~ Release all trout except anglers may retain up to 2 hatchery steelhead.

(C) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(vii) Salmon and steelhead:

(A) Open March 16 through July 31:

(I) Limit 2; no more than 2 salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release wild Chinook.

(B) Open August 1 through October 31:

(I) From the mouth to the Highway 14 Bridge, the daily catch limit and retention regulations for hatchery and wild fish follows the most liberal regulations of the mainstem Columbia and Wind rivers when both areas are open concurrently for salmon.

(II) Limit 6; up to 2 adults may be retained.

(III) Release wild coho and wild Chinook.

(c) From 100 feet above Shipherd Falls to the river source:

(i) The following areas are closed: All tributaries; from 400 feet below to 100 feet above Coffey Dam; from Moore Bridge upstream to the river source, including all tributaries.

(ii) From 100 feet above Shipherd Falls to 800 yards downstream from Carson National Fish Hatchery:

(A) Open September 16 through November 30:

(I) Catch and release only(~~(=)~~).

(II) Selective gear rules apply(~~(=and~~

~~(III) It is unlawful to fish from a floating device equipped with an internal combustion motor).~~

(B) Salmon and steelhead open May 1 through June 30:

(I) Limit 2; no more than 2 salmon, or 2 hatchery steelhead, or one of each, may be retained;

(II) Anti-snagging rule applies;

(III) Only fish hooked inside the mouth may be retained;

(IV) Barbless hooks are required; and

(V) Night closure in effect.

(iii) From 800 yards downstream from Carson National Fish Hatchery to Moore Bridge open September 16 through November 30:

(A) Catch and release only (~~(and)~~).

(B) Selective gear rules apply(~~(=~~

~~(B) It is unlawful to fish from a floating device equipped with an internal combustion motor).~~

~~((91))~~ **(104) Winston Creek (tributary to Cowlitz River) (Lewis County):**

(a) Selective gear rules apply.

(b) ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(=))~~ Trout: Minimum length 10 inches.

~~((92))~~ **(105) Yale Reservoir (Cowlitz County):**

(a) Kokanee: Limit 16; kokanee do not count toward the trout limit.

(b) Landlocked salmon rules apply.

~~((93))~~ **(106) Yale Reservoir tributaries (Cowlitz and Clark counties) excluding Cougar Creek and including Dog, Dry, Siouxon and its tributaries including North Siouxon, West, Horseshoe, Wildcat, Chinook, and Calamity creeks: Statewide season, minimum size and daily limits apply.**

(107) Yellowjacket Creek (tributary to Cispus River) (Lewis County):

(a) Selective gear rules apply.

(b) ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(=))~~ Trout: Minimum length 12 inches.

AMENDATORY SECTION (Amending WSR 14-16-027, filed 7/25/14, effective 8/25/14)

WAC 220-310-195 Freshwater exceptions to statewide rules—Eastside. (1) ((County-wide)) Countywide freshwater exceptions to statewide rules:

(a) ~~((Adams and Grant counties: All seasons in specific freshwater exceptions to statewide rules apply to inlet and outlet streams of named lakes in Grant and Adams counties.))~~ All lake, pond, and reservoir inlets and outlets and irrigation canals, wasteways, and drains in Grant and Adams counties (except Crab Creek, Rocky Ford Creek and Ponds, Columbia Basin Hatchery Creek, Bobcat Creek, Coyote Creek, Hays Creek, Red Rock Creek, Sand Hollow Creek, and Lake Lenore inlet and outlet) are open year-round.

(b) In Adams, Douglas, Franklin, Grant, and Okanogan counties, except Zosel Dam (Okanogan River) and Enloe Dam (Similkameen River): It is permissible to fish up to the base of all dams.

(c) In Ferry ((and)), Lincoln, and Stevens counties:

(i) Unless otherwise provided in this section, all tributaries to Lake Roosevelt between Grand Coulee Dam and the State Highway 25 Bridge at Northport except Barnaby ~~((and)),~~ Nancy, and Onion creeks are open the Saturday before Memorial Day through October 31.

(ii) Trout: Limit 5, no minimum length.

(2) Aeneas Lake (Okanogan County):

(a) Open the fourth Saturday in April through October 31 for fly fishing only.

(b) It is unlawful to fish from a floating device equipped with a motor.

(c) Trout: Limit one.

(3) Ahtanum Creek, including North and Middle Forks (Yakima County):

(a) Selective gear rules apply.

(b) In the North Fork, open from the mouth to Grey Rock Trailhead Bridge crossing ~~((to))~~ and upstream from the mouth of Shellneck Creek ~~((and))~~

(c) In the Middle Fork, open from the mouth to the A2000 Road ~~((Bridge at Tree Phones Campground downstream))~~ to the ~~((A2000))~~ Spur Road Bridge in NE Section 34 ~~((=Closed))~~ and upstream of the A2000 Road Bridge at Tree Phones Campground. Trout minimum length ten inches.

~~((4)) **(Alkali Lake (Grant County):**~~

~~((a)) Bluegill: It is unlawful to retain more than five greater than six inches in length.~~

~~((b)) Crappie: It is unlawful to retain more than five greater than eight inches in length.~~

~~((5)) **Alta Lake (Okanogan County):** Open the fourth Saturday in April through ~~((September 30))~~ October 31.~~

~~((6)) **(5) Amber Lake (Spokane County):**~~

(a) Selective gear rules apply.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Open March 1 through November 30.

(i) From March 1 through the Friday before fourth Saturday in April, and October 1 through November 30: Catch and release only.

(ii) From the fourth Saturday in April through September 30:

(A) Trout: Limit two; minimum length fourteen inches.

(B) Release rainbow trout with a clipped adipose fin and a healed scar at the site of the clipped fin.

~~((7)) **(6) American River (Yakima County):**~~

(a) Selective gear rules apply.

(b) From the Highway 410 Bridge at river mile 5.4 to the Mesatchee Creek Trail crossing at river mile 15.8 ~~((from July 16 through September 15: Closed.~~

~~((8)):~~

(i) Open the first Saturday in June to July 15.

(ii) Open September 16 to October 31.

(c) From the mouth to the Highway 410 Bridge at river mile 5.4 and upstream of the Mesatchee Creek Trail river crossing at river mile 15.8: Open the first Saturday in June through October 31.

(d) Trout minimum length ten inches in the mainstem only.

(e) American River tributaries, except Union and Kettle creeks: Open.

(7) Amon Wasteway (Benton County):

(a) Selective gear rules apply.

~~((9)) (b) Trout minimum length ten inches.~~

(8) Asotin Creek, mainstem and forks (Asotin County):

(a) It is unlawful to fish for steelhead.

(b) From SR 129 Bridge upstream to the forks: It is permissible to fish up to the base of Headgate Dam.

(c) Asotin mainstem and the mainstem North Fork from the mouth upstream to the USFS boundary: ~~((+))~~ Selective gear rules apply.

~~((ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.)~~

(d) North Fork from the USFS boundary upstream and all other tributaries: Closed.

(e) South Fork and tributaries: Closed.

~~((+)) **(9) B.C. Mill Pond (Stevens County):** Open the fourth Saturday in April through October 31.~~

~~((+)) **(10) Badger Lake (Spokane County):** Open the fourth Saturday in April through September 30.~~

~~((+)) **(11) Banks Lake (Grant County):**~~

(a) Chumming is permissible.

(b) Crappie: Limit 10; minimum size 9 inches.

(c) Perch: Limit twenty-five.

~~((+)) **(12) Bayley Lake (Stevens County):**~~

(a) Inlet stream: Closed.

(b) Fly fishing only.

(c) It is unlawful to fish from a floating device equipped with a motor.

(d) Open the fourth Saturday in April through October 31.

(i) From the fourth Saturday in April through July 4: Trout limit one; minimum length 14 inches.

(ii) From July 5 through October 31: Catch and release only.

~~((+)) **(13) Bear Creek (Yakima County) (tributary to South Fork Tieton River):** ~~((Closed from the mouth to the falls (approximately 3/4 mile)))~~ Open upstream of the Bear Creek Falls, approximately 3.4 miles upstream of USFS Road 1070.~~

~~((+)) **(14) Bear Lake (Spokane County):** Open to juvenile anglers, licensed adults accompanied by a juvenile, and anglers with a disability who possess a designated harvester companion card only.~~

~~((+)) **(15) Beaver Lake (Columbia County):**~~

(a) Open March 1 through October 31.

(b) It is unlawful to fish from any floating device.

~~((+)) **(16) Beaver Lake (Big) (Okanogan County):** Open the fourth Saturday in April through October 31.~~

(17) Beaver Lake (Little) (Okanogan County): Open fourth Saturday in April through October 31.

(18) Beda Lake (Grant County):

(a) Selective gear rules apply.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Trout: Limit one.

~~((+)) **(19) Beehive (Lake) Reservoir (Chelan County):**~~

(a) Open the fourth Saturday in April through October 31.

(b) From July 5 through October 31:

(i) Selective gear rules apply.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Catch and release only.

~~((19))~~ (20) Bennington Lake (Mill Creek Reservoir) (Walla Walla County):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

~~((20))~~ (21) Beth Lake (Okanogan County): Open the fourth Saturday in April through October 31.

(22) Big Four Lake (Columbia County):

(a) Open March 1 through October 31 for fly fishing only.

(b) It is unlawful to fish from any floating device.

(c) Trout: Limit two.

~~((21))~~ (23) Big Meadow Creek (Chelan County): From the mouth upstream:

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout:

(i) Rainbow trout: Catch and release only.

(ii) Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

(e) Big Meadow Creek tributaries from the mouth of Big Meadow Creek upstream: Open the Saturday before Memorial Day through October 31.

(24) Big Meadow Lake (Pend Oreille County):

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

~~((22))~~ (25) Big Tiffany Lake (Okanogan County):

(a) Eastern brook trout (~~(limit ten);~~ No limit; eastern brook trout do not count toward the daily trout limit.

(b) ~~(Release all)~~ Cutthroat: Limit two.

~~((23))~~ (26) Big Twin Lake (Okanogan County):

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one.

~~((24))~~ (27) Bird Creek (Klickitat County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Trout: Limit 5.

~~((25))~~ (28) Blackbird Island Pond (Chelan County): Open July 1 through September 30 for juvenile anglers only.

~~((26))~~ (29) Black Lake (Okanogan County):

(a) Selective gear rules apply.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((27))~~ (30) Black Lake (Stevens County): Open the fourth Saturday in April through October 31.

~~((28))~~ (31) Blockhouse Creek (Klickitat County): Trout limit five.

~~((29) Bloodgood Creek (Klickitat County):~~ Trout limit five.

~~(30))~~ (32) Blue Lake (Columbia County):

(a) ~~(Open March 1 through October 31.~~

~~(b))~~ It is unlawful to fish from any floating device.

~~((e))~~ (b) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

~~((31))~~ (33) Blue Lake (Grant County): Open the fourth Saturday in April through September 30.

~~((32))~~ (34) Blue Lake (near Sinlahekin) (Okanogan County):

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(e) Trout: Limit one.

~~((33))~~ (35) Blue Lake (near Wannacut Lake) (Okanogan County):

(a) Open the Fourth Saturday in April through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one.

~~((34))~~ (36) Bobcat Creek and Ponds (Adams County): Open April 1 through September 30.

~~((35))~~ (37) Bonaparte Creek (Okanogan County): ~~((a) From the mouth to the falls one mile upstream: Closed.~~

~~(b))~~ From the falls upstream to river mile 1.0, including all tributaries (not otherwise provided for in this section):

~~((i))~~ (a) Open the Saturday before Memorial Day through October 31.

~~((ii))~~ (b) Bass: No limit and no size restrictions.

~~((iii))~~ (c) Channel catfish: No limit.

~~((iv))~~ (d) Walleye: No limit and no size restrictions.

~~((36))~~ (38) Bonaparte Lake (Okanogan County):

(a) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(b) Trout: It is unlawful to retain more than one trout over twenty inches in length.

~~((37))~~ (39) Boulder Creek and tributaries (Okanogan County):

(a) From the mouth to the barrier falls at river mile 1.0:

~~((i) Open the Saturday before Memorial Day through (October 31, including tributaries not otherwise provided for in this section))~~ August 15:

(ii) Selective gear rules apply.

(iii) Catch and release only.

(b) From barrier falls at river mile 1.0 upstream, including all tributaries:

(i) Open the Saturday before Memorial Day through October 31:

(ii) Eastern brook trout: Limit 10; eastern brook trout do not count toward the trout limit.

~~((c) (Release all cutthroat.~~

~~(38))~~ Cutthroat: Limit 2.

~~(40) Bowman Creek (Klickitat County): ((Trout limit five.~~

~~((39)) (a) From the mouth to Canyon Creek including Canyon Creek and all other tributaries: Closed.~~

~~(b) From Canyon Creek upstream to source: Trout limit 5.~~

(41) Box Canyon Creek and tributaries (Kittitas County):

~~((a) From the mouth to the waterfall approximately 2 miles upstream, including the portion flowing through the dry lakebed: Closed.~~

~~((b)) Upstream from the 20 foot waterfall approximately 2 miles upstream of the mouth ((to the USFS Road #4930 Bridge: Selective gear rules apply.~~

~~(40) Brookies Lake (Grant County):~~

~~(a) Selective gear rules apply.~~

~~(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(c) Trout: Limit one.~~

~~((41)): Open the Saturday before Memorial Day through October 31.~~

(42) Browns Creek (Pend Oreille County):

(a) Open the Saturday before Memorial Day until October 31.

(b) Fly fishing only.

~~((42)) (43) Browns Lake (Pend Oreille County):~~

(a) Open the fourth Saturday in April through October 31.

(b) Fly fishing only.

(c) It is unlawful to fish from a floating device equipped with a motor.

(d) Trout: It is unlawful to retain more than one trout greater than 11 inches in length.

~~((43) Buckskin Creek and tributaries (Yakima County): Closed from the mouth to the west boundary of Surtides Golf Course.)~~

(44) Buck Creek and tributaries (Chelan County):

(a) Open the Saturday before Memorial Day through October 31 from the mouth of Buck Creek upstream.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(45) Bumping Lake (Reservoir) (Yakima County):

(a) For all species except sturgeon: It is permissible to fish two poles, so long as the angler possesses a valid two-pole endorsement.

(b) Chumming is permissible.

~~((b)) (c) Kokanee: Limit sixteen; kokanee do not count towards the trout limit.~~

~~((45)) (46) Bumping River (Yakima County):~~

(a) It is permissible to fish up to the base of Bumping Dam.

(b) From the mouth to Bumping Reservoir, including all tributaries:

(i) Selective gear rules apply.

(ii) ~~((Open December 1 through March 31 for whitefish only; whitefish gear rules apply.))~~ Trout minimum size ten inches.

(c) From Bumping Lake upstream, including all tributaries except Deep Creek: Open the Saturday before Memorial Day through October 31.

~~((46)) (47) Burbank Slough (Walla Walla County):~~ It is unlawful to fish from any floating device in the area east and north of Highway 12, except for the channel east of Highway 12 up to the fish screen at the Number 3 Pumping Station.

~~((47)) (48) Burke Lake (Grant County):~~ Open March 1 through July 31.

~~((48)) (49) Buttermilk Creek (Okanogan County), **including all tributaries:** ((Closed from the mouth to the confluence of East and West Forks.~~

~~(49))~~

(a) Open the Saturday before Memorial Day through August 15.

(b) Catch and release only.

(c) Selective gear rules apply.

(50) Buzzard Lake (Okanogan County):

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules apply.

(c) Trout: Limit one.

~~((50)) (51) Caldwell Lake (Pend Oreille County):~~

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Trout: Limit two; minimum length twelve inches.

~~((51)) (52) Caliche Lakes, ((Lower,) Upper, (and West)) (Grant County):~~ Open March 1 through July 31.

~~((52)) (53) Calispell Creek (Calispell River) (Pend Oreille County):~~

(a) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.

(b) From the mouth to Calispell Lake: Open year-round.

(c) From Calispell Lake upstream to the source:

(i) Selective gear rules apply.

~~((ii) ((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~((iii))~~ Open the Saturday before Memorial Day through October 31.

~~((53)) (54) Calispell Creek tributaries (Pend Oreille County):~~

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.

~~((54)) (55) Campbell Lake (Okanogan County):~~

(a) Open year-round.

(b) April 1 through August 31.

(i) Selective gear rules apply.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Catch and release only.

~~((55)) (56) Carl's Lake (Pend Oreille County):~~ Open the fourth Saturday in April through October 31.

~~((56))~~ (57) Cascade Lake (Grant County): Open March 1 through July 31.

~~((57))~~ (58) Cattail Lake (Grant County): Open April 1 through September 30.

~~((58))~~ (59) Cedar Creek (Okanogan County):

(a) Closed from the mouth to Cedar Falls.

~~((59))~~ (b) Open the Saturday before Memorial Day through August 15.

(c) Selective gear rules apply.

(d) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(e) Catch and release only.

(f) Cedar Creek and all tributaries above Cedar Falls:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(60) Cedar Creek and tributaries (Pend Oreille County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.

~~((60))~~ (61) Cedar Lake (Stevens County): Open the fourth Saturday in April through October 31.

~~((61))~~ (62) Chain Lake (Pend Oreille County):

(a) Open the fourth Saturday in April through October 31.

(b) Release all kokanee.

~~((62))~~ (63) Chapman Lake (Spokane County):

(a) Open the fourth Saturday in April through October 31.

(b) Chumming is permissible.

(c) Kokanee: Limit ten; kokanee do not count toward the trout limit.

~~((63) Chelan Hatchery Creek (Chelan County): Closed.)~~

(64) Chelan Lake (Chelan County):

(a) South of a line from Purple Point at Stehekin and Painted Rocks:

(i) Within 400 feet of all tributaries: Closed.

(ii) Trout:

(A) Release wild cutthroat.

(B) Kokanee and lake trout do not count toward the trout limit.

(iii) Kokanee: Limit 10; no minimum size.

(iv) Lake trout: No limit; no minimum size.

(v) Salmon open year round: Daily limit 1; no minimum size.

(b) North of a line between Purple Point at Stehekin and Painted Rocks:

(i) Lake trout open year-round: No limit.

(ii) Salmon open year-round: Limit 1; minimum length 15 inches.

(iii) From August 1 through March 31:

(A) Trout:

(I) Release wild cutthroat.

(II) Kokanee and lake trout do not count toward the trout limit.

(B) Kokanee: Limit 10.

(65) Chelan Lake tributaries (Chelan County):

(a) Open August 1 through September 30 from the mouths upstream one mile, except Stehekin River.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Release wild cutthroat.

(66) Chelan River (Chelan County):

(a) From the railroad bridge to the Chelan P.U.D. safety barrier below the power house:

(i) Open May 15 through August 31.

(ii) Barbless hooks are required for salmon and steelhead.

(iii) ~~((September))~~ July 1 through October 15: Anti-snagging rule and night closure in effect.

(b) Trout: Catch and release only.

(c) Salmon: Open September 1 through October 15:

(i) Limit 8; no more than 2 adult hatchery Chinook and no more than 4 sockeye may be retained.

(ii) Release coho and wild adult Chinook.

(67) Chewuch River (Chewack River) (Okanogan County):

(a) From the mouth to Eight Mile Creek:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Catch and release only.

(b) From Eight Mile Creek to Pasayten Wilderness boundary ~~((: Closed the first Saturday in June through October 31))~~ falls, including tributaries except for Boulder Creek:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Catch and release only.

(c) From the mouth to Pasayten Wilderness boundary falls: Open December 1 through March 31 for whitefish only; whitefish gear rules apply.

(d) From the Pasayten Wilderness boundary falls upstream, including tributaries: Open the Saturday before Memorial Day through October 31.

(68) Chikamin Creek (Chelan County) and all tributaries:

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout:

(i) Rainbow trout are catch and release only.

(ii) Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

(69) Chiwaukum Creek and all tributaries from Fool Hen Creek upstream, not including Fool Hen Creek (Chelan County): ~~((Closed from the mouth to Fool Hen Creek.))~~

(a) Selective gear rules apply.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Open the Saturday before Memorial Day through October 31.

(d) Chiwaukum Creek tributaries from mouth of Chiwaukum Creek to Fool Hen Creek, including Fool Hen Creek: Open the Saturday before Memorial Day through October 31.

(70) Chiwawa River and all tributaries from Buck Creek upstream, including Buck Creek (Chelan County): ~~((Closed from the mouth to Buck Creek.))~~

(a) Selective gear rules apply.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Open the Saturday before Memorial Day through October 31.

(d) Chiwawa River tributaries from the mouth to Buck Creek, except Big Meadow, Buck, Chikamin, Clear, Phelps and Rock creeks: Open the Saturday before Memorial Day through October 31.

(71) Chopaka Lake (Okanogan County):

(a) Open the fourth Saturday in April through October 31 for fly fishing only.

(b) It is unlawful to fish from a floating device equipped with a motor.

(c) Trout: Limit one.

(72) Chumstick Creek (Chelan County): From the mouth upstream:

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout:

(i) Rainbow trout, catch and release only.

(ii) Eastern brook trout: Limit 16. Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

(e) Chumstick Creek tributaries from the mouth of Chumstick Creek upstream: Open the Saturday before Memorial Day through October 31.

(73) Clear Creek (Chelan County): Closed.

~~((73))~~ **(74) Clear Lake (Chelan County):**

(a) Open the fourth Saturday in April through October 31.

(b) From July 5 through October 31:

(i) Selective gear rules apply.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Catch and release only.

~~((74))~~ **(75) Clear Lake (Spokane County):** Open the fourth Saturday in April through October 31.

~~((75))~~ **(76) Cle Elum Lake (Reservoir) (Kittitas County):**

(a) Trout (except kokanee): ~~((Limit two; minimum length twelve inches.))~~ Lake trout, brown trout, and eastern brook trout are not included in the trout daily limit.

(b) Kokanee: ~~((Limit sixteen, no minimum size; kokanee do not count toward the daily trout limit))~~ Minimum length 9 inches and maximum length 15 inches.

~~((76))~~ **(77) Cle Elum River (Kittitas County):**

(a) From the mouth to Cle Elum Dam:

(i) Open year-round.

(ii) Selective gear rules apply.

(iii) Trout: Catch and release only.

(iv) It is permissible to fish up to the base of Cle Elum Dam.

(v) December 1 through ~~((March))~~ January 31: Whitefish gear rules apply.

(b) From above Cle Elum Lake to outlet of Hyas Lake (not including Tucquala Lake):

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) Trout minimum size ten inches.

(c) All tributaries to Cle Elum River above Cle Elum Lake to outlet of Hyas Lake not otherwise provided for in this section: Open the Saturday before Memorial Day through October 31.

~~((77))~~ **(78) Cliff Lake (Grant County):** Open March 1 through July 31.

~~((78))~~ **(79) Coffee Pot Lake (Lincoln County):**

(a) Open March 1 through September 30.

(b) Selective gear rules apply.

(c) Crappie: Limit ten; minimum length nine inches.

(d) Trout: Limit one; minimum length eighteen inches.

~~((79))~~ **(80) Columbia Basin Hatchery Creek (Grant County):**

(a) Open April 1 through September 30 from the hatchery outflow to the confluence with Rocky Coulee Wasteway.

(b) Open to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

(c) Trout: Limit 3; no minimum size.

~~((80))~~ **(81) Columbia Park Pond (Benton County):**

(a) Open to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

(b) All species: Limit 5 fish combined.

~~((81))~~ **(82) Columbia River tributaries (all independent tributaries in Kittitas County between Wanapum Dam and Chelan County boundary line):**

(a) Selective gear rules apply.

(b) Trout minimum size ten inches.

(83) Colville River (Stevens County):

(a) From the mouth to the bridge at town of Valley:

(i) Open year-round.

(ii) Trout:

(A) Limit 5.

(B) From October 1 through November 30, no more than 2 brown trout may be retained.

(iii) Walleye: Daily limit 16 fish; no size restrictions.

(iv) Sturgeon: It is unlawful to fish for or retain sturgeon.

(b) All tributaries to Colville River, from the mouth to the bridge at the town of Valley, open the Saturday before Memorial Day through October 31.

(c) From the bridge at the town of Valley upstream, including tributaries:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

~~((iii)) It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(82))~~ **(84) Conconully Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

~~((83))~~ **(85) Conconully Reservoir (Okanogan County):** Open the fourth Saturday in April through October 31.

~~((84))~~ **(86) Conger Pond (Pend Oreille County):** Open the fourth Saturday in April through October 31.

~~((85))~~ **(87) Conner Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

~~((86))~~ **(88) Cooper River (Kittitas County):**

(a) Open the Saturday before Memorial Day through October 31 from the mouth to Cooper Lake.

(b) Selective gear rules apply.

~~((87))~~ **(89) Coot Lake (Grant County):** Open April 1 through September 30.

~~((88))~~ **(90) Corral (~~Canyon~~) Creek (Benton County):**

(a) Selective gear rules apply.

~~((89))~~ (b) Trout minimum size ten inches.

(91) Cottonwood Creek (Lincoln County): Open year-round.

~~((90))~~ **(92) Cottonwood Creek (Walla Walla County):** Closed.

~~((91))~~ **(93) Cougar Lake (Pasayten Wilderness) (Okanogan County):**

(a) Selective gear rules apply.

(b) It is permissible to fish two poles so long as the angler possesses a two-pole endorsement.

~~((92))~~ **(94) Cougar Lake (near Winthrop) (Okanogan County):**

(a) Open year-round.

(b) Selective gear rules apply.

(c) From April 1 through August 31:

(i) Catch and release only.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((93) Cowiche Creek (Yakima County):~~ Selective gear rules apply.

~~(94))~~ **(95) Coyote Creek and Ponds (Adams County):** Open April 1 through September 30.

~~((95))~~ **(96) Crab Creek (Adams/Grant/Lincoln counties):**

(a) From the mouth to Morgan Lake Road in Section 36: Open April 1 through September 30.

(b) From Morgan Lake Road in Section 36 to O'Sullivan Dam (including Marsh Unit I and II impoundments): Closed.

~~((96) Crab Creek (Lincoln/Grant counties) and tributaries:~~

~~(a) Open year-round.~~

~~(b) From March 1 through May 31: It is unlawful to use terminal gear other than a single hook measuring 3/4 inch or less point to shank.~~

~~(c) From Grant County Road 7 to the fountain buoy and shoreline markers or 150 feet downstream of the Alder Street fill: Limits and size restrictions are the same as Moses Lake.~~

~~(d) From Moses Lake downstream to the confluence of the outlet streams: Limit and size restrictions are the same as in the Potholes Reservoir.)~~ (c) From the confluence of the Moses Lake outlets to Sand Dune Rd. (including all tributaries):

(i) Open year-round.

(ii) For minimum size/daily limits see Potholes Reservoir Rules (Eastside Lakes).

(iii) From March 1 through May 31: Only one single-point hook 3/4 inch or less measured from point to shank may be used.

(d) From the fountain buoy and shoreline markers or 150' downstream of the Alder Street fill to Grant County Rd. 7 (including all tributaries except Columbia Basin Hatchery Creek):

(i) Open year-round.

(ii) For minimum size/daily limits see Moses Lake Rules (Eastside Lakes).

(iii) From March 10 through May 31: Only one single-point hook 3/4 inch or less measured from point to shank may be used.

(e) Above Grant County Rd. 7 (including all tributaries, except Goose Creek in the city of Wilbur): Open year-round.

(97) Crawfish Lake (Okanogan County):

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(98) Crescent Lake (Pend Oreille County): Open the Fourth Saturday in April through October 31.

(99) Crystal Lake (Grant County): Open March 1 through July 31.

(100) Cup Lake (Grant County): Open March 1 through July 31.

(101) Curl Lake (Columbia County):

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from any floating device.

(c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(102) Dalton Lake (Franklin County):

(a) Open March 1 through October 31.

(b) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(103) Davis Lake (Ferry County): Open the fourth Saturday in April through October 31.

(104) Davis Lake (Okanogan County):

(a) Open year-round.

(b) April 1 through August 31:

(i) Selective gear rules apply.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Catch and release only.

(105) **Davis Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(106) **Dayton Pond (Columbia County):**

(a) Open to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

(b) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(107) **Deadman Lake (Adams County):** Open April 1 through September 30.

(108) **Deep Creek (tributary to Bumping Lake) (Yakima County):** ~~((a) From the mouth to the second bridge crossing on USFS Rd. 1808 (approximately 3.7 miles from junction of USFS Rds. 1800 and 1808): Closed.~~

~~((b))~~ From the waterfall approximately 1/3 mile above the second bridge crossing on USFS Road 1808 upstream: Open the Saturday before Memorial Day through October 31.

(109) **Deep Lake (Grant County):** Open the fourth Saturday in April through September 30.

(110) **Deep Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(111) **Deer Lake (Columbia County):**

(a) Open March 1 through October 31.

(b) It is unlawful to fish from any floating device.

(c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(112) **Deer (Deer Springs) Lake (Lincoln County):** Open the fourth Saturday in April through September 30.

(113) **Deer Lake (Stevens County):**

(a) Open March 1 through October 31.

(b) Trout: It is unlawful to retain more than two trout over thirty inches in length.

(114) ~~((De Roux Creek (Kittitas County): (a) From the mouth to the USFS Trail #1392 (De Roux Cr. Trail) stream crossing (approximately one river mile): Closed.~~

~~((b) Upstream of the USFS Trail #1392 stream crossing: Selective gear rules apply.~~

~~((115))~~ **Diamond Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

~~((116) Dillacort Creek (Klickitat County):~~ Release all trout.

~~((117))~~ **(115) Dog Lake (Yakima County):** It is unlawful to retain more than 1 trout over 14 inches in length.

~~((118) Dot Lake (Grant County):~~ Open March 1 through July 31.

~~((119))~~ **(116) Domerie Creek (Kittitas County):**

(a) Selective gear rules apply.

(b) Trout minimum size ten inches.

(117) Downs Lake (Lincoln/Spokane counties):

(a) Open March 1 through September 30.

(b) Crappie: Limit ten; minimum length nine inches.

~~((120))~~ **(118) Dry Creek (Walla Walla County):** Closed upstream from the middle Waitsburg Road.

~~((121))~~ **(119) Dry Falls Lake (Grant County):**

(a) Open April 1 through November 30.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one.

~~((122))~~ **(120) Dune Lake (Grant County):**

(a) Selective gear rules apply.

(b) Trout: Limit one.

~~((123))~~ **(121) Dusty Lake (Grant County):**

(a) Open March 1 through November 30.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one.

~~((124))~~ **(122) Early Winters Creek (Okanogan County):** ~~((Closed))~~ From the mouth upstream, including all tributaries except Cedar Creek:

(a) Open the Saturday before Memorial Day through August 15.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Catch and release only.

~~((125))~~ **(123) East Little Walla Walla River (Walla Walla County):** Closed.

~~((126) Easton Lake (Kittitas County):~~

~~((a) Open the Saturday before Memorial Day through October 31.~~

~~((b) Trout: It is unlawful to retain more than 2 trout other than eastern brook trout as part of the limit.~~

~~((127))~~ **(124) Eightmile Lake (Chelan County):** It is unlawful to retain more than two mackinaw as part of the trout limit.

~~((128))~~ **(125) Elbow Lake (Stevens County):** Open the fourth Saturday in April through October 31.

~~((129))~~ **(126) Ell Lake (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one.

~~((130))~~ **(127) Ellen Lake (Ferry County):**

(a) Open the fourth Saturday in April through October 31.

(b) Release all fish, except anglers may retain up to five rainbow trout.

~~((131))~~ **(128) Eloika Lake (Spokane County):** Crappie limit ten; minimum length nine inches.

~~((132))~~ **(129) Lake Entiat (Col.R.) tributaries (Chelan/Douglas County):** Open the Saturday before Memorial Day through October 31 from Rocky Reach Dam to Wells Dam, except the Entiat River, Chelan River and Chelan Hatchery Creek.

(130) Entiat River (Chelan County):

(a) From the mouth (Highway 97 Bridge) to Entiat Falls:

(i) Open December 1 through March 31 for whitefish only.

(ii) Whitefish gear rules apply.

(b) Entiat River tributaries from the mouth to Entiat Falls, except the Mad River and Roaring Creek: Open the Saturday before Memorial Day through October 31.

(c) Entiat River and all tributaries above Entiat Falls:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Trout:

(A) Limit 5; it is unlawful to retain more than one trout greater than 12 inches in length.

(B) Eastern brook trout: Limit 10. Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

~~((133))~~ **(131) Ephrata Lake (Grant County):** Closed.

~~((134))~~ **(132) Empire Lake (Ferry County):** Open the fourth Saturday in April through October 31.

(133) Esquatzel Coulee (Franklin County): Open year-round.

(134) Esquatzel Coulee, West Branch (Franklin County): Open year-round, except closed September 1 through November 30 at Block 1 Wasteway Outlet.

(135) Fan Lake (Pend Oreille County):

(a) Open the fourth Saturday in April through September 30.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(136) Ferry Lake (Ferry County): It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(137) Fio Rito Lakes (Kittitas County):

(a) Open March 1 through December 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(138) Fish Lake (Chelan County):

(a) Perch: Daily limit 25.

(b) Trout: It is unlawful to retain more than 2 trout over 15 inches in length.

(139) Fish Lake (Ferry County): Open the fourth Saturday in April through October 31.

(140) Fish Lake (Okanogan County): Open the fourth Saturday in April through October 31.

(141) Fish Lake (Spokane County):

(a) Open the fourth Saturday in April through September 30.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(142) Fishhook Pond (Walla Walla County):

(a) Open March 1 through October 31.

(b) It is unlawful to fish from a floating device.

(c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(143) Fishtrap Lake (Lincoln/Spokane counties): Open the fourth Saturday in April through September 30.

(144) Forde Lake (Okanogan County): Open the fourth Saturday in April through October 31.

(145) Fourth of July Lake (Adams/Lincoln counties):

(a) Open ~~((December 1))~~ the first Friday after Thanksgiving through March 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Trout: It is unlawful to retain more than two trout over fourteen inches in length.

(146) Frater Lake (Pend Oreille County): Open the fourth Saturday in April through October 31.

(147) Frenchman Hills Lake (Grant County): Open February 1 through September 30.

(148) Gadwall Lake (Grant County): Open April 1 through September 30.

(149) Garfield Juvenile Pond (Whitman County): Open to juvenile anglers only.

~~((150))~~ ~~**(George Lake (Grant County):**~~ Open March 1 through July 31.

~~((151))~~ **(151) Gillette Lake (Stevens County):** Open the fourth Saturday in April through October 31.

~~((152))~~ **(151) Goat Creek (Okanogan County):** ~~(Closed.~~

~~((153))~~ ~~**Gold Creek, Gold Creek Pond and Outlet Channel (tributary to Keechelus Lake) (Kittitas County):**~~ Closed, including that portion of Gold Creek that flows through the dry lake bed.

~~((154))~~ ~~**Gold Creek (Okanogan County):**~~ Closed from the mouth to the confluence with North Fork Gold Creek.

~~((155))~~ From the mouth upstream including all tributaries:

(a) Open the Saturday before Memorial Day through August 15.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Catch and release only.

(152) Golf Course Pond (Asotin County):

(a) Open March 1 through October 31.

(b) It is unlawful to retain more than 2 trout over 13 inches in length.

~~((156))~~ **(153) Goose Creek (Lincoln County), within the city limits of Wilbur:** Open year-round to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

~~((157))~~ **(154) Goose Lake, Lower (Grant County):**

(a) Bluegill: It is unlawful to retain more than five fish over six inches in length.

(b) Crappie: Limit ten; minimum length nine inches.

~~((158))~~ **(155) Grande Ronde River (Asotin County):**

(a) General river rules:

(i) For all portions of the Grande Ronde River and its tributaries that are open to game fish angling:

(A) Bass: No limit.

(B) Channel catfish: No limit.

(C) Walleye: No limit and no size restrictions.

(ii) From September 15 through March 15: It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Rules by river section:

(i) From the mouth to County Road Bridge, about 2.5 miles upstream:

(A) Open year-round.

(B) September 1 through May 31: Selective gear rules apply.

(C) Trout: ~~((Minimum length 10 inches, maximum length 20 inches.))~~

(D) No minimum size for trout with missing adipose fin with a healed scar.

(II) Steelhead: From first Saturday in June through April 15, up to 3 hatchery steelhead may be retained.

(ii) From County Road Bridge upstream to the Oregon state line and all tributaries, except Wenaha River tributaries:

(A) Open the first Saturday in June through October 31:

(I) Trout: No minimum size for trout with a missing adipose fin with a healed scar.

(II) Anglers may retain up to 3 hatchery steelhead.

(III) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(B) From the first Saturday in June through August 31: Selective gear rules apply.

(C) From September 1 through April 15: It is unlawful to use anything other than barbless hooks.

(D) Open (~~from~~) November 1 through April 15, except (~~the~~) all tributaries are closed.

(I) Release all fish except anglers may retain up to 15 whitefish and 3 hatchery steelhead.

~~((+59)) (II) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.~~

(156) Granger Pond (Yakima): Open March 1 through December 31.

(157) Granite Creek and tributaries (Pend Oreille County): Closed.

~~((+60)) (158) Green Lake (Upper) (Okanogan County):~~

(a) Open year-round.

(b) (~~April~~) From March 1 through November 30:

(i) Selective gear rules apply.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Catch and release only.

~~((+61)) (159) Green Lake (Lower) (Okanogan County):~~

(a) Open year-round.

(b) (~~April~~) March 1 through November 30:

(i) Selective gear rules apply.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Catch and release only.

~~((+62)) (160) Grimes Lake (Douglas County):~~

(a) Open June 1 through August 31:

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one.

~~((+63)) (161) Halfmoon Lake (Adams County):~~ Open April 1 through September 30.

~~((+64)) (162) Halfmoon Lake (Pend Oreille County):~~ Open the fourth Saturday in April through October 31.

~~((+65)) (163) Hampton Lakes, Lower and Upper (Grant County):~~

(a) Open April 1 through September 30.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((+66)) (164) Harris Lake (Grant County):~~

(a) Selective gear rules apply.

(b) Trout: Limit one.

~~((+67)) (165) Harvey Creek (tributary to Sullivan Lake) (Pend Oreille County) and tributaries:~~

(a) From the mouth to Bridge 4830 on county road (about 1 1/2 miles): Closed.

(b) From Bridge 4830 upstream: ~~((+))~~ Selective gear rules apply.

~~((+ii)) It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~((+68)) (166) Hatch Lake (Stevens County):~~

(a) Open (~~December 1~~) the first Friday after Thanksgiving through March 31.

(b) Release all fish, except up to five rainbow trout may be retained.

~~((+69)) (167) Hawk Creek and tributaries (Lincoln County) upstream of the Falls at Hawk Creek Campground:~~ Open year-round.

~~((+70)) (168) Hays Creek and Ponds (Adams County):~~ Open April 1 through September 30.

~~((+71)) (169) Headgate Pond (Asotin County):~~ Open the fourth Saturday in April through October 31 to juvenile anglers, seniors, and anglers with a disability who possess a designated harvester companion card only.

~~((+72)) (170) Hen Lake (Grant County):~~ Open April 1 through September 30.

~~((+73)) (171) Heritage Lake (Stevens County):~~ Open the fourth Saturday in April through October 31.

~~((+74) Herman Lake (Adams County):~~ Open April 1 through September 30.

~~((+75)) (172) Hog Canyon Creek (Spokane County):~~ Open year-round from the Hog Canyon Dam to Scroggie Road.

~~((+76)) (173) Hog Canyon Lake (Spokane County):~~

(a) Open (~~December 1~~) the first Friday after Thanksgiving through March 31.

(b) Trout: It is unlawful to retain more than two trout over fourteen inches in length.

~~((+77)) (174) Homestead Lake (Grant County):~~

(a) Selective gear rules apply.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Trout: Limit one.

~~((+78)) (175) Horseshoe Lake (Pend Oreille County):~~

(a) Open the fourth Saturday in April through October 31.

(b) Kokanee: Limit ten; kokanee do not count toward the trout limit.

~~((+79)) (176) Horsethief Lake (Klickitat County):~~ Open the fourth Saturday in April through October 31.

~~((+80)) (177) Hourglass Lake (Grant County):~~ Open April 1 through September 30.

~~((+81)) (178) Huff Lake (Pend Oreille County):~~ Closed.

~~((+82)) (179) Hutchinson Lake (Adams County):~~

(a) Open April 1 through September 30.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((+83)) (180) I-82 Ponds, 1 through 7 (Yakima County):~~

(a) Open March 1 through December 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((184))~~ **(181) Icicle River and all tributaries (Creek) (Chelan County):**

~~(a) ((From the mouth to the Leavenworth National Fish Hatchery rack): Closed.~~

~~(b))~~ From the Leavenworth National Fish Hatchery rack upstream to Leland Creek, including Leland Creek:

(i) Open the Saturday before Memorial Day through ~~((September 30))~~ October 31.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((185))~~ (iv) Trout: Eastern brook trout: Limit 16. Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

(b) From Leland Creek upstream, not including Leland Creek: Open the Saturday before Memorial Day through October 31.

(182) Indian Creek and tributaries (Pend Oreille County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10. Once an angler has retained 2 trout other than eastern brook trout, the entire trout limit has been taken and the angler must cease fishing for trout.

~~((186))~~ **(183) Indian Creek (Yakima County):**

~~((a) From the mouth to the waterfall approximately 6 miles upstream, including the portion of the creek that flows through the dry lakebed: Closed.~~

~~(b))~~ Upstream of the waterfall approximately 6 miles upstream from the mouth:

~~((+))~~ (a) Open the Saturday before Memorial Day through October 31.

~~((+))~~ (b) Eastern brook trout:

~~((A))~~ (i) No limit and no length restrictions.

~~((B))~~ (ii) Eastern brook trout do not count toward the trout limit.

~~((187))~~ **(184) Ingall's Creek and all tributaries upstream of the Alpine Lakes Wilderness boundary (Chelan County):** ~~((Closed from the mouth to the Wilderness boundary.~~

~~(188))~~

(a) Open the Saturday before Memorial Day through October 31.

(b) Ingalls Creek tributaries from the mouth of Ingalls Creek to the Alpine Lakes Wilderness boundary: Open the Saturday before Memorial Day through October 31.

(185) Jameson Lake (Douglas County): Open the fourth Saturday in April through July 4 and October 1 through October 31.

~~((189))~~ **(186) Jasmine Creek (Okanogan County):** Open year-round to juvenile anglers only.

~~((190))~~ **(187) Jefferson Park Pond (Walla Walla County):**

(a) Open March 1 through October 31.

(b) Open to juvenile fishers only.

~~((b))~~ (c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

~~((191))~~ **Jewitt Creek (Klickitat County):**

~~(a) Open to juvenile fishers only.~~

~~(b) Trout: Limit five; no minimum length.~~

~~(192))~~ **(188) Jolanda, Lake (Chelan County):** Closed.

~~((193))~~ **(189) Jump-Off Joe Lake (Stevens County):** Open the fourth Saturday in April through October 31.

~~((194))~~ **(190) Kachess Lake (Reservoir) (Kittitas County):** ~~((a))~~ Chumming is permissible.

~~((b) Kokanee: Limit sixteen; kokanee do not count toward the daily trout limit.~~

~~(e) Trout: Limit two, minimum length twelve inches.~~

~~(195))~~ **(191) Kachess River (Kittitas County):**

(a) From ~~((Kachess Lake (Reservoir) upstream to the waterfall approximately one-half mile above Mineral Creek: Closed.~~

~~(b))~~ the mouth to Kachess Dam:

(i) It is permissible to fish up to the base of Kachess Dam.

~~((e))~~ (ii) Selective gear rules apply.

~~((196))~~ (iii) Trout minimum size ten inches.

(b) Kachess Lake tributaries, except Box Canyon Creek: Open under statewide rules.

(c) Upstream of impassable 50 to 60 foot fall about 1/2 mile upstream of Mineral Creek: Open.

(192) Kalispell Creek and tributaries (Pend Oreille County):

(a) Open the last Saturday in April through October 31.

(b) Selective gear rules apply.

~~((e) It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(197))~~ **(193) Keechelus Lake (Reservoir) (Kittitas County):** ~~((a))~~ Chumming is permissible.

~~((b) Trout: Limit two; minimum length twelve inches.~~

~~(e) Kokanee: Limit sixteen; kokanee do not count toward the daily trout limit.~~

~~(198))~~ **(194) Kettle River (Stevens County):**

(a) The tributaries from the mouth to Barstow Bridge: Open from the Saturday before Memorial Day through October 31.

(b) From Barstow Bridge upstream:

(i) Open the Saturday before Memorial Day until October 31.

(ii) Selective gear rules apply, except for juvenile anglers, from the Canadian border upstream to Highway 21 Bridge at Curlew.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Sturgeon: It is unlawful to fish for or retain sturgeon.

(v) Trout: Minimum length 12 inches.

(vi) Open November 1 through May 31 for whitefish only. Whitefish gear rules apply.

(c) Tributaries to Kettle River, from Barstow Bridge upstream: Open from the Saturday before Memorial Day through October 31.

~~((199))~~ **(195) Kings Lake and tributaries (Pend Oreille County):** Closed.

~~((200))~~ (196) Kiwanis Pond (Kittitas County): Open to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

~~((201))~~ (197) Klickitat River (Klickitat County):

(a) From the mouth to Fisher Hill Bridge:

(i) All tributaries are closed.

(ii) Open April 1 through January 31.

~~((11))~~ (iii) Barbless hooks are required for salmon and steelhead.

~~((11))~~ (iv) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(v) Anti-snagging rule in effect and night closure applies April 1 through May 31 and August 1 through January 31. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

~~((14))~~ (vi) Game fish: Closed December 1 through January 31.

~~((14))~~ (vii) April 1 through May 31: Release all fish except anglers may retain hatchery steelhead.

~~((14))~~ Trout: Minimum length twelve inches.

~~((14))~~ (viii) Salmon and steelhead:

(A) Open April 1 through May 31 on Sundays, Mondays, Wednesdays and Saturdays only:

(I) Limit 2; no more than 2 hatchery steelhead, or 2 salmon, or one of each, may be retained.

(II) Release wild Chinook.

(B) Open June 1 through July 31:

(I) Limit 6 fish; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release wild Chinook.

(C) August 1 through January 31: Limit 6 fish; no more than 3 adult Chinook and no more than 2 hatchery steelhead may be retained.

(b) From Fisher Hill Bridge to the boundary markers above Klickitat Salmon Hatchery, the following waters are closed: From Fishery Hill Bridge to 400 feet above #5 fishway, and from the boundary markers below Klickitat Salmon Hatchery to the boundary markers above the hatchery.

(c) From 400 feet above #5 fishway to the boundary markers below Klickitat Salmon Hatchery:

(i) All tributaries except Bird, Blockhouse, Bowman, Spring, Outlet creeks and the Little Klickitat River: Closed.

(ii) The waters from the boundary markers above Klickitat Salmon Hatchery to the boundary markers below the hatchery: Closed.

(iii) Barbless hooks are required for salmon and steelhead.

~~((11))~~ (iv) Open June 1 through November 30: Trout minimum length twelve inches.

~~((11))~~ (v) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(vi) Open December 1 through March 31: Whitefish gear rules apply.

~~((14))~~ (vii) Salmon and steelhead:

(A) June 1 through July 31:

(I) Limit 6 fish; no more than 2 adult hatchery steelhead may be retained.

(II) Release adult salmon and wild Chinook.

(B) August 1 through November 30: Limit 6 fish; no more than 3 adult Chinook and no more than 2 hatchery steelhead may be retained.

(d) From the boundary markers above Klickitat Salmon Hatchery to the Yakama Indian Reservation boundary:

(i) Open June 1 through November 30: Trout minimum length 12 inches.

(ii) Open December 1 through March 31: Whitefish gear rules apply.

(iii) Barbless hooks are required for salmon and steelhead.

(e) From the Yakama Indian Reservation boundary upstream to source, including all tributaries: Closed.

~~((202))~~ (198) Lake Creek (Okanogan County):

(a) From the mouth to Black Lake: Closed.

(b) From Black Lake to Three Prong Creek: Closed.

~~((203))~~ (199) Latah (Hangman) Creek (Spokane County): ~~((Open year-round))~~ From the mouth upstream to Idaho state line: Open year-round.

(200) Latah (Hangman) Creek Tributaries (Spokane County) including all tributaries within this system: Open the Saturday before Memorial Day through October 31 from the mouths upstream.

~~((204))~~ (201) Le Clerc Creek and tributaries (Pend Oreille County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10. Once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.

~~((205))~~ (202) Ledbetter Lake (Pend Oreille County): Open the fourth Saturday in April through October 31.

~~((206))~~ (203) Ledking Lake (Pend Oreille County): Open the fourth Saturday in April through October 31.

~~((207))~~ (204) Leech Lake (Yakima County):

(a) Open for fly fishing only.

(b) It is unlawful to fish from a floating device equipped with a motor.

(c) Trout: It is unlawful to retain more than one trout over 14 inches in length.

~~((208))~~ (205) Lemna Lake (Grant County): Open April 1 through September 30.

~~((209))~~ (206) Lenice Lake (Grant County):

(a) Open March 1 through November 30.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one.

~~((210))~~ (207) Lenore Lake (Grant County):

(a) The waters within a 200 yard radius of the trash rack leading to the irrigation pumping station (on the south end of the lake) and the area approximately 100 yards beyond the mouth of inlet stream to State Highway 17: Closed.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device with an internal combustion motor.

(d) Open from March 1 through November 30:

(i) From March 1 through May 31: Catch and release only.

(ii) June 1 through November 30: Trout limit one.

~~((211))~~ (208) Leo Lake (Pend Oreille County): Open the fourth Saturday in April through October 31.

~~((212))~~ (209) Liberty Lake (Spokane County): Open March 1 through October 31.

~~((213))~~ (210) Lilly Lake (Chelan County):

(a) Open the fourth Saturday in April through October 31.

(b) July 5 through October 31:

(i) Selective gear rules apply.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Catch and release only.

~~((214))~~ (211) Lions Park Pond (Walla Walla County):

(a) Open March 1 through October 31.

(b) Open to juvenile anglers only.

~~((18))~~ (c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

~~((215))~~ (212) Little Klickitat River (Klickitat County):

(a) Within Goldendale city limits:

~~((18))~~ (i) Open the fourth Saturday in April through October 31 ~~((to juvenile fishers only))~~.

~~((18))~~ (ii) Open the fourth Saturday in April through May 31 to juvenile and senior fishers only.

(iii) Trout: Limit five; no minimum length.

~~((216))~~ (b) All other waters including tributaries: Open first Saturday in June through October 31.

(213) Little Lost Lake (Pend Oreille County): Open the fourth Saturday in April through October 31.

~~((217) Little Naches River (Yakima County), including tributaries)~~: Selective gear rules apply.

~~((218))~~ (214) Little Pend Oreille River (Stevens County):

(a) Open the Saturday before Memorial Day through October 31.

(b) From the Little Pend Oreille wildlife refuge boundary approximately one mile downstream from the refuge headquarters office, to Crystal Falls:

(i) Selective gear rules apply.

~~((18))~~ (ii) (It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((18))~~ (iii) Release all fish except anglers may retain up to 5 eastern brook trout.

(c) All tributaries to the Little Pend Oreille River are open the Saturday before Memorial Day through October 31.

~~((219))~~ (215) Little Spokane River (Spokane County):

(a) Open year-round from the mouth to the SR 291 Bridge.

(b) From the SR 291 Bridge upstream to the West Branch:

(i) Open the fourth Saturday in April through October 31.

(ii) Open December 1 through March 31 for whitefish only; ~~((whitefish gear rules apply))~~ limit 15 whitefish; no minimum size.

(c) From the West Branch upstream:

(i) Closed from the inlet of Chain Lake upstream one-quarter mile to the railroad crossing culvert.

(ii) Open the Saturday before Memorial Day through October 31.

(iii) Kokanee: It is unlawful to retain kokanee taken upstream from the bridge at Fridegar Road, including Chain Lake.

(d) Unless otherwise provided in this section, all tributaries to the Little Spokane River are open the Saturday before Memorial Day through October 31.

~~((220))~~ (216) Little Twin Lake (Okanogan County):

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one.

~~((221))~~ (217) Little Twin Lake (Stevens County): Open the fourth Saturday in April through October 31.

~~((222))~~ (218) Little Wenatchee River (Chelan County): ~~((Closed from Lake Wenatchee to the falls below U.S. Forest Service Road 6700 Bridge at Riverside Campground))~~

(a) From the falls below USFS Rd. 6700 Bridge upstream: Open the Saturday before Memorial Day through October 31.

(b) Little Wenatchee tributaries from the mouth upstream, except Rainy Creek: Open the Saturday before Memorial Day through October 31.

~~((223))~~ (219) Long Lake (Ferry County):

(a) Open the fourth Saturday in April through October 31

(b) Fly fishing only.

(c) It is unlawful to use flies containing lead.

(d) It is unlawful to fish from a floating device equipped with a motor.

~~((224))~~ (220) Long Lake (Okanogan County): Open the fourth Saturday in April through ~~((September 30))~~ October 31.

~~((225))~~ (221) Loon Lake (Stevens County):

(a) Open the fourth Saturday in April through October 31.

(b) Kokanee: Limit ten; kokanee do not count toward the trout limit.

(c) Trout (except kokanee): Limit five, except it is unlawful to retain more than two trout over twenty inches in length.

~~((226))~~ (222) Lost Lake (Kittitas County): It is unlawful to retain more than one trout over 14 inches in length.

~~((227))~~ (223) Lost Lake (Okanogan County):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

~~((228))~~ (224) Lost River (Okanogan County):

(a) From the mouth to the mouth of Monument Creek: Closed.

(b) Lost River and all tributaries from the mouth of Monument Creek to the outlet of Cougar Lake, including Monument Creek:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Trout: Minimum length 14 inches; it is permissible to retain Dolly Varden/Bull Trout with a minimum length of 14 inches as part of the trout limit.

~~((229))~~ **(225) Lucky Duck Pond (Stevens County):** Open to juvenile anglers only.

~~((230) Lyle Lake (Adams County):~~ Open April 1 through September 30.

~~(231))~~ **(226) Mad River and all tributaries from mouth to Jimmy Creek, including Jimmy Creek (Chelan County):** ~~((Closed from the mouth upstream to Jimmy Creek))~~

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout:

(i) Rainbow trout, catch and release only.

(ii) Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

(e) Mad River and all tributaries from Jimmy Creek upstream, not including Jimmy Creek: Open the Saturday before Memorial Day through October 31.

~~((232) Manastash Creek (Kittitas County), including tributaries: Selective gear rules apply.~~

~~(233))~~ **(227) Marshall Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

~~((234))~~ **(228) Martha Lake (Grant County):** Open March 1 through July 31.

~~((235))~~ **(229) Mattoon Lake (Kittitas County):**

(a) Open March 1 through December 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((236))~~ **(230) McCabe Pond (Kittitas County):**

(a) Open March 1 through December 31.

(b) It is unlawful to fish from any floating device.

~~((237))~~ (c) Five fish limit for all game fish species combined.

~~((237))~~ **(231) McDowell Lake (Stevens County):**

(a) Open the fourth Saturday in April through October 31 for fly fishing only.

(b) It is unlawful to fish from a floating device equipped with a motor.

(c) Catch and release only.

~~((238))~~ **(232) McManaman Lake (Adams County):** Open April 1 through September 30.

~~((239))~~ **(233) Medical Lake (Spokane County):**

(a) Open March 1 through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with a motor.

(d) Trout: Limit two; minimum length fourteen inches.

~~((240))~~ **(234) Medical Lake, West (Spokane County):** Open the fourth Saturday in April through September 30.

~~((241))~~ **(235) Mercer Creek (Kittitas County):**

(a) Open to juvenile anglers only within the Ellensburg city limits.

~~((242))~~ (b) Trout ten inch minimum length.

(c) Selective gear rules apply.

(236) Merritt Lake (Chelan County):

(a) Trout limit sixteen, except eastern brook trout. Eastern brook trout do not count towards the trout daily limit.

(b) Eastern brook trout: No minimum size and no limit.

~~((243))~~ **(237) Merry Lake (Grant County):**

(a) Open March 1 through November 30.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one.

~~((244))~~ **(238) Methow River (Okanogan County):**

(a) From the mouth to County Road 1535 (Burma Road) Bridge: Closed.

(b) From County Road 1535 (Burma Road) Bridge to Gold Creek:

(i) Open the Saturday before Memorial Day through September 15.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Catch and release only.

(c) From Gold Creek to Foghorn Dam:

(i) Open the Saturday before Memorial Day through September 30.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Catch and release only.

(d) Methow River tributaries from Gold Creek to Foghorn Dam; except Twisp River and Chewuch River:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Trout:

(A) Catch and release all rainbow trout.

(B) Eastern brook trout: Limit 16. Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

(e) From Foghorn Dam to Weeman Bridge:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Trout:

(A) Catch and release only for rainbow trout.

(B) Eastern brook trout: Limit 16. Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

~~((e))~~ (f) From Weeman Bridge to the falls above Brush Creek: ((Closed from the first Saturday in June through October 31))

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Catch and release only.

(g) Methow River tributaries from Weeman Bridge to the falls above Brush Creek; excluding Lost River, Goat Creek, and Early Winters Creek.

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Catch and release only.

(h) Methow River and tributaries above the falls above Brush Creek: Open the Saturday before Memorial Day through October 31.

~~((f))~~ (i) From Gold Creek to the falls above Brush Creek:

(i) Open December 1 through March 31 for whitefish only.

(ii) Whitefish gear rules apply.

~~((g))~~ (j) Methow River tributaries not otherwise provided in this section:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Trout: Maximum length 20 inches.

~~((245) Mill Creek (Chelan County): Closed.~~

~~(246))~~ (239) Mill Creek and tributaries (Pend Oreille County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10.

(c) Once an angler has retained 2 trout other than eastern brook trout, the entire trout limit has been taken.

~~((247))~~ (240) Mill Creek (Walla Walla County):

(a) From the mouth to Bennington Dam, including tributaries: Closed waters.

(b) From Bennington Dam upstream: All tributaries: Closed waters.

(c) Selective gear rules apply.

(d) ~~(It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

(e)) Release all steelhead.

~~((248))~~ (241) Mill Pond (Pend Oreille County): Open the fourth Saturday in April through October 31.

~~((249))~~ (242) Mineral Creek (tributary to upper Kachess River) (Kittitas County): ~~((From the mouth to))~~ Statewide rules apply upstream of the Wilderness Boundary ~~((Closed))~~.

~~((250) Mirror Lake (Grant County): Open the fourth Saturday in April through September 30.~~

~~(251))~~ (243) Molson Lake (Okanogan County):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((252))~~ (b) Limit 2.

(244) Monument Creek (Okanogan County), including tributaries: Selective gear rules apply.

~~((253))~~ (245) Moran Slough (including inlet and outlet streams) (Grant County): Closed.

~~((254))~~ (246) Morgan Lake (Adams County): Open April 1 through September 30.

~~((255))~~ (247) Moses Lake (Grant County):

(a) Bluegill: Limit five; minimum length eight inches.

(b) Crappie: Limit ten; minimum length nine inches.

(c) ~~(Walleye:~~

(i) Limit eight; minimum length twelve inches.

(ii) It is unlawful to retain more than one walleye over 22 inches in length.

~~((d))~~ Yellow perch: Limit 25.

~~((256))~~ (248) Mud Lake (Yakima County):

(a) Selective gear rules apply.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Trout: Limit one.

~~((257))~~ (249) Mudgett Lake (Stevens County): Open the fourth Saturday in April through October 31.

~~((258))~~ (250) Muskegon Lake (Pend Oreille County):

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit two.

~~((259))~~ (251) Myron Lake (Yakima County):

(a) Open March 1 through December 31.

(b) Selective gear rules apply.

~~((b))~~ (c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((e))~~ (d) Trout: Limit one.

~~((260))~~ (252) Myrtle Lake (Chelan County): Eastern brook trout no minimum size and no limit.

(253) Mystic Lake (Pend Oreille County): Open the fourth Saturday in April through October 31.

~~((261))~~ (254) Naches River (Yakima/Kittitas counties):

(a) From the mouth to Little Naches River:

~~((a))~~ (i) Selective gear rules apply.

~~((b))~~ (ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((e))~~ (iii) Trout:

~~((i))~~ (A) Minimum length twelve inches, maximum length twenty inches.

~~((ii))~~ (B) Release trout from the confluence with Tieton River to ~~((mouth of Rattlesnake Creek))~~ the confluence of the Little Naches River and Bumping River (origin of Naches River).

~~((d))~~ (b) From the mouth to the Tieton River:

(i) December 1 through ~~((March))~~ January 31 ~~((~~

)).

(ii) Only whitefish may be retained ~~((~~

~~(ii))~~;

~~(iii)~~ Whitefish gear rules apply.

~~((262))~~ **(255) All Naches River tributaries except Bumping River, Tieton River and Rattlesnake Creek:**

~~(a)~~ Selective gear rules apply.

~~(b)~~ Trout: Minimum size ten inches.

(256) Naneum Creek and tributaries (Kittitas County):

~~(a)~~ Selective gear rules apply.

~~((263))~~ ~~(b)~~ Trout: Minimum size ten inches.

(257) Naneum Pond (Kittitas County): Open to juvenile anglers only.

~~((264))~~ **(258) Napeequa River and all tributaries from Twin Lakes Creek upstream (Chelan County):**
~~((Closed from the mouth to Twin Lakes Creek.~~

~~(265) Nile Creek (Yakima County), including tributaries:~~ Selective gear rules apply.

~~(266))~~ Open the Saturday before Memorial Day through October 31.

(259) Nason Creek (Chelan County):

~~(a)~~ ~~((From the mouth upstream to Smith Brook: Closed.~~
~~(b))~~ From Smith Brook to Stevens Creek:

~~(i)~~ Open the Saturday before Memorial Day through October 31.

~~(ii)~~ Selective gear rules apply.

~~(iii)~~ It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((267) Negro Creek (Lincoln County):~~ Open year-round from the mouth at Sprague Lake to the fish barrier dam at Fishtrap Lake.

~~(268))~~ ~~(iv)~~ Eastern brook trout: Limit 16. Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

~~(b)~~ Nason Creek and all tributaries from Stevens Creek upstream, including Stevens Creek:

~~(i)~~ Open the Saturday before Memorial Day through October 31.

~~(ii)~~ Eastern brook trout: Limit 16. Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

~~(c)~~ Nason Creek tributaries from mouth of Nason Creek to Smith Brook, including Smith Brook, except the Mill Creek drainage:

~~(i)~~ Open the Saturday before Memorial Day through October 31.

~~(ii)~~ Eastern brook trout: Limit 16. Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

(260) Negro Creek (Whitman County): Open the fourth Saturday in April through July 15.

~~((269))~~ **(261) Nile Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

~~((270))~~ **(262) No Name Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

~~((271))~~ **(263) North Creek (Okanogan County):** Closed from the mouth to the falls at river mile 0.8.

~~((272))~~ **(264) North Elton Pond (Yakima County):**

~~(a)~~ Open ~~((December 1))~~ the first Friday after Thanksgiving through March 31.

~~(b)~~ It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~(c)~~ Trout: Limit two.

~~((273))~~ **(265) North Potholes Reserve Ponds (Grant County):**

~~(a)~~ Open February 1 through the day before waterfowl season begins.

~~(b)~~ It is unlawful to fish from any floating device, except it is permissible to fish using float tubes.

~~((274))~~ **(266) Nunnally Lake (Grant County):**

~~(a)~~ The outlet stream of Nunnally Lake is closed.

~~(b)~~ Open March 1 through November 30:

~~(i)~~ Selective gear rules apply.

~~(ii)~~ It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~(iii)~~ Trout: Limit one.

~~((275) Oak Creek (Yakima County), including tributaries:~~ Selective gear rules apply.

~~(276))~~ **(267) Okanogan River (Okanogan County):**

~~(a)~~ Within the mainstem or tributaries open for game fish angling:

~~(i)~~ It is unlawful to fish for salmon and steelhead using anything other than barbless hooks.

~~(ii)~~ Bass: No limit and no size restrictions.

~~(iii)~~ Channel catfish: No limit.

~~(iv)~~ Walleye: No limit and no size restrictions.

~~(b)~~ From the mouth to Highway 97 Bridge immediately upstream of the mouth:

~~(i)~~ Open year-round.

~~(ii)~~ July 1 through October 15: Anti-snagging rule applies and night closure in effect.

~~(iii)~~ Trout: Catch and release only.

~~(iv)~~ Salmon:

~~(A)~~ Open July 1 through October 15.

~~(B)~~ It is permissible to fish two poles from July 1 through October 15 so long as the angler possesses a two-pole endorsement.

~~(C)~~ Limit 8; no more than 2 adult hatchery Chinook and no more than 4 sockeye may be retained.

~~(D)~~ Release coho and wild adult Chinook.

~~(c)~~ From Highway 97 Bridge immediately upstream of the mouth to the highway bridge at Malott:

~~(i)~~ Open year-round.

~~(ii)~~ July 1 through September 15: Anti-snagging rule applies and night closure in effect.

~~(iii)~~ Trout: Catch and release only.

~~(iv)~~ Salmon:

~~(A)~~ Open July 1 through September 15.

~~(B)~~ Limit 8; no more than 2 adult hatchery Chinook and no more than 4 sockeye may be retained.

~~(C)~~ Release coho and wild adult Chinook.

~~(d)~~ From the highway bridge at Malott upstream:

~~(i)~~ From Zosel Dam downstream to the first Highway 97 Bridge downstream of the dam: Closed.

(ii) Open the Saturday before Memorial Day through September 15.

(iii) July 1 through September 15: Anti-snagging rule applies and night closure in effect.

(iv) Trout: Catch and release only.

(v) Salmon:

(A) Open July 1 through September 15.

(B) Limit 8; no more than 2 adult hatchery Chinook and no more than 4 sockeye may be retained.

(C) Release coho and wild adult Chinook.

~~((277))~~ **Old Mill Stream (Chelan County):** Closed.

~~(278))~~ (e) All Okanogan River tributaries, except Salmon Creek, Jasmine Creek, Bonaparte Creek, and the Similkameen River:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Trout: Catch and release all trout.

(268) Outlet Creek (Klickitat County):

(a) All tributaries are closed.

(b) Open the Saturday before Memorial Day through October 31.

~~((b))~~ (c) Trout: Limit 5.

~~((279))~~ **(269) Palouse River (Whitman County):**

(a) Open year-round from the mouth to the base of Palouse Falls.

(b) Bass: No limit.

(c) Channel catfish: No limit.

(d) Trout: Open June 16 through March 31 only.

(e) Walleye: No limit.

(i) From June 16 through August 31:

(A) Limit 6(~~(; minimum length 10 inches)).~~)

(B) Release all steelhead.

(C) No minimum size for trout with missing adipose fin and healed scar at the site of the missing fin.

(D) It is permissible to fish with two poles so long as the angler possesses a valid two-pole endorsement.

(ii) From September 1 through March 31:

(A) Limit 6(~~(; minimum length 10 inches)).~~)

(B) Anglers may retain up to 3 hatchery steelhead.

(C) It is unlawful to fish for steelhead using anything other than barbless hooks.

~~((e) Walleye: No limit; no size restrictions.~~

~~(280))~~ (D) No minimum size for trout with missing adipose fin and healed scar at the site of the missing fin.

(270) Palouse River (Whitman County) mainstem above Palouse Falls and tributaries (Washington waters only), except Rock Creek: Open year-round.

~~((281) Panther Creek (Chelan County):~~ Closed.

~~(282))~~ **(271) Pampa Pond (Whitman County):**

(a) Open March 1 through September 30.

(b) It is unlawful to fish from any floating device.

(c) Trout: It is unlawful to retain more than two over 13 inches in length.

~~((283))~~ **(272) Para-Juvenile Lake (Adams/Grant counties):** Open April 1 through September 30 to juvenile anglers only.

~~((284))~~ **(273) Park Lake (Grant County):** Open the fourth Saturday in April through September 30.

~~((285))~~ **(274) Parker Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

~~((286))~~ **(275) Pataha Creek (Garfield County):**

(a) Bass: No limit.

(b) Channel catfish: No limit.

(c) Walleye: No limit.

(d) Within the city limits of Pomeroy: Open to juvenile anglers only.

~~((b))~~ (e) From the city limits of Pomeroy upstream:

(i) Selective gear rules apply.

(ii) ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor))~~ Trout:

(A) Eastern brook trout: Limit 10.

(B) Once an angler has retained 2 trout other than Eastern brook trout, the entire trout limit has been taken.

~~((287))~~ **(276) Pearrygin Lake (Okanogan County):** Open the fourth Saturday in April through ~~((September 30))~~ October 31.

~~((288))~~ **(277) Pend Oreille River (Pend Oreille County):**

(a) In the mainstem:

(i) Open year-round.

(ii) All sloughs within the boundaries of the Kalispel Reservation, except Calispell Slough: Closed.

(iii) Two pole fishing is permissible so long as the angler possesses a two-pole endorsement.

(b) Pend Oreille River tributaries are open the Saturday before Memorial Day through October 31, unless otherwise provided for in this section.

~~((289))~~ **(278) Perch Lake (Grant County):** Open the fourth Saturday in April through September 30.

~~((290))~~ **(279) Peshastin Creek and all tributaries from Ruby Creek upstream, not including Ruby Creek (Chelan County):** ~~((Closed from the mouth to Ruby Creek.~~

~~(291))~~

(a) Open the Saturday before Memorial Day through

October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout:

(i) Rainbow trout, catch and release only.

(ii) Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

(e) Peshastin Creek tributaries from the mouth of Peshastin Creek to Ruby Creek (including Ruby Creek), except Ingalls Creek: Open the Saturday before Memorial Day through October 31.

(280) Petit Lake (Pend Oreille County):

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((292))~~ **(281) Phalon Lake (Stevens County):** Closed.

~~((293))~~ **(282) Phelps Creek and all tributaries from the mouth to the barrier falls (mile 1) (Chelan County):**

(a) Open the Saturday before Memorial Day through October 31 (~~from the mouth to the falls at river mile one~~).

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((294))~~ (d) From the barrier falls (mile 1) upstream: Open the Saturday before Memorial Day through October 31.

(283) Phillips Lake (Stevens County): Open the fourth Saturday in April through October 31.

~~((295))~~ **(284) Pierre Lake (Stevens County):** It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

~~((296))~~ **(285) Pillar Lake (Grant County):** Open April 1 through September 30.

~~((297))~~ **(286) Ping Pond (Grant County):**

(a) Open the third Saturday in April through Labor Day to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

(b) Limit 5 game fish; no minimum size restrictions.

~~((298))~~ **(287) Pit Lake (Douglas County):** Open to juvenile anglers only.

~~((299))~~ **(288) Poacher Lake (Grant County):** Open April 1 through September 30.

~~((300))~~ **(289) Potholes Reservoir (Grant County):**

(a) Crappie: Minimum length nine inches.

(b) Crappie and bluegill: Combined limit of twenty-five fish.

(c) Perch: Limit twenty-five fish.

~~((d))~~ ~~Walleye: Limit 8; minimum size 12 inches. It is unlawful to retain more than 1 walleye greater than 22 inches in length.~~

~~((301))~~ **(290) Potter's Pond (Stevens County):** Open the fourth Saturday in April through October 31.

~~((302))~~ **(291) Powerline Lake (Franklin County):**

(a) Open March 1 through first Sunday in October.

(b) Trout limit 2.

~~((303))~~ **(292) Priest Lake tributaries (Pend Oreille County):** Open the Saturday before Memorial Day through October 31, including Upper Priest Lake tributaries, except as otherwise provided in this section.

~~((304))~~ **(293) Priest River tributaries (Pend Oreille County):** Open the Saturday before Memorial Day through October 31.

~~((305))~~ **(294) Quail Lake (Adams County):**

(a) Open for fly fishing only.

(b) It is unlawful to fish from any floating device equipped with a motor.

(c) Catch and release only.

~~((306))~~ **(295) Quarry Pond (Walla Walla County):**

(a) Open March 1 through October 31.

(b) It is unlawful to fish from any floating device.

~~((b))~~ (c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

~~((307))~~ **(296) Quincy Lake (Grant County):** Open March 1 through July 31.

~~((308))~~ **(297) Rainbow Lake (Columbia County):**

(a) Open March 1 through October 31.

(b) It is unlawful to fish from any floating device.

(c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

~~((309))~~ **(298) Rainy Creek (Chelan County):** From the mouth of Rainy Creek upstream:

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(299) Rat Lake (Okanogan County):

(a) Open year-round.

(b) From April 1 to November 30:

(i) Selective gear rules apply.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Catch and release only.

~~((310))~~ **(300) Rattlesnake Creek (Yakima County) (~~and tributaries~~):**

(a) Selective gear rules apply.

(b) Catch and release only for all species in the mainstem.

~~((311))~~ **(301) Rattlesnake Creek tributaries:**

(a) Selective gear rules apply.

(b) Trout minimum size 10 inches.

(302) Red Rock Creek (Grant County): Open April 1 through September 30.

~~((312))~~ **(303) Reflection Pond (Okanogan County):** Open the fourth Saturday in April through October 31.

~~((313))~~ **(304) Renner Lake (Ferry County):** Open the fourth Saturday in April through October 31.

~~((314))~~ **(305) Rigley Lake (Stevens County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit two, minimum length twelve inches.

~~((315))~~ **(306) Rimrock Lake (Reservoir) (Yakima County):**

(a) For all species except sturgeon: It is permissible to fish using two poles, so long as the angler possesses a valid two-pole endorsement.

(b) Chumming is permissible.

~~((b))~~ (c) Kokanee: Limit sixteen; kokanee do not count toward the trout daily limit.

~~((316) Ringold Springs Creek (Hatchery Creek) (Franklin County):~~ Closed.

~~(317))~~ **(307) Roaring Creek (Entiat River Tributary) and all tributaries (Chelan County):** From the mouth of Roaring Creek upstream:

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout:

(i) Rainbow trout are catch and release only.

(ii) Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern

brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing for trout.

(308) Rock Creek (Adams/Whitman counties):

(a) From the mouth to Endicott West Road: Open year-round.

(b) From Endicott West Road to the bridge on George Knott Road at Revere:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(i-v))~~ Catch and release only.

(c) From the bridge on George Knott Road upstream: Open year-round.

~~((318))~~ **(309) Rock Creek (Chelan County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((319))~~ **(310) Rock Creek (Klickitat County):**

(a) From Army Corps of Engineers Park upstream to the source: Closed waters.

(b) Open year-round from the mouth to the Army Corps of Engineers Park. Limits, size restrictions and gear restrictions are the same as those in the adjacent portion of the Columbia River.

~~((320))~~ **(311) Rock Island Pool (Col.R.) tributaries (Chelan/Douglas County):** Open the Saturday before Memorial Day through October 31 from Rock Island Dam to Rocky Reach Dam, except the Wenatchee River.

(312) Rocky Ford Creek and Ponds (Grant County):

(a) Open to fly fishing and fishing from the bank only (no wading).

(b) Catch and release only.

~~((321))~~ **(313) Rocky Lake (Stevens County):**

(a) Open the fourth Saturday in April through October 31.

(b) From June 1 through October 31:

(i) Selective gear rules apply.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Catch and release only.

~~((322))~~ **(314) Roosevelt Lake (Grant/Ferry/Lincoln/Stevens counties):**

(a) The following areas are closed:

(i) From the Little Dalles power line crossing upstream approximately one mile to the marked rock point, and from Northport power line crossing upstream to the most upstream point of Steamboat Rock, from March 1 through the Friday before Memorial Day.

(ii) The Kettle arm upstream to Barstow Bridge from April 1 through the Friday before Memorial Day.

(b) Carp: It is unlawful to fish for carp with bow and arrow.

(c) Kokanee: Limit 6; no more than 2 with intact adipose fins may be retained.

(d) Salmon: Landlocked salmon rules apply.

(e) Sturgeon: It is unlawful to fish for or retain sturgeon in Roosevelt Lake and its tributaries.

(f) Trout (except kokanee): Limit 5; it is unlawful to retain more than 2 over 20 inches in length.

(g) Walleye: No size restrictions; limit 16 fish.

~~((323))~~ **(315) Rotary Lake (Yakima County):** Open March 1 through December 31.

~~((324))~~ **(316) Round Lake (Okanogan County):** Open the fourth Saturday in April through ~~((September 30))~~ October 31.

~~((324))~~ **(317) Rowland Lake(s), North (Klickitat County):** Open the fourth Saturday in April through the last day in February, except closed the Monday before Thanksgiving Day through Thanksgiving Day.

~~((325))~~ **(318) Royal Lake (Adams County):** Closed.

~~((326))~~ **(319) Royal Slough (including Marsh Unit IV impoundments) (Adams County):** Closed.

~~((327))~~ **(320) Ruby Creek and tributaries (Pend Oreille County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken and the angler must cease fishing for trout.

~~((328))~~ **(321) Rufus Woods Lake (Douglas/Okanogan counties):**

(a) ~~((Chumming is permissible.~~

~~(b))~~ From Grand Coulee Dam downstream to State Route 155 Bridge: Closed.

~~((c))~~ (b) It is unlawful to fish for or retain sturgeon from the lake or its tributaries.

~~((d))~~ (c) Trout: Limit 2; only uninjured trout caught using artificial lures or flies with single-point barbless hooks may be released.

~~((e))~~ (d) Tributaries to Rufus Woods Lake: Open the Saturday before Memorial Day through October 31.

~~((329))~~ **(322) Sacheen Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

~~((330))~~ **(323) Saddle Mountain Lake (Grant County):** Closed.

~~((331))~~ **(324) Sago Lake (Grant County):** Open April 1 through September 30.

~~((332))~~ **(325) Salmon Creek, mainstem (Okanogan County):** ~~((Closed.~~

~~(333))~~

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Catch and release only.

(326) Salmon Creek, North Fork and West Fork from mouth to South Fork (Okanogan County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((334))~~ (327) San Poil River (Ferry County):

(a) From the western shoreline at the mouth of the San Poil Arm (as marked by a regulatory buoy) directly eastward across the San Poil Arm to the eastern shoreline of the San Poil Arm (as marked by a regulatory buoy) upstream to the north shore of the outlet of French Johns Lake (Manila Creek) northeast across the San Poil Arm to the north shore of the outlet of Dick Creek:

(i) It is unlawful to fish for or retain sturgeon.

(ii) Open April 1 through January 31 for kokanee, smallmouth bass, trout, and walleye:

(A) Kokanee: Limit 2 fish in addition to the trout limit; no minimum size requirement.

(B) Smallmouth bass: Limit 10; it is unlawful to retain more than one over 14 inches.

(C) Trout:

(I) Limit 5; it is unlawful to retain more than 2 trout over 20 inches.

(II) Release all rainbow trout with adipose fins intact.

(D) Walleye: Limit 16; no size restrictions.

(iii) Open year-round for other game fish, salmon, and carp:

(A) Carp: It is unlawful to fish for carp with bow and arrow.

(B) Salmon: Landlocked salmon rules apply.

(b) From the north shore of the outlet of French Johns Lake (Manila Creek) northeast across the San Poil Arm to the north shore of the outlet of Dick Creek to approximately 5 miles upstream from the outlet of French Johns Lake, as marked by regulatory buoys:

(i) It is unlawful to fish for or retain sturgeon, kokanee, and all other trout.

(ii) Open April 1 through January 31 for walleye and smallmouth bass:

(A) Smallmouth bass: Limit 10; it is unlawful to retain more than one over 14 inches.

(B) Walleye: Limit 16; no size restrictions.

(iii) Open year-round for other game fish, salmon, and carp:

(A) Carp: It is unlawful to fish for carp with bow and arrow.

(B) Salmon: Landlocked salmon rules apply.

(c) The waters from approximately 5 miles upstream from the outlet of French Johns Lake, as marked by regulatory buoys, to all waters north of the regulatory buoy line at or above 1,310 feet mean sea level elevation are managed under the regulatory authority of the Colville Confederated Tribe of Indians.

(d) From above the Colville Confederated Tribe of Indians Reservation northern boundary, upstream to the headwaters, including tributaries: Open the Saturday before Memorial day through October 31.

~~((335))~~ (328) Sand Hallow Creek (Grant County) including all tributaries: Open April 1 through September 30 from State Route 243 upstream.

(329) Sarg Hubbard Park Pond (Reflection Pond) (Yakima County):

(a) Open March 1 through December 31.

(b) Open to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

~~((336))~~ (330) Schaefer Lake (Chelan County):

(a) Trout limit sixteen, except eastern brook trout. Eastern brook trout do not count towards the trout daily limit.

(b) Eastern brook trout: No minimum size and no limit.

~~((337))~~ (331) Scooteny Reservoir (Franklin County): Walleye limit 8; minimum size 12 inches. It is unlawful to retain more than one walleye over 22 inches in length.

~~((338))~~ (332) Sedge Lake (Grant County):

(a) Selective gear rules apply.

(b) Trout: Limit one.

~~((339) Shellneck Creek (Yakima County): Closed.~~

~~(340))~~ (333) Sherman Creek (Ferry County) and all tributaries:

(a) From the hatchery boat dock to 400 feet upstream of hatchery water diversion dam: Closed.

(b) Open the Saturday before Memorial Day through October 31.

~~((341))~~ (334) Sherry Lake (Stevens County): Open the fourth Saturday in April through October 31.

~~((342))~~ (335) Shiner Lake (Adams County):

(a) Open April 1 through September 30.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((343))~~ (336) Shoveler Lake (Grant County): Open April 1 through September 30.

~~((344))~~ (337) Sidley Lake (Okanogan County): Trout limit two.

~~((345) Silvas Creek (Klickitat County): Trout: Catch and release only.~~

~~(346))~~ (338) Silver Lake (Spokane County): Crappie limit ten; minimum length nine inches.

~~((347))~~ (339) Silver Nail Lake (Okanogan County): Open to juvenile anglers only.

~~((348))~~ (340) Similkameen River (Okanogan County):

(a) Barbless hooks required for salmon and steelhead.

(b) From the mouth to Enloe Dam:

(i) Closed from Enloe Dam downstream 400 feet.

(ii) July 1 through September 15:

(A) Anti-snagging rule applies.

(B) Night closure in effect.

(iii) Salmon:

(A) Open July 1 through September 15.

(B) Limit 8; no more than 2 adult hatchery Chinook and no more than 4 sockeye may be retained.

(C) Release coho and wild adult Chinook.

(iv) Open December 1 through March 31 for whitefish only; whitefish gear rules apply.

(c) From Enloe Dam to the Canadian border, including tributaries, except Sinlahekin Creek:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Open December 1 through March 31 for whitefish only; whitefish gear rules apply.

~~((349))~~ (341) Sinlahekin Creek (Okanogan County):

(a) From Palmer Lake to Cecile Creek Bridge:

(i) Open the Saturday before Memorial Day through August 31.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Open December 1 through March 31 for whitefish only; whitefish gear rules apply.

(b) From Cecile Creek Bridge upstream, including all tributaries: Open the Saturday before Memorial Day through October 31.

~~((350))~~ (342) **Skookum Lake, North (Pend Oreille County):** Open the fourth Saturday in April through October 31.

~~((351))~~ (343) **Skookum Lake, South (Pend Oreille County):** It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

~~((352) Skookumhuck Creek (Klickitat County):~~ Trout: Catch and release only.

~~(353))~~ (344) **Slate Creek and tributaries (Pend Oreille County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.

~~((354))~~ (345) **Snake River:**

(a) Open year-round, except the following areas are closed:

(i) Within 400 feet of the base of any dam;

(ii) Within a 400 foot radius around the fish ladder entrance at Lyons Ferry Hatchery;

(iii) Within a 200 foot radius upstream of the fish ladder exit above Lower Granite Dam; and

(iv) Within an area 1,200 feet downstream from the base of the west lock gate at Little Goose Dam on the south bank of the Snake River and 100 feet out into the river from the south river bank.

(b) Bass: No limit and no size restrictions.

(c) Channel catfish: No limit.

(d) Sturgeon:

(i) From the mouth to Ice Harbor Dam:

(A) Daily limit one. Minimum fork length is 43 inches; maximum fork length is 54 inches.

~~(B)~~ (B) Closed to fishing for sturgeon from May 1 through July 31 from the downstream end of Goose Island up to Ice Harbor Dam.

~~((B))~~ (C) Release all sturgeon from August 1 through January 31.

(ii) From Ice Harbor Dam to the Oregon border, including all tributaries: Release all sturgeon ~~((in waters upstream from Lower Granite Dam, including all tributaries)).~~

(e) Trout:

(i) Open June 16 through March 31

(ii) April 1 through June 15: Catch and release only.

(iii) Limit 6; minimum length 10 inches.

(iv) It is unlawful to retain more than 3 hatchery steelhead.

(v) Barbless hooks required for steelhead.

(vi) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(f) Walleye: No limit and no size restrictions.

~~((355))~~ (346) **Snipe Lake (Grant County):** Open April 1 through September 30.

~~((356))~~ (347) **Snipes Creek (Benton County):**

(a) Selective gear rules apply.

~~((357) Snyder Creek (Klickitat County):~~ Trout: Catch and release only.

~~(358))~~ (b) Trout minimum length ten inches.

(348) **South Salmo River (Pend Oreille County), including tributaries:** Open the Saturday before Memorial Day through October 31.

~~((359))~~ (349) **Spearfish Lake (Klickitat County):** Open the fourth Saturday in April through last day in February.

~~((360))~~ (350) **Spectacle Lake (Okanogan County):** Open April 1 through September 30.

~~((361))~~ (351) **Spokane River (Spokane County):**

(a) From SR 25 Bridge upstream to 400 feet below Little Falls Dam:

(i) It is permissible to fish with two poles so long as the angler possesses a two-pole endorsement.

(ii) Open year-round:

(A) Kokanee:

(I) Limit 6; no minimum size.

(II) It is unlawful to retain more than 2 with intact adipose fins.

(III) Kokanee does not count towards the trout daily limit.

(B) Salmon: Landlocked salmon rules apply.

(C) Sturgeon: It is unlawful to fish for or retain sturgeon.

(D) Trout:

(I) Limit 5; no minimum size.

(II) It is unlawful to retain more than 2 trout over 20 inches in length.

(E) Walleye: Limit 16; no size restrictions.

(b) From the Little Falls Dam to the upstream boundary of the Plese Flats Day Use Area (Riverside State Park), except Long Lake ~~((formed by))~~ (Nine Mile Dam to Long Lake Dam): Open year-round.

(i) Landlocked salmon rules apply.

(ii) Sturgeon: It is unlawful to fish for or retain sturgeon.

(iii) Trout: Limit 5; no more than 2 trout over 20 inches in length may be retained.

(c) From the upstream boundary at Plese Flats Day Use Area (Riverside State Park) upstream to the Monroe Street Dam:

(i) Selective gear rules apply.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Open June 1 through March 15:

(A) Salmon: Open June 1 through March 15; landlocked salmon rules apply.

(B) Sturgeon: It is unlawful to fish for or retain sturgeon.

(C) Trout: Limit one; release wild trout (adipose fin intact).

(d) From Monroe Street Dam upstream to Upriver Dam:

(i) Open year-round.

(ii) Landlocked salmon rules apply.

(e) From Upriver Dam upstream to the Idaho/Washington state line:

(i) Selective gear rules apply.

(ii) Open the first Saturday in June through March 15.

(iii) Catch and release only.

(f) Unless otherwise provided in this section, all tributaries to the Spokane River (Washington waters only) are open the Saturday before Memorial Day through October 31.

~~((362))~~ (352) Sprague Lake (Adams/Lincoln counties):

(a) The following waters are closed:

(i) Cow Creek;

(ii) The marsh at the southwest end of the lake from the lakeside edge of the reeds to Danekas Road;

(iii) The small bay at the southeast end of the lake; and

(iv) Those waters within 50 feet of Harper Island.

(b) All other waters southwest of the southwest tip of Harper Island: Closed from October 1 through April 30.

(c) Crappie: Minimum length nine inches.

(d) Crappie and bluegill: Combined daily limit of twenty-five fish.

(e) Trout: It is unlawful to retain more than two trout over twenty inches in length.

~~((363))~~ (353) Spring Creek (Benton County):

(a) Selective gear rules apply.

~~((364))~~ (b) Trout minimum length ten inches.

~~(354) Spring Creek ((Goldendale Hatchery)) (Klickitat County):~~

(a) Goldendale Hatchery: Open the Saturday before Memorial Day through October 31. ~~((b))~~ Trout: Limit 5.

~~((365))~~ (b) All other waters: Open the first Saturday in June through October 31.

(355) Spring Hill Reservoir (Black Lake, Lower Wheeler Reservoir) (Chelan County):

(a) Open the fourth Saturday in April through October 31.

(b) July 5 through October 31: Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Catch and release only.

~~((366))~~ (356) Spring Lake (Columbia County):

~~(a) (Open March 1 through October 31.~~

~~(b))~~ It is unlawful to fish from any floating device.

~~((e))~~ (b) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

~~((367))~~ (357) Spring Lakes (Grant County): Open March 1 through July 31.

~~((368))~~ (358) Stan Coffin Lake (Grant County): Bass: Catch and release only.

~~((369))~~ (359) Starvation Lake (Stevens County):

(a) Open the fourth Saturday in April through October 31.

(b) From June 1 through October 31:

(i) Selective gear rules apply.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Catch and release only.

~~((370))~~ (360) Stehekin River (Chelan County):

(a) From the mouth to Agnes Creek:

~~((a))~~ (i) Selective gear rules apply.

~~((b))~~ (ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((e))~~ (iii) Open July 1 through October 31: Trout minimum length fifteen inches; release cutthroat.

~~((d))~~ (iv) Open March 1 through June 30: Catch and release only.

~~((371))~~ (b) From Agnes Creek upstream: Open the Saturday before Memorial Day through October 31.

(361) Stratford/Brook Lake (Grant County): Open February 1 through September 30.

~~((372))~~ (362) Sullivan Creek (Pend Oreille County):

(a) From the mouth to Mill Pond: Open the Saturday before Memorial Day through October 31.

(i) Barbless hooks are required.

(ii) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.

(iii) Release all cutthroat.

(b) From Mill Pond upstream and tributaries:

(i) Selective gear rules apply.

~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.))~~ Release all cutthroat.

(ii) Open the Saturday before Memorial Day through October 31.

(iv) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken((and the angler must cease fishing for trout)).

~~((373))~~ (363) Sullivan Lake (Pend Oreille County):

(a) Kokanee: Limit ten; kokanee do not count toward the trout limit.

(b) Trout (except kokanee): Limit two trout.

~~((374))~~ (364) Sullivan Lake tributaries (Pend Oreille County), except as otherwise provided in this section: Open the Saturday before Memorial Day through October 31.

~~((375))~~ (365) Summit Lake (Stevens County): Open the fourth Saturday in April through October 31.

~~((376) Swale Creek (Klickitat County): Trout: Catch and release only.~~

~~(377))~~ (366) Swan Lake (Ferry County):

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

~~((378) Swauk Creek (Kittitas County), including tributaries: Selective gear rules apply.~~

~~(379))~~ (367) Tacoma Creek and tributaries (Pend Oreille County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken and the angler must cease fishing for trout.

~~((380) Taneum Creek (Kittitas County), including tributaries: Selective gear rules apply.~~

~~(381))~~ (368) Teal Lakes (North and South) (Grant/Adams counties): Open April 1 through September 30.

~~((382))~~ (369) Teanaway River (Kittitas County), and tributaries except North Fork:

(a) Selective gear rules apply.

~~((383))~~ (b) Trout minimum length ten inches.

(370) Teanaway River, North Fork (Kittitas County): ~~((a))~~ From the mouth to Beverly Creek, including all tributaries:

~~((†))~~ (a) Selective gear rules apply.

~~((†))~~ (b) Trout: Catch and release only.

~~((b))~~ From Beverly Creek to the impassable waterfall at the end of USFS Road 9737: Closed.

~~(384))~~ **(371) North Fork Teanaway River tributaries from mouth to Beverly Creek, including Beverly Creek:**

(a) Selective gear rules apply.

(b) Trout: Minimum size ten inches.

(372) Tern Lake (Grant County):

(a) Selective gear rules apply.

(b) Trout: Limit one.

~~((385))~~ **(373) Thomas Lake (Stevens County):** Open the fourth Saturday in April through October 31.

~~((386))~~ **~~Thread Lake (Adams County):~~** Open April 1 through September 30.

~~(387))~~ **(374) Tieton River (Yakima County):**

(a) From the mouth to Tieton Dam, including all tributaries:

(i) It is permissible to fish up to the base of Tieton (Rimrock) Dam.

~~((†))~~ (ii) Selective gear rules apply.

~~((e))~~ Open December 1 through March 31 for whitefish only; whitefish gear rules apply.

~~(388))~~ (iii) Trout minimum length ten inches.

(b) Tributaries upstream of Tieton Dam except North Fork Tieton River, South Fork Tieton River and Indian Creek: Open the Saturday before Memorial Day through October 31.

(375) Tieton River, North Fork (Yakima County):

(a) The following waters are closed:

(i) The Clear Lake spillway channel; and

(ii) Within 400 feet of Clear Lake Dam.

(b) ~~((†))~~ In the mainstem, including that portion of the river that flows through the dry lakebed of Rimrock Reservoir, upstream to the USFS Road 740 Bridge below Clear Lake Dam:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply for the mainstem and tributaries.

~~((389))~~ (c) In the mainstem upstream of Clear Lake:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

(d) All North Fork Tieton tributaries, including Clear Creek: Open the Saturday before Memorial Day through October 31.

~~((a))~~ **(376) Tieton River, South Fork (Yakima County):** ~~From the bridge on USFS Road 1200 to bridge on USFS Rd. 1070 (approximately 12.5 miles): Closed.~~

~~((b))~~ From the bridge on USFS Rd. 1070 upstream and all tributaries, except Bear Creek and Spruce Creek: Open the Saturday before Memorial Day through October 31.

~~((390))~~ **(377) Touchet River (Columbia/Walla Walla counties):**

(a) General river rules: For all portions of the Touchet River and its tributaries that are open to game fish angling:

(i) Bass: No limit.

(ii) Channel catfish: No limit.

(iii) Walleye: No limit and no size restrictions.

(b) Rules by river section:

~~(i)~~ From the mouth to the confluence of ~~(North and South Forks, and all tributaries open to game fish angling:~~

~~(i)~~ Bass: No limit and no size restrictions.

~~(ii)~~ Channel catfish: No limit.

~~(iii)~~ Walleye: No limit and no size restrictions.

~~(b)~~ From the mouth to the confluence of the North and South Forks from November 1 through April 15:

~~(i)~~ It is unlawful to use anything other than barbless hooks.

~~(ii)~~ From November 1 through March 31: Release all fish except hatchery steelhead and brown trout; limit 3 combined.

~~(iii)~~ From April 1 through April 15: Release all fish except anglers may retain up to 3 hatchery steelhead.

~~(e))~~ Coppei Creek:

(A) Open the first Saturday in June through October 31:

(I) Trout: Maximum length 20 inches. No minimum size for trout with missing adipose fin and a healed scar at the site of the missing fin.

(II) Steelhead: Open September 1 through October 31: daily limit 3. It is unlawful to use anything other than barbless hooks when fishing for steelhead.

(B) Open November 1 through March 31:

(I) Release all fish except hatchery steelhead and brown trout.

(II) Daily limit 3 hatchery steelhead and brown trout combined.

(III) It is unlawful to use anything other than barbless hooks.

(ii) From the mouth of Coppei Creek to the confluence of North and South Forks and all tributaries:

(A) Selective gear rules apply.

(B) Open the first Saturday in June through October 31.

(C) Trout:

(I) 8 inch minimum size.

(II) Daily limit 2.

(III) No minimum size for trout with a missing adipose fin and a healed scar at the site of the missing fin.

(D) Steelhead:

(I) Open September 1 through October 31 only.

(II) Limit 3 hatchery steelhead.

(III) Release all wild steelhead.

(IV) It is unlawful to use anything other than barbless hooks when fishing for steelhead.

(iii) From the confluence of the North and South Forks upstream(~~, including South Fork, North Fork, Robinson and Wolf Forks~~):

~~((†))~~ (A) Tributaries other than North Fork, South Fork, Robinson Fork, and Wolf Fork: Closed.

~~((†))~~ (B) All tributaries of North Fork, South Fork, Robinson Fork, and Wolf Fork: Closed.

(C) Selective gear rules apply.

~~((iii))~~ It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((iv))~~ (D) Release all steelhead.

~~((†))~~ (iv) From mouth of North Fork, upstream (~~((†))~~) to Spangler Creek:

~~((†))~~ (A) Open the first Saturday in June through (~~(August))~~ October 31.

~~((ii))~~ Selective gear rules and all tributaries are closed.

~~(e))~~ (B) Trout: No minimum size for trout with a missing adipose fin and a healed scar at the site of the missing fin.

(v) North Fork upstream of Spangler Creek: Open the first Saturday in June through August 31.

(vi) Wolf Fork from the mouth to Coates Creek:

(A) Open the first Saturday in June through October 31.

(B) No minimum size for trout with missing adipose fin and healed scar.

(vii) Wolf Fork above Coates Creek: Open the first Saturday in June through August 31.

(viii) Robinson Fork:

(A) Open the first Saturday in June through August 31.

(B) No minimum size for trout with a missing adipose fin and a healed scar at the site of the missing fin.

(ix) South Fork, from the mouth to Griffin Fork:

(A) Open the first Saturday in June through October 31.

(B) No minimum size for trout with a missing adipose fin and a healed scar at the site of the missing fin.

(x) South Fork, upstream from Griffin Creek:

(A) Open the first Saturday in June through August 31.

~~((f))~~ Wolf Fork, upstream from Coates Creek:

(i) All tributaries are closed:

(ii) Open the first Saturday in June through August 31.

(iii) Selective gear rules apply:

~~(391))~~ (B) Trout: Open the first Saturday in June through October 31.

(378) Trapper Lake (Chelan County): Trout: Limit two.

~~((392))~~ **(379) Trout Lake (Ferry County):** Open the fourth Saturday in April through October 31.

~~((393))~~ **(380) Trout Lake (tributary to Big White Salmon River) (Klickitat County) including all tributaries:** Open the first Saturday in June through October 31.

~~((394))~~ **(381) Tucannon River (Columbia County):**

(a) General River Rules:

(i) Unless otherwise provided in this section, all tributaries are closed, except Pataha Creek.

(ii) For all portions of the Tucannon River open to game fish angling:

(A) Bass: No limit and no size restrictions.

(B) Channel catfish: No limit.

(C) Walleye: No limit and no size restrictions.

(b) Rules by river section:

(i) From the mouth upstream to Tucannon Hatchery Bridge:

(A) Open the first Saturday in June through October 31.

(B) Selective gear rules apply upstream of Turner Road Bridge at Marengo.

~~((B))~~ It is unlawful to fish from a floating device equipped with an internal combustion motor upstream of Turner Road Bridge at Marengo.

(C) Anglers may retain up to 3 hatchery steelhead.

(D) Open November 1 through March 31:

(E) It is unlawful to use anything other than barbless hooks.

(H) Release all fish, except anglers may retain up to 3 hatchery steelhead and 15 whitefish.

~~(E))~~ (C) Steelhead:

(I) Limit 3 hatchery steelhead.

(II) Open the first Saturday in June through August 31.

(III) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(IV) Open September 1 through the last day in February.

(ii) From the mouth of Tucannon upstream to Turner Road Bridge at Marengo:

(A) Daily limit 2 hatchery steelhead; release all wild steelhead.

(I) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(II) It is unlawful to use anything other than barbless hooks when fishing for steelhead.

(B) Whitefish: Open November 1 through last day of February. It is permissible to retain up to 15 whitefish.

(iii) From the Tucannon Hatchery Bridge upstream to Cow Camp Bridge: Open the first Saturday in June through August 31:

~~((F))~~ The following waters are closed:

(H) All tributaries and the (A) The waters in the mainstem from the Tucannon Hatchery Bridge upstream to 500 feet above the Rainbow Lake intake are closed.

~~((ii))~~ From Cow Camp Bridge upstream:

(A)) (B) Selective gear rules apply.

~~((B))~~ It is unlawful to fish from a floating device equipped with an internal combustion motor.

(C) Steelhead: Catch and release only.

~~(395))~~ (C) No minimum size for trout with a missing adipose fin and a healed scar at the site of the missing fin.

(iv) From the Cow Camp Bridge upstream: Closed.

(382) Tucuala Lake (Kittitas County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: No limit; eastern brook trout do not count towards the trout limit.

~~((396))~~ **(383) Twin Lakes (Chelan County) and tributaries and outlet stream to junction with the Napeequa River:** Closed.

~~((397))~~ **(384) Twisp River (Okanogan County):**

(a) From the mouth to War Creek:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Catch and release only.

(b) From War Creek to South Fork Twisp River:

~~(Closed:~~

~~(398) Umtanum Creek (Kittitas County):~~ Selective gear rules apply.

~~(399))~~

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Catch and release only.

(c) Twisp River Tributaries from the mouth to War Creek; including Buttermilk Creek and Little Bridge Creek:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Catch and release only.

(d) Twisp River tributaries from War Creek to the North Fork Twisp River, including War Creek, South Fork Twisp River, North Creek to Twisp River Road Bridge, and North Fork Twisp River to the falls:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Catch and release only.

(e) North Fork Twisp River above the falls and North Creek above Twisp River Road Bridge are open from the Saturday before Memorial Day to October 31.

(385) Union Creek (Yakima County): ~~((Closed from the mouth))~~ Open upstream ~~((to))~~ of the falls (approximately 1/4 mile from the mouth).

~~((400))~~ (386) Upper Wheeler Reservoir (Chelan County): ~~((Closed-~~

~~401))~~

(a) Open the fourth Saturday in April through October 31.

(b) Fly fishing only.

(c) It is unlawful to fish from a floating device equipped with a motor.

(d) Catch and release only.

(387) Vanes Lake (Pend Oreille County): Open the fourth Saturday in April through October 31.

~~((402))~~ (388) Vic Meyers (Rainbow) Lake (Grant County): Open the fourth Saturday in April through September 30.

~~((403) Wahkineus Creek (Klickitat County):~~ Trout: ~~Catch and release only.~~

~~404))~~ (389) Waitts Lake (Stevens County): Open the fourth Saturday in April through last day in February.

~~((405))~~ (390) Walla Walla River (Walla Walla County):

(a) ~~((In the mainstem and tributaries open to game fish angling:))~~ General rules in the mainstem:

(i) Bass: No limit and no size restrictions.

(ii) Channel catfish: No limit.

(iii) Walleye: No limit and no size restrictions.

(b) Rules by river section:

(i) From the mouth to ~~((the Touchet River))~~ McDonald Road Bridge:

~~((+))~~ (A) Open year-round, except all tributaries other than the Touchet River are closed.

~~((+))~~ (B) Trout:

~~((A))~~ (I) Release trout April 1 through May 31.

~~((B) Limit 3 hatchery steelhead.~~

~~((C))~~ (II) Steelhead: Open first Saturday in June through March 31; Limit 3 hatchery steelhead.

(III) It is unlawful to fish for steelhead using anything other than barbless hooks.

~~((e) From the Touchet River upstream to the state line:~~

~~((+))~~ (IV) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(ii) From the McDonald Road Bridge upstream to the Oregon state line:

(A) Open from the first Saturday in June through October 31 ~~((; trout: Limit 3 hatchery steelhead)).~~

~~((+))~~ (B) Selective gear rules apply.

(C) No minimum size for trout with a missing adipose fin and a healed scar at the site of the missing fin.

(D) Limit 3 hatchery steelhead.

(E) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(F) For all the game fish from November 1 through March 31:

~~((A) It is unlawful to fish for steelhead using anything other than barbless hooks.~~

~~((B))~~ (I) Selective gear rules apply.

(II) Release all fish, except anglers may retain up to 3 hatchery steelhead.

~~((iii) All tributaries are closed, except Mill Creek and the Touchet River are open as provided in this section.~~

~~406))~~ (III) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(391) Wanapum Pool (Columbia River) tributaries (Chelan/Douglas County): Open the Saturday before Memorial Day through October 31 from Wanapum Dam to Rock Island Dam.

(392) Wannacut Lake (Okanogan County): Open the fourth Saturday in April through October 31.

~~((407))~~ (393) Wapato Lake (Chelan County):

(a) Trout: Open the fourth Saturday in April through October 31.

(b) ~~((From August 1 through October 31: Selective gear rules apply.~~

~~((e) Trout: Catch and release only))~~ All other game fish: Open the fourth Saturday in April through October 31.

~~((408))~~ (394) Ward Lake (Ferry County): Open the fourth Saturday in April through October 31.

~~((409))~~ (395) Warden Lake (Grant County): Open the fourth Saturday in April through September 30.

~~((410))~~ (396) Warden Lake, South (Grant County): Open the fourth Saturday in April through September 30.

~~((411))~~ (397) Washburn Island Pond (Okanogan County):

(a) Open April 1 through September 30.

(b) It is unlawful to fish with use of an internal combustion motor. An internal combustion motor may be attached to a floating device, but must not be used.

~~((412))~~ (398) Washburn Lake (Okanogan County):

(a) Open the fourth Saturday in April through October 31.

(b) Trout: Limit ~~((two))~~ one.

~~((413))~~ (c) Selective gear rules apply.

(d) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(399) Watson Lake (Columbia County):

(a) Open March 1 through October 31.

(b) It is unlawful to fish from any floating device.

(c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

~~((414))~~ (400) Wenaha River tributaries within Washington:

- (a) Open the first Saturday in June through August 31.
- (b) Selective gear rules apply.
- (c) ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~
- ~~((d))~~ Trout: Release all steelhead.

~~((415))~~ (401) Wenas Creek (Yakima County):

(a) From the mouth to Wenas Lake, including all tributaries:

- (i) Selective gear rules apply.
- (ii) Trout: Minimum size ten inches.

(b) Upstream of Wenas Lake, including all tributaries:

Open the Saturday before Memorial Day to October 31.

(402) Wenatchee Lake (Chelan County):

- (a) Selective gear rules apply.
- (b) Trout:
 - (i) Limit two; minimum length twelve inches.
 - (ii) Release all kokanee.
 - (iii) Kokanee/sockeye under sixteen inches are considered kokanee while those fish sixteen inches and over are considered sockeye salmon.

~~((416))~~ (403) Wenatchee River (Chelan County):

(a) From the mouth to 400 feet below Dryden Dam:
~~((December 1 through March 31: Open for whitefish only; whitefish gear rules apply-~~

- ~~((ii))~~ ~~Salmon:~~
- ~~((A))~~ Salmon open August 1 through September 30.
- ~~((B))~~ (ii) Selective gear rules apply.
- ~~((C))~~ (iii) Night closure in effect.
- ~~((D))~~ (iv) Limit 4; it is unlawful to retain more than 2 adult hatchery Chinook.

~~((E))~~ (v) Release all wild salmon.

(b) From the mouth of Peshastin Creek (above Dryden Dam) to ~~((Highway 2 Bridge at Leavenworth))~~ the Icicle River Road Bridge:

~~((i))~~ ~~Salmon:~~
~~((A))~~ Salmon open September 1 through September 30.
~~((B))~~ (ii) Limit 4; it is unlawful to retain more than 2 adult hatchery Chinook.

~~((C))~~ (iii) Release all wild salmon.

~~((D))~~ (iv) Selective gear rules apply and night closure in effect.

~~((ii))~~ Whitefish: Open December 1 through March 31; whitefish gear rules apply-

(c) From the Highway 2 Bridge at Leavenworth to Icicle River Road Bridge; open for salmon September 1 through September 30:

- (i) Limit 4; no more than 2 adult hatchery Chinook may be retained.
- (ii) Release all wild salmon.
- (iii) Selective gear rules apply and night closure in effect.
- (d) Lake Jolanda is closed.

~~((417))~~ (404) West Evans Pond (Asotin County):

(a) Open March 1 through October 31.

(b) It is unlawful to retain more than 2 trout over 13 inches in length.

~~((418))~~ ~~Wheeler Creek (Klickitat County): Trout: Catch and release only.~~

~~((419))~~ (405) White River (Chelan County), from the mouth upstream to White River Falls upstream: ~~((Closed-~~
~~((420))~~ Open the Saturday before Memorial Day through October 31, including White River tributaries from the mouth of the White River upstream, except Panther Creek and the Napequa River.

(406) White Salmon River (Klickitat/Skamania counties):

(a) From the mouth (Burlington Northern Railroad Bridge) to the county road bridge below the powerhouse:

(i) It is unlawful to fish for salmon and steelhead using anything other than barbless hooks.

(ii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

~~((iii))~~ (iii) Open ~~((August 1 through March 31-~~

~~((A))~~ year-round.

(iv) August 1 through December 31: Anti-snagging rule applies.

~~((B))~~ ~~Trout: Minimum length 14 inches.~~

~~((iii))~~ (v) Salmon and steelhead open year-round:

(A) From April 1 through July 31:

(I) Limit 2; no more than 2 salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release wild Chinook.

(B) From August 1 through March 31:

(I) Limit 6; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release wild Chinook and wild coho.

(b) From the county road bridge below the powerhouse upstream to Big Brothers Falls (river mile 16):

(i) All tributaries from Big Brothers Falls downstream 400 feet: Closed.

(ii) Open the first Saturday in June through October 31.

(iii) Selective gear rules apply.

~~((iv))~~ ~~((It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~((v))~~ Release all fish, except anglers may retain up to 2 hatchery steelhead.

~~((421))~~ (v) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(c) From Big Brothers Falls upstream to the source, including all tributaries: Open the first Saturday in June through October 31.

(407) Wide Hollow Creek (Yakima County): Open to juvenile anglers only.

~~((422))~~ (408) Widgeon Lake (Grant County): Open April 1 through September 30.

~~((423))~~ (409) Williams Lake (Spokane County): Open the fourth Saturday in April through September 30.

~~((424))~~ (410) Williams Lake (Stevens County):

(a) Open ~~((December 1))~~ the first Friday after Thanksgiving through March 31.

(b) Release all fish except anglers may retain up to five rainbow trout.

~~((425))~~ (411) Wilson Creek ~~((two branches within Ellensburg city limits))~~ (Kittitas County): ~~((Open to juvenile anglers only.~~

~~((426))~~

(a) Selective gear rules apply.

(b) Trout: Minimum size ten inches.

(c) Two branches within Ellensburg city limits: Open to juvenile anglers only.

(412) Winchester Wasteway (Grant County) (that portion within the Winchester Game Reserve): Open February 1 through September 30.

~~((427))~~ **(413) Wolf Creek, mouth to mouth of south fork (Okanogan County):** ~~Closed.~~
(428))

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Catch and release only.

(414) Woodhouse Ponds (Kittitas County): Open March 1 through December 31.

(415) Yakima River (Yakima County):

(a) General river rules:

(i) Release all steelhead in the mainstem and tributaries.

(ii) Downstream of Highway 240 Bridge, Columbia River rules apply.

(iii) In the mainstem and tributaries:

(A) Bass: No limit and no size restrictions.

(B) Channel catfish: No limit.

(C) Walleye: No limit and no size restrictions.

(b) Rules by river section:

(i) From the mouth to 400 feet below Prosser Dam:

~~((A))~~ From the WDFW white markers 200 feet downstream of the USBR Chandler Powerhouse/Pumping Station spillway chute to the powerline crossing immediately upstream of the powerhouse: Closed September 1 through October 22.

~~((B))~~ (ii) From Highway 240 Bridge to 400 feet below Prosser Dam:

(A) Open March 1 through October 22.

(B) From March 1 through August 31; for all open species except sturgeon: It is permissible to fish with two poles so long as the angler possesses a valid two-pole endorsement.

(C) Chumming is permissible.

(D) Trout: Catch and release only.

(E) Salmon:

(I) Open September 1 through October 22.

(II) Night closure in effect.

(III) It is unlawful to fish for salmon using anything other than barbless hooks.

(IV) Limit 6; it is unlawful to retain more than 2 adults.

~~((ii))~~ (iii) From Prosser Dam to Highway 223 Bridge:

(A) Open May 1 through October 31.

(B) Trout: Catch and release only.

~~((iii))~~ (iv) From Highway 223 Bridge to 400 feet below Sunnyside Dam:

~~((A))~~ Trout: Minimum length is 12 inches, maximum length is 20 inches.

~~((B) Open December 1 through the last day in February for whitefish only; whitefish gear rules apply.~~

~~((iv))~~ (v) From Sunnyside Dam to 3,500 feet below Roza Dam:

(A) Closed from Yakima Avenue-Terrace Heights Bridge upstream 400 feet.

(B) Selective gear rules apply.

(C) It is unlawful to fish from a floating device equipped with an internal combustion motor from the I-82 Bridge at Selah Gap to 3,500 feet below Roza Dam.

(D) Trout: Minimum length 12 inches, maximum length 20 inches.

(E) Open December 1 through ~~((the last day in February))~~ January 31 for whitefish only; whitefish gear rules apply.

~~((v) From 3,500 feet below Roza Dam to 400 feet below Roza Dam:~~

~~(A) Open December 1 through the last day in February for whitefish only; whitefish gear rules apply.~~

~~(B) It is unlawful to fish from a floating device equipped with an internal combustion motor.)~~

(vi) From Roza Dam to 400 feet below Easton Dam ~~((and from Lake Easton to the base of Keechelus Dam)):~~

(A) Open year-round.

(B) ~~((Lawful))~~ It is permissible to fish from floating devices equipped with motors only from the U.S. Bureau of Reclamation restricted area signs at Roza Dam upstream to the boat launch ramp on the Roza Access Area (approximately ~~((0.5 mile))~~ 1.5 river miles).

(C) Selective gear rules apply.

~~(D) Trout: ((H) From Roza Dam to 400 feet below Easton Dam: Catch and release only.~~

~~(H) From Lake Easton to the base of Keechelus Dam: Catch and release only except anglers may retain eastern brook trout. There is no limit and no minimum size restriction for eastern brook trout))~~ Catch and release only.

(E) Whitefish: Open December 1 through the last day in February; whitefish gear rules apply.

~~((429))~~ (vii) From Easton Dam to the base of Keechelus Dam:

(A) Selective gear rules apply.

(B) Trout: Catch and release only, except it is permissible to retain eastern brook trout. There is no daily limit and no minimum size restriction for eastern brook trout.

(viii) For all Yakima River tributaries from Roza Dam to Keechelus Dam not otherwise provided for in this section:

(A) Selective gear rules apply.

(B) Trout: Minimum length ten inches.

(C) Wilson Creek downstream of BNSF railroad bridge: Yakima River rules apply.

(416) Keechelus Lake tributaries, except Gold Creek: Open the Saturday before Memorial Day through October 31.

(417) Yakima Sportsmen's Park Ponds (Yakima County): Open to juvenile anglers only.

~~((430))~~ (418) Yellowhawk Creek (Walla Walla County): Closed.

~~((431))~~ (419) Yocum Lake (Pend Oreille County):

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to use lead weights or lead jigs that measure 1.5 inches or less along the longest axis.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 14-16-027, filed 7/25/14, effective 8/25/14)

WAC 220-310-200 Freshwater exceptions to state-wide rules—Columbia. The following exceptions to state-wide rules apply to the Columbia River, including impoundments and all connecting sloughs, except Wells Ponds:

(1) **General Columbia River rules:**

(a) In the concurrent waters of the Columbia River between Washington and Oregon, the license of either state is valid when fishing from a vessel.

(i) Anglers must comply with the fishing regulations of the state in which they are fishing.

(ii) This subsection does not allow an angler licensed in Oregon to fish on the Washington shore, or in the sloughs or tributaries in Washington except as otherwise provided by department rule.

(iii) Anglers fishing the Columbia River are restricted to one limit, as defined by the laws of the state in which they are fishing, even if they are licensed by both states.

(b) It is unlawful to possess in the field salmon or steelhead mutilated so that size, species, or fin clip cannot be determined until the angler has reached their automobile or principal means of land transportation and completed his or her daily angling.

(c) Salmon and trout handling rules provided in WAC 220-56-118 apply to the Columbia River, except from February 15 through June 15 in the mainstem Columbia from the Rocky Point/Tongue Point line upstream to the Washington-Oregon border where WAC 220-56-118 applies only to anglers fishing from vessels less than 30 feet in length (as substantiated by Coast Guard documentation or Marine Board registration).

(d) From Buoy 10 to the Washington/Oregon border: From August 1 through December 31, each angler aboard a vessel may deploy salmon/steelhead angling gear until the daily salmon/steelhead limit for all anglers aboard has been achieved.

(e) Open year-round unless otherwise provided.

(f) Barbless hooks are required for salmon and steelhead.

(2) **Rules by river section:**

(a) From a true north-south line through Buoy 10, upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank:

(i) Fishing from the north jetty is permissible when Marine Area 1 or Buoy 10 areas are open for salmon, and the limit and minimum size restrictions follow the most liberal regulations if both areas are open.

(ii) Release all trout, except anglers may retain hatchery steelhead.

(iii) Walleye:

(A) Limit 10; no minimum length.

(B) No more than 5 longer than 18 inches may be retained, and only one walleye may be longer than 24 inches.

(iv) Bass: Limit 5 bass between 12 and 17 inches in length; no more than 3 longer than 15 inches may be retained.

(v) Channel catfish: No limit.

(vi) Salmon and steelhead:

(A) Open June 16 through July 31:

(I) Closed to fishing for salmon and steelhead from Buoy 10 to the Megler-Astoria Bridge.

(II) Limit 6; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(III) Release all salmon other than sockeye and hatchery Chinook.

(IV) From July 1 through July 31, release adult Chinook and sockeye.

(B) Open August 1 through September 1:

(I) Limit 2 salmon, or 2 hatchery steelhead, or one of each.

(II) Release all salmon except Chinook and hatchery coho.

(III) August 30 through September 1: It is unlawful to retain Chinook that do not have a clipped adipose or left ventral fin as evidenced by a healed scar.

(IV) Chinook minimum length 24 inches; only one Chinook may be retained as part of the limit.

(V) Coho minimum length 16 inches.

(C) Open September 2 through September 30:

(I) Limit 3; no more than 2 hatchery steelhead may be retained.

(II) Release all salmon other than hatchery coho.

(III) Coho minimum length 16 inches.

(D) Open October 1 through December 31:

(I) Limit 6; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release all salmon except Chinook and hatchery coho.

(E) Open January 1 through March 31:

(I) Limit 6; no more than 2 adult hatchery Chinook, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release all salmon except hatchery Chinook.

(vii) Sturgeon: It is unlawful to retain sturgeon (catch and release only).

(viii) Shad open May 16 through March 31.

(ix) Forage fish and bottomfish: Marine Area 1 general rules apply; eulachon closed.

(b) From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank, upstream to the I-5 Bridge:

(i) Trout:

(A) Open May 16 through March 31.

(B) Release all trout except hatchery cutthroat and hatchery steelhead (the limit is as provided under (b)(v) of this subsection).

(I) Anglers may retain up to 2 hatchery cutthroat.

(II) Hatchery cutthroat minimum length 12 inches.

(III) Barbless hooks are required for cutthroat trout.

(ii) Walleye:

(A) Limit 10; no minimum length.

(B) No more than 5 longer than 18 inches may be retained, and only one may be longer than 24 inches.

(iii) Bass: Limit 5 bass between 12 and 17 inches in length; it is unlawful to retain more than 3 longer than 15 inches.

(iv) Channel catfish: No limit.

(v) Salmon and steelhead:

(A) Open May 16 through July 31:

(I) Release all salmon except hatchery Chinook and sockeye.

(II) Limit 6; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(III) Release sockeye and adult Chinook May 16 through June 15 and July 1 through July 31.

(B) Open August 1 through September 30:

(I) Upstream of Warrior Rock line: Limit 6; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained. Release all salmon except Chinook and hatchery coho.

(II) Downstream of Warrior Rock line: Limit 6; no more than 2 adult salmon, and only one adult Chinook may be retained. Release wild Chinook from September 7 through September 14, and release all Chinook from September 15 through September 30.

(C) For the purpose of this subsection, "Warrior Rock line" is defined as a line projected from the Warrior Rock Lighthouse, through Red Bouy 4, to the orange marker atop the dolphin on the Washington shore.

(D) Open October 1 through December 31:

(I) Limit 6; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release all salmon except Chinook and hatchery coho.

(E) Open January 1 through March 31:

(I) Limit 6 fish; no more than 2 adult hatchery Chinook, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release all salmon except hatchery Chinook.

(vi) Shad open May 16 through March 31.

(vii) Sturgeon: It is unlawful to retain sturgeon (catch and release only).

(c) From the I-5 Bridge to Bonneville Dam:

(i) The following waters are closed:

(A) From the upstream line of Bonneville Dam to boundary markers 600 feet below the fish ladder at the powerhouse.

(B) January 1 through April 30 from a line between the upstream end of Sand Island (near Rooster Rock) on the Columbia River, to the boundary marker on the Oregon shore, downstream to a line between the lower end of Sand Island and the boundary marker on the Oregon shore.

(C) Closed to angling from a floating device or by any method except hand-casted gear from shore from Bonneville Dam downstream to a line from the Hamilton Island boat ramp to an Oregon boundary marker on the westernmost tip of Robins Island.

(ii) Camas Slough:

(A) It is permissible for an angler licensed in Oregon or Washington to fish from a floating device.

(B) In the waters of the Columbia River downstream from the mouth of the Washougal River, north of Lady Island, and downstream of the Highway 14 Bridge at the upstream end of Lady Island:

(I) From August 1 through December 31: It is permissible to fish with two poles so long as the angler possesses a valid two-pole endorsement.

(II) From August 1 through December 31: Each angler aboard a vessel may deploy salmon/steelhead angling gear until the daily salmon/steelhead limit for all anglers aboard has been achieved.

(III) Open for salmon when the adjacent mainstem Columbia or Washougal rivers are open for salmon.

(IV) The limit for salmon is the same as the most liberal regulation of either area, except anglers may only retain hatchery Chinook and hatchery coho; release all other salmon.

(iii) Release all trout except hatchery steelhead.

(iv) Walleye:

(A) Limit 10; no minimum length.

(B) No more than 5 longer than 18 inches may be retained, and only one walleye may be longer than 24 inches.

(v) Bass: Limit 5 bass between 12 and 17 inches in length; no more than 3 longer than 15 inches may be retained.

(vi) Channel catfish: No limit.

(vii) Salmon and steelhead:

(A) Open June 16 through July 31:

(I) Limit 6; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release all salmon except hatchery Chinook and sockeye.

(III) Release adult Chinook and sockeye July 1 through July 31.

(B) Open August 1 through December 31:

(I) Limit 6; no more than 2 adult salmon or 2 hatchery steelhead, or one of each, may be retained, except no more than 3 adults, of which no more than 2 may be hatchery coho or 2 hatchery steelhead, or one of each, may be retained upstream from a line projected from the lower end of the Steamboat Landing dock on the Washington shore through navigation Light #50 to the Oregon shore.

(II) Release all salmon except Chinook and hatchery coho.

(III) Closed November 1 through December 31 from Beacon Rock to Bonneville Dam.

(viii) Steelhead: Open January 1 through March 31.

(ix) Shad: Open May 16 through March 31.

(x) Sturgeon:

(A) The following waters are closed to fishing for sturgeon:

(I) From Bonneville Dam downstream to a boundary marker on the Washington shore approximately 4,000 feet below the fish ladder at the powerhouse, south to the downstream end of Cascade Island, and across to the Oregon angling boundary on Bradford Island (the Cascade Island-Bradford Island line).

(II) From Bonneville Dam downstream 9 miles to a line crossing the Columbia River from navigation marker 82 on the Oregon shore, westerly to the boundary marker on the Washington shore upstream of Fir Point (navigational marker 82 line), from May 1 through August 31.

(B) It is unlawful to retain sturgeon (catch and release only) in all other areas within this river section.

(d) From Bonneville Dam to The Dalles Dam:

(i) Closed waters:

(A) Within one quarter mile of the USFWS Spring Creek Hatchery Grounds, between posted markers located one quarter mile on either side of the fish ladder entrance.

(B) At The Dalles between the upstream line of The Dalles Dam to the upstream side of the Interstate 197 Bridge,

except that bank fishing is permitted up to the downstream navigation lock wall on the Washington shore.

(ii) Release all trout, except anglers may retain hatchery steelhead.

(iii) Walleye:

(A) Limit 10; no minimum length.

(B) No more than 5 longer than 18 inches may be retained, and only one may be longer than 24 inches.

(iv) Bass: Limit 5 bass between 12 and 17 inches in length; no more than 3 longer than 15 inches may be retained.

(v) Channel catfish: No limit.

(vi) Salmon and steelhead:

(A) Open June 16 through July 31:

(I) Limit 6; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release all salmon except sockeye and hatchery Chinook.

(B) Open August 1 through December 31:

(I) August 1 through October 15: Anti-snagging rule applies and night closure in effect.

(II) Limit 6; no more than 3 adults, of which no more than 2 may be coho or 2 hatchery steelhead, or one of each, may be retained.

(III) Release all salmon except Chinook and coho.

(IV) Release wild coho from Bonneville Dam to Hood River Bridge.

(vii) Steelhead: Open January 1 through March 31.

(viii) Sturgeon:

(A) Release sturgeon August 1 through December 31.

(B) Closed to fishing for sturgeon between The Dalles Dam downstream 1.8 miles to a line from the east (upstream) dock at the Port of The Dalles boat ramp straight across to a marker on the Washington shore from May 1 through July 31.

(e) From The Dalles Dam to McNary Dam:

(i) Closed waters:

(A) At John Day Dam between the upstream line of John Day Dam to markers approximately 3,000 feet downstream, except that bank fishing is permitted up to 400 feet below the fishway entrance on the Washington shore.

(B) At McNary Dam between the upstream line of McNary Dam downstream to a line across the river from the red and white marker on the Oregon shore on a line that intersects the downstream end of the wing-wall of the boat lock near the Washington shore.

(ii) Release all trout except hatchery steelhead.

(iii) Walleye:

(A) Limit 10; no minimum length.

(B) No more than 5 longer than 18 inches may be retained, and only one walleye may be longer than 24 inches.

(iv) Bass: Limit 5 bass between 12 and 17 inches in length; no more than 3 longer than 15 inches may be retained.

(v) Channel catfish: No limit.

(vi) Salmon and steelhead:

(A) Open June 16 through July 31:

(I) Limit 6; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release all salmon except hatchery Chinook and sockeye.

(B) Open August 1 through December 31:

(I) August 1 through October 15: Anti-snagging rule applies and night closure in effect.

(II) Limit 6; no more than 3 adults, of which no more than 2 may be coho or 2 hatchery steelhead, or one of each, may be retained.

(III) Release all salmon except Chinook and coho.

(vii) Steelhead: Open January 1 through March 31.

(viii) Sturgeon:

(A) Minimum fork length 43 inches.

(B) Closed to fishing for sturgeon:

(I) May 1 through July 31 from John Day Dam downstream 2.4 miles to a line crossing the Columbia at a right angle to the thread of the river from the west end of the grain silo at Rufus, Oregon.

(II) May 1 through July 31 from McNary Dam downstream to the Highway 82 (395) Bridge.

(C) August 1 through December 31: Catch and release only.

(f) From McNary Dam to Highway 395 Bridge at Pasco:

(i) Barbless hooks are required for salmon and steelhead.

(ii) The Snake River Confluence Protection Area includes waters of the Columbia River from the railroad bridge between Burbank and Kennewick, upstream approximately 2.1 miles to the first power line crossing the Columbia upstream of the navigation light on the point of Sacajawea State Park. For all species, limits, seasons, size restrictions and gear restrictions are the same as those in the adjacent portion of the Snake River.

(iii) Release all trout except hatchery steelhead.

(iv) From McNary Dam upstream to Highway 730 at the Oregon/Washington border: Walleye limit 10; no minimum length. No more than 5 walleye longer than 18 inches may be retained, and only one may be longer than 24 inches.

(v) Upstream from Highway 730 at the Oregon/Washington border:

(A) Bass: No limit and no size restrictions.

(B) Walleye: No limit and no size restrictions.

(vi) Salmon and steelhead:

(A) Open June 16 through July 31:

(I) Limit 6; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release all salmon except hatchery Chinook and sockeye.

(B) Open August 1 through December 31:

(I) Limit 6; no more than 3 adults, of which no more than 2 may be coho or 2 hatchery steelhead, or one of each, may be retained.

(II) Release all salmon except Chinook and coho.

(vii) Steelhead: Open January 1 through March 31.

(viii) Sturgeon: Catch and release only August 1 through January 31.

(g) From the Highway 395 Bridge at Pasco to the Old Hanford townsite wooden power line towers, in Sec. 30, T13N, R28E:

(i) Barbless hooks are required for salmon and steelhead.

(ii) Closed waters:

(A) Within a 400 foot radius of the Columbia Irrigation District (CID) fish barrier at the mouth of the CID wasteway at Columbia Park.

(B) Ringold Springs Creek (Hatchery Creek).

(C) In the Columbia River within 100 foot radius (arc) from the mouth of Ringold Springs Creek (Hatchery Creek).

(D) September 1 through November 30: Esquatzel Coulee Block 1 irrigation wasteway return from the spillway to the Columbia River.

(iii) Ringold Area Bank Fishery waters, from WDFW markers 1/4 mile downstream from the Ringold wasteway outlet, to WDFW markers 1/2 mile upstream from Spring Creek:

(A) Fishing is allowed only from the bank and only on the hatchery side of the river.

(B) Release all trout, except anglers may retain up to 2 hatchery steelhead from April 1 through April 15.

(iv) From ((~~June 16~~)) October 23 through July 31, for all open species except sturgeon: It is permissible to fish with two poles so long as the angler possesses a two-pole endorsement.

(v) Release all steelhead with a radio-tag wire protruding from the mouth, or with a disk or floy tag attached near the dorsal fin.

(vi) Trout:

(A) October 1 through October 31 release all trout, except 2 hatchery steelhead with both the adipose and a ventral fin clipped may be retained.

(B) November 1 through March 31 release all trout, except anglers may retain up to 2 hatchery steelhead.

(vii) Bass: No limit and no size restrictions.

(viii) Channel catfish: No limit.

(ix) Walleye: No limit and no size restrictions.

(x) Salmon:

(A) Open June 16 through July 31:

(I) Limit 8; no more than 2 adult hatchery Chinook and no more than 4 sockeye may be retained.

(II) Release coho and wild adult Chinook.

(B) Open August 1 through October 22: Limit 6; no more than 2 adult salmon may be retained.

(xi) Sturgeon: Catch and release only from August 1 through January 31.

(h) From the Old Hanford townsite wooden power line towers, in Sec. 30, T13N, R28E, to Vernita Bridge, (Highway 24):

(i) Barbless hooks are required for salmon and steelhead.

(ii) Open February 1 through October 22.

(iii) ((~~June 16~~)) February 1 through July 31, for all open species except sturgeon: It is permissible to fish with two poles so long as the angler possesses a two-pole endorsement.

(iv) Trout: Catch and release only.

(v) Bass: No limit and no size restrictions.

(vi) Channel catfish: No limit.

(vii) Walleye: No limit and no size restrictions.

(viii) Salmon:

(A) Open June 16 through July 31:

(I) Limit 8; no more than 2 adult hatchery Chinook and no more than 4 sockeye may be retained.

(II) Release coho and wild adult Chinook.

(B) Open August 1 through October 22: Limit 6; no more than 2 adult salmon may be retained.

(ix) Sturgeon: Release sturgeon August 1 through October 22.

(i) From Vernita Bridge (Highway 24) to Priest Rapids Dam:

(i) Barbless hooks are required for salmon and steelhead.

(ii) Closed waters:

(A) At Priest Rapids Dam; waters between the upstream line of Priest Rapids Dam downstream to the boundary markers 650 feet below the fish ladders.

(B) At Jackson (Moran) Creek, or Priest Rapids Hatchery Outlet Creek; waters of the Priest Rapids Hatchery system to the outlet on the Columbia River, extending to mid-stream Columbia River between boundary markers located 100 feet upstream and 400 feet downstream of the mouth.

(iii) ((~~June 16~~)) October 23 through July 31, for all open species except sturgeon: It is permissible to fish with two poles so long as the angler possesses a two-pole endorsement.

(iv) Trout: Catch and release only.

(v) Walleye: No limit and no size restrictions.

(vi) Bass: No limit and no size restrictions.

(vii) Channel catfish: No limit.

(viii) Salmon:

(A) Open June 16 through July 31:

(I) Limit 8; no more than 2 adult hatchery Chinook and no more than 4 sockeye may be retained.

(II) Release coho and wild adult Chinook.

(B) Open August 1 through October 22: Limit 6; no more than 2 adult salmon may be retained.

(ix) Sturgeon:

(A) Closed to fishing for sturgeon from May 1 through July 31 from Priest Rapids Dam downstream 2.5 miles to the boundary marker on the river bank 400 feet downstream from Priest Rapids Hatchery outlet channel (Jackson Creek).

(B) August 1 through January 31: Catch and release only.

(j) From Priest Rapids Dam to Wanapum Dam:

(i) Barbless hooks required for salmon and steelhead.

(ii) Closed waters at Wanapum Dam, between the upstream line of Wanapum Dam to the boundary markers 750 feet downstream of the east fish ladder and 500 feet downstream of the west fish ladder.

(iii) July 1 through August 31: Fishing two poles is permissible so long as the angler possesses a two-pole endorsement.

(iv) Release all trout.

(v) Walleye: No limit and no size restrictions.

(vi) Bass: No limit and no size restrictions.

(vii) Channel catfish: No limit.

(viii) Salmon:

(A) Open July 1 through August 31:

(I) Limit 8; no more than 2 adult hatchery Chinook and no more than 4 sockeye may be retained.

(II) Release coho and wild adult Chinook.

(B) Open September 1 through October 22: Limit 6 Chinook; no more than 2 adults may be retained.

(ix) Sturgeon: Catch and release only.

(k) From Wanapum Dam to Wells Dam:

(i) Barbless hooks are required for salmon and steelhead.

(ii) Closed waters:

(A) At Rocky Reach Dam and Rock Island Dam, between the upstream line of the dam to boundary markers 400 feet downstream of the fish ladders.

(B) At Wells Dam, between the upstream line of Wells Dam to boundary markers 400 feet downstream of the spawning channel discharge (on Chelan County side) and fish ladder (on Douglas County side).

(iii) July 1 through August 31: Fishing two poles is permissible so long as the angler possesses a two-pole endorsement.

(iv) Trout: Catch and release only.

(v) Walleye: No limit and no size restrictions.

(vi) Bass: No limit and no size restrictions.

(vii) Channel catfish: No limit.

(viii) Salmon open July 1 through October 15:

(A) Limit 8; no more than 2 adult hatchery Chinook and no more than 4 sockeye may be retained.

(B) Release coho and wild adult Chinook.

(ix) Sturgeon: Catch and release only.

(l) From Wells Dam to Highway 173 Bridge at Brewster:

(i) Barbless hooks are required for salmon and steelhead.

(ii) July 16 through August 31: Fishing two poles is permissible so long as the angler possesses a two-pole endorsement.

(iii) Release all trout.

(iv) Walleye: No limit and no size restrictions.

(v) Bass: No limit and no size restrictions.

(vi) Channel catfish: No limit.

(vii) Salmon open July 16 through August 31:

(A) Limit 8; no more than 2 adult hatchery Chinook and no more than 4 sockeye may be retained.

(B) Release coho and wild adult Chinook.

(viii) Sturgeon: Catch and release only.

(m) From Highway 173 Bridge at Brewster to Chief Joseph Dam:

(i) Barbless hooks are required for salmon and steelhead.

(ii) Closed waters:

(A) From the Okanogan County shore between Chief Joseph Dam and the Highway 17 Bridge.

(B) From the Douglas County shore from Chief Joseph Dam to the rock jetty at the upstream shoreline of Foster Creek.

(iii) July 1 through August 31: Fishing two poles is permissible so long as the angler possesses a two-pole endorsement.

(iv) It is unlawful to fish from a floating device downstream of Chief Joseph Dam from the boundary marker to the Corps of Engineers safety zone marker.

(v) Trout: Catch and release only.

(vi) Walleye: No limit and no size restrictions.

(vii) Bass: No limit and no size restrictions.

(viii) Channel catfish: No limit.

(ix) Salmon: Open July 1 through October 15:

(A) Limit 8; no more than 2 adult hatchery Chinook and no more than 4 sockeye may be retained.

(B) Release coho and wild adult Chinook.

(x) Sturgeon: Catch and release only.

(n) Above Chief Joseph Dam: See Rufus Woods Lake in WAC 220-310-195.

(o) Above Grand Coulee Dam: See Lake Roosevelt in WAC 220-310-195.

WSR 14-22-118
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed November 5, 2014, 11:30 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 6.03 (Notice of Construction).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on December 18, 2014, at 8:45 a.m.

Date of Intended Adoption: December 18, 2014.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@psccleanair.org, fax (206) 343-7522, by December 17, 2014.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by December 11, 2014, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a nonproject action for technical amendments to the agency's notice of construction provisions to clarify that notifications from planned dry cleaning equipment installations are only required from operations using perchloroethylene (perc) solvent based operations.

Since the current notification language for dry cleaners is not specific to perc solvent operations, this leads to all new dry cleaning operations submitting notifications, even when they have switched to safer hydrocarbon cleaning operations. This means paperwork being submitted to the agency, along with appropriate notification filing fee (currently \$200), for sources that we do not register. This practice is not a good use of resources for the businesses and the agency. The proposal will align the notification requirements with the registration program requirements and the environmental issues that have previously been identified as important for this business sector.

Reasons Supporting Proposal: The overall benefit of this proposed amendment is that the dry cleaning businesses and the agency will see a requirement and procedure eliminated that does not support the agency regulatory program administrative needs or our combined environmental objectives. It will refocus this requirement on the environmental and compliance efforts related to the use of perc in dry cleaning. It should reduce the number of notifications received and provide clarity that our inspection focus should be on perc dry cleaning operations. Overall, there are no cost increases or budget implications from this proposed amendment.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement:

Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

November 5, 2014
Craig Kenworthy
Executive Director

AMENDATORY SECTION

SECTION 6.03 NOTICE OF CONSTRUCTION

(a) It shall be unlawful for any person to cause or allow the establishment of a new source, or the replacement or substantial alteration of control equipment installed on an existing source, unless a "Notice of Construction application" has been filed and an "Order of Approval" has been issued by the Agency. The exemptions in Sections 6.03 (b) and (c) of this regulation shall not apply to:

(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Subpart AAA (New Residential Wood Heaters), Subpart BB (Kraft Pulp Mills), Subpart S (Primary Aluminum Reduction Plants), Subpart OOO (Nonmetallic Mineral Processing Plants), and Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines; and for relocation of affected facilities under Subpart I (Hot Mix Asphalt Facilities) for which an Order of Approval has been previously issued by the Agency;

(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for Subpart B (Radon from Underground Uranium Mines), Subpart H (Emissions of Radionuclides other than Radon from Department of Energy Facilities), Subpart I (Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H), Subpart K (Radionuclides from Elemental Phosphorus Plants), Subpart Q (Radon from Department of Energy Facilities), Subpart R (Radon from Phosphogypsum Stacks), Subpart T (Radon from Disposal of Uranium Mill Tailings), Subpart W (Radon from Operating Mill Tailings), and for demolition and renovation projects subject to Subpart M (Asbestos);

(3) Any project that qualifies as a new source as defined under 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except for the provisions of Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, Subpart LL (Primary Aluminum Reduction Plants), the provisions of Subpart S (Pulp and Paper Industry) and Subpart MM (Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills) pertaining to kraft

and sulfite pulp mills, the provisions of Subpart ZZZZ (Reciprocating Internal Combustion Engines) pertaining to emergency and limited-use stationary reciprocating internal combustion engines, Subpart DDDDD (Industrial, Commercial, and Institutional Boilers and Process Heaters), Subpart WWWW (Hospitals: Ethylene Oxide Sterilizers), Subpart CCCCC (Gasoline Dispensing Facilities), Subpart HHH-HHH (Paint Stripping and Miscellaneous Surface Coating Operations), Subpart WWWW (Plating and Polishing Operations), Subpart XXXXXX (Nine Metal Fabrication and Finishing Source Categories), Subpart YYYYYY (Ferrous Production Facilities), and Subpart ZZZZZZ (Aluminum, Copper, and Other Nonferrous Foundries);

(4) Any new major stationary source or major modification as defined under WAC 173-400-030; and

(5) Any stationary source previously exempted from review that is cited by the Agency for causing air pollution under Section 9.11 of this regulation.

(b) **Notifications.** A Notice of Construction application and Order of Approval are not required for the new sources identified in this section, provided that a complete notification is filed with the Agency. It shall be unlawful for any person to cause or allow establishment of a new source identified in this section unless a complete notification has been filed with the Agency:

Liquid Storage and Transfer

(1) Storage tanks used exclusively for:

(A) Gasoline dispensing and having a rated capacity of $\geq 1,001$ gallons, PROVIDED THAT they are installed in accordance with the current California Air Resources Board Executive Orders;

(B) Organic liquids with a true vapor pressure of 2.2-4.0 psia and having a rated capacity of 20,000-39,999 gallons; or

(C) Organic liquids with a true vapor pressure of 0.5-0.75 psia and having a rated capacity $\geq 40,000$ gallons.

(2) Loading and unloading equipment used exclusively for the storage tanks exempted above, including gasoline dispensers at gasoline stations.

Relocation of Portable Batch Plants

(3) Relocation of the following portable facilities: asphalt batch plants, nonmetallic mineral processing plants, and concrete batch plants for which an Order of Approval has been previously issued by the Agency. *All the conditions in the previously issued Order of Approval remain in effect.*

Dry Cleaning

(4) Unvented, dry-to-dry, dry-cleaning system (~~equipment~~) that uses perchloroethylene as the cleaning solvent and is equipped with emission control equipment (~~refrigerated condensers~~) to recover the cleaning solvent, PROVIDED THAT the system and installation comply with all requirements of 40 CFR 63, Subpart M (Dry Cleaning Facilities).

Printing

(5) Non-heatset, web offset presses and wholesale, sheet-fed offset presses (lithographic or letterpress) using exclusively soy-based or kerosene-like oil-based inks, fountain solutions with $\leq 6\%$ VOC by volume or $\leq 8.5\%$ if refrigerated to $< 60^\circ\text{F}$, and cleaning solvents with a vapor pressure $\leq 25\text{mm Hg}$ or a VOC content $\leq 30\%$ by volume.

Water Treatment

(6) Industrial and commercial wastewater evaporators (except flame impingement) used exclusively for wastewater generated on-site that meets all discharge limits for disposal into the local municipal sewer system (including metals, cyanide, fats/oils/grease, pH, flammable or explosive materials, organic compounds, hydrogen sulfide, solids, and food waste). *A letter from the local sewer district documenting compliance is required in order to use this exemption.*

Sanding Equipment

(7) Sanding equipment controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of <3.5:1 (for reverse-air or manual cleaning) or <12:1 (for pulse-jet cleaning).

Ventilation and Control Equipment

(8) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of <3.5:1 (for mechanical or manual cleaning) or <12:1 (for pulse-jet cleaning).

(9) Replacement of an existing paint spray booth that has previously received an Order of Approval, with like kind equipment and for spray coating operations that continue to operate consistent with the previously issued Order of Approval. *All the conditions in the previously issued Order of Approval remain in effect.*

Miscellaneous

(10) Any source not otherwise exempt under Section 6.03(c) of this regulation that has been determined through review of a Notice of Construction application by the Control Officer not to warrant an Order of Approval because it has a de minimis impact on air quality and does not pose a threat to human health or the environment.

Coffee Roasters

(11) Batch coffee roasters with a maximum rated capacity of 10 lbs per batch or less.

(c) **Exemptions.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that sufficient records are kept to document the exemption:

Combustion

(1) Fuel-burning equipment (except when combusting pollutants generated by a non-exempt source) having a rated capacity:

(A) <10 million Btu per hour heat input burning exclusively distillate fuel oil, natural gas, propane, butane, biodiesel that meets ASTM D 6751 specifications (or any combination thereof);

(B) <0.5 million Btu per hour heat output burning waste-derived fuel (including fuel oil not meeting the specifications in Section 9.08 of this regulation); or

(C) <1 million Btu per hour heat input burning any other fuel.

(2) All stationary gas turbines with a rated heat input <10 million Btu per hour.

(3) Stationary internal combustion engines having a rated capacity:

(A) <50 horsepower output;

(B) Used solely for instructional purposes at research, teaching, or educational facilities; or

(C) Portable or standby units operated <500 hours per year, PROVIDED THAT they are not operated at a facility with a power supply contract that offers a lower rate in exchange for the power supplier's ability to curtail energy consumption with prior notice.

(4) Relocation of portable, stationary internal combustion engines or gas turbines for which an Order of Approval has been previously issued by the Agency.

(5) All nonroad compression ignition engines subject to 40 CFR Part 89 and land-based nonroad compression engines subject to 40 CFR Part 1039.

Metallurgy

(6) Crucible furnaces, pot furnaces, or induction furnaces with a capacity ≤1,000 pounds, PROVIDED THAT no sweating or distilling is conducted, and PROVIDED THAT only precious metals, or an alloy containing >50% aluminum, magnesium, tin, zinc, or copper is melted.

(7) Crucible furnaces or pot furnaces with a capacity ≤450 cubic inches of any molten metal.

(8) Ladles used in pouring molten metals.

(9) Foundry sand-mold forming equipment.

(10) Shell core and shell-mold manufacturing machines.

(11) Molds used for the casting of metals.

(12) Die casting machines with a rated capacity ≤1,000 pounds that are not used for copper alloys.

(13) Equipment used for heating metals immediately prior to forging, pressing, rolling, or drawing, if any combustion equipment is also exempt.

(14) Forming equipment used exclusively for forging, rolling, or drawing of metals, if any combustion equipment is also exempt.

(15) Heat treatment equipment used exclusively for metals, if any combustion equipment is also exempt.

(16) Equipment used exclusively for case hardening, carburizing, cyaniding, nitriding, carbonitriding, siliconizing, or diffusion treating of metals, if any combustion equipment is also exempt.

(17) Atmosphere generators used in connection with metal heat-treating processes.

(18) Sintering equipment used exclusively for metals other than lead, PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

(19) Welding equipment, and thermal cutting of metals other than stainless steel. Exceptions or specific conditions that apply to these exemptions are identified as follows:

(A) Thermal cutting of stainless steel (defined as an alloy with a minimum chromium content of 10.5%, by weight) installed after November 1, 2013 shall not be exempt;

(B) Thermal cutting of stainless steel performed solely for plant maintenance activities shall be exempt;

(C) Thermal cutting of stainless steel refers to all thermal cutting technologies, including but not limited to, plasma arc, air carbon arc, laser, powder torch, and oxy-fuel technologies.

(20) Soldering or brazing, or equipment, including brazing ovens.

(21) Equipment used exclusively for surface preparation, passivation, deoxidation, and/or stripping that meets all of the following tank content criteria:

- (A) ≤ 50 grams of VOC per liter;
- (B) No acids other than boric, formic, acetic, phosphoric, sulfuric, or $\leq 12\%$ hydrochloric; and
- (C) May contain alkaline oxidizing agents, hydrogen peroxide, salt solutions, sodium hydroxide, and water in any concentration.

Associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment are also exempt. (This exemption does not include anodizing, hard anodizing, chemical milling, circuit board etching using ammonia-based etchant, electrocleaning, or the stripping of chromium, except sulfuric acid and/or boric acid anodizing with a total bath concentration of $\leq 20\%$ by weight and using $\leq 10,000$ amp-hours per day, or phosphoric acid anodizing with a bath concentration of $\leq 15\%$ by weight of phosphoric acid and using $\leq 20,000$ amp-hours per day.)

(22) Equipment used exclusively for electrolytic plating (except the use of chromic and/or hydrochloric acid) or electrolytic stripping (except the use of chromic, hydrochloric, nitric, or sulfuric acid) of brass, bronze, copper, iron, tin, zinc, precious metals, and associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment. Also, equipment used to electrolytically recover metals from spent or pretreated plating solutions that qualify for this exemption.

Ceramics and Glass

(23) Kilns used for firing ceramic-ware or artwork, if any combustion equipment is also exempt.

(24) Porcelain enameling furnaces, porcelain enameling drying ovens, vitreous enameling furnaces, or vitreous enameling drying ovens, if any combustion equipment is also exempt.

(25) Hand glass melting furnaces, electric furnaces, and pot furnaces with a capacity $\leq 1,000$ pounds of glass.

(26) Heat-treatment equipment used exclusively for glass, if any combustion equipment is also exempt.

(27) Sintering equipment used exclusively for glass PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

Plastics and Rubber and Composites

(28) Equipment used exclusively for conveying and storing plastic pellets.

(29) Extrusion equipment used exclusively for extruding rubber or plastics where no organic plasticizer is present, or for pelletizing polystyrene foam scrap.

(30) Equipment used for extrusion, compression molding, and injection molding of plastics, PROVIDED THAT the VOC content of all mold release products or lubricants is $\leq 1\%$ by weight.

(31) Injection or blow-molding equipment for rubber or plastics, PROVIDED THAT no blowing agent other than compressed air, water, or carbon dioxide is used.

(32) Presses or molds used for curing, post-curing, or forming composite products and plastic products, PROVIDED THAT the blowing agent contains no VOC or chlorinated compounds.

(33) Presses or molds used for curing or forming rubber products and composite rubber products with a ram diameter ≤ 26 inches, PROVIDED THAT it is operated at $\leq 400^\circ\text{F}$.

(34) Ovens used exclusively for the curing or forming of plastics or composite products, where no foam-forming or expanding process is involved, if any combustion equipment is also exempt.

(35) Ovens used exclusively for the curing of vinyl plastisols by the closed-mold curing process, if any combustion equipment is also exempt.

(36) Equipment used exclusively for softening or annealing plastics, if any combustion equipment is also exempt.

(37) Hot wire cutting of expanded polystyrene foam and woven polyester film.

(38) Mixers, roll mills, and calenders for rubber or plastics where no material in powder form is added and no organic solvents, diluents, or thinners are used.

Material Working and Handling

(39) Equipment used for mechanical buffing (except tire buffers), polishing, carving, cutting, drilling, grinding, machining, planing, pressing, routing, sawing, stamping, or turning of wood, ceramic artwork, ceramic precision parts, leather, metals, plastics, rubber, fiberboard, masonry, glass, silicon, semiconductor wafers, carbon, graphite, or composites.

(40) Hand-held sanding equipment.

(41) Sanding equipment controlled by a fabric filter with an airflow of $< 2,000$ cfm.

(42) Equipment used exclusively for shredding of wood (e.g., tub grinders, hammermills, hoppers), or for extruding, pressing, handling, or storage of wood chips, sawdust, or wood shavings.

(43) Paper shredding and associated conveying systems and baling equipment.

(44) Hammermills used exclusively to process aluminum and/or tin cans.

(45) Tumblers used for the cleaning or deburring of metal products without abrasive blasting.

Abrasive Blasting

(46) Portable abrasive blasting equipment used at a temporary location to clean bridges, water towers, buildings, or similar structures, PROVIDED THAT any blasting with sand (or silica) is performed with $\geq 66\%$ by volume water.

(47) Portable vacuum blasting equipment using steel shot and vented to a fabric filter.

(48) Hydroblasting equipment using exclusively water as the abrasive.

(49) Abrasive blasting cabinets vented to a fabric filter, PROVIDED THAT the total internal volume of the cabinet is ≤ 100 cubic feet.

(50) Shot peening operations, PROVIDED THAT no surface material is removed.

Cleaning

(51) Solvent cleaning:

(A) Non-refillable, hand-held aerosol spray cans of solvent; or

(B) Closed-loop solvent recovery systems with refrigerated or water-cooled condensers used for recovery of waste solvent generated on-site.

(52) Steam-cleaning equipment.

(53) Unheated liquid solvent tanks used for cleaning or drying parts:

(A) With a solvent capacity ≤ 10 gallons and containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(B) Using a solvent with a true vapor pressure ≤ 0.6 psi containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloro-ethylene, or any combination thereof;

(C) With a remote reservoir and using a solvent containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof; or

(D) With a solvent capacity ≤ 2 gallons; or

(E) Using solutions with a Volatile Organic Compound (VOC) content of $\leq 1\%$ by weight and no identified Hazardous Air Pollutant (HAP), and are heated below the boiling point of the solution.

(54) Hand-wipe cleaning.

Coating, Resin, and Adhesive Application

(55) Powder-coating equipment.

(56) Portable coating equipment and pavement stripers used exclusively for the field application of architectural coatings and industrial maintenance coatings to stationary structures and their appurtenances or to pavements and curbs.

(57) High-volume low-pressure (HVLP) spray-coating equipment having a cup capacity ≤ 8 fluid ounces, PROVIDED THAT it is not used to coat > 9 square feet per day and is not used to coat motor vehicles or aerospace components.

(58) Airbrushes having a cup capacity ≤ 2 fluid ounces and an airflow of 0.5-2.0 cfm.

(59) Hand-held aerosol spray cans having a capacity of ≤ 1 quart of coating and hand-held brush and rollers for coating application.

(60) Spray-coating equipment used exclusively for application of automotive undercoating or bed liner materials with a flash point $> 100^\circ\text{F}$.

(61) Ovens associated with an exempt coating operation, if any combustion equipment is also exempt.

(62) Ovens associated with a coating operation that are used exclusively to accelerate evaporation, if any combustion equipment is also exempt. (Note: The coating operation is not necessarily exempt.)

(63) Radiation-curing equipment using ultraviolet or electron beam energy to initiate a chemical reaction forming a polymer network in a coating.

(64) Hand lay, brush, and roll-up resins equipment and operations.

(65) Equipment used exclusively for melting or applying of waxes or natural and synthetic resins.

(66) Hot-melt adhesive equipment.

(67) Any adhesive application equipment that exclusively uses materials containing $< 1\%$ VOC by weight and $< 0.1\%$ HAP.

(68) Equipment used exclusively for bonding of linings to brake shoes, where no organic solvents are used.

Printing

(69) Retail, sheet-fed, non-heatset offset presses (lithographic or letter-press).

(70) Presses using exclusively UV-curable inks.

(71) Presses using exclusively plastisols.

(72) Presses using exclusively water-based inks (< 1.5 lbs VOC per gallon, excluding water, or $< 10\%$ VOC by volume) and cleaning solvents without VOC.

(73) Presses used exclusively for making proofs.

(74) Electrostatic, ink jet, laser jet, and thermal printing equipment.

(75) Ovens used exclusively for exempt printing presses, if any combustion equipment is also exempt.

Photography

(76) Photographic process equipment by which an image is reproduced upon material sensitized by radiant energy, excluding equipment using perchloroethylene.

Liquid Storage and Transfer

(77) Storage tanks permanently attached to a motor vehicle.

(78) Storage tanks used exclusively for:

(A) Liquefied gases, including any tanks designed to operate in excess of 29.7 psia without emissions;

(B) Asphalt at a facility other than an asphalt roofing plant, asphalt processing plant, hot mix asphalt plants, or petroleum refinery;

(C) Any liquids (other than asphalt) that also have a rated capacity $\leq 1,000$ gallons;

(D) Organic liquids (other than gasoline or asphalt) that also have a rated capacity $< 20,000$ gallons;

(E) Organic liquids (other than asphalt) with a true vapor pressure < 2.2 psia (e.g., ASTM spec. fuel oils and lubricating oils) that also have a rated capacity $< 40,000$ gallons;

(F) Organic liquids (other than asphalt) with a true vapor pressure < 0.5 psia that also have a rated capacity $\geq 40,000$ gallons;

(G) Sulfuric acid or phosphoric acid with an acid strength $\leq 99\%$ by weight;

(H) Nitric acid with an acid strength $\leq 70\%$ by weight;

(I) Hydrochloric acid or hydrofluoric acid tanks with an acid strength $\leq 30\%$ by weight;

(J) Aqueous solutions of sodium hydroxide, sodium hypochlorite, or salts, PROVIDED THAT the surface of the solution contains $\leq 1\%$ VOC by weight;

(K) Liquid soaps, liquid detergents, vegetable oils, fatty acids, fatty esters, fatty alcohols, waxes, and wax emulsions;

(L) Tallow or edible animal fats intended for human consumption and of sufficient quality to be certifiable for United States markets;

(M) Water emulsion intermediates and products, including latex, with a VOC content $\leq 5\%$ by volume or a VOC composite partial pressure of ≤ 0.1 psi at 68°F ; or

(N) Wine, beer, or other alcoholic beverages.

(79) Loading and unloading equipment used exclusively for the storage tanks exempted above.

(80) Loading and unloading equipment used exclusively for transferring liquids or compressed gases into containers having a rated capacity < 60 gallons, except equipment trans-

ferring >1,000 gallons per day of liquid with a true vapor pressure >0.5 psia.

(81) Equipment used exclusively for the packaging of sodium hypochlorite-based household cleaning or pool products.

Mixing

(82) Mixing equipment, PROVIDED THAT no material in powder form is added and the mixture contains <1% VOC by weight.

(83) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives.

(84) Equipment used exclusively for the manufacture of water emulsions of waxes, greases, or oils.

(85) Equipment used exclusively for the mixing and packaging of lubricants or greases.

(86) Equipment used exclusively for manufacturing soap or detergent bars, including mixing tanks, roll mills, plodders, cutters, wrappers, where no heating, drying, or chemical reactions occur.

(87) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form, PROVIDED THAT the solution contains <1% VOC by weight.

(88) Batch mixers with a rated working capacity ≤55 gallons.

(89) Batch mixers used exclusively for paints, varnishes, lacquers, enamels, shellacs, printing inks, or sealers, PROVIDED THAT the mixer is equipped with a lid that contacts ≥90% of the rim.

Water Treatment

(90) Oil/water separators, except those at petroleum refineries.

(91) Water cooling towers and water cooling ponds not used for evaporative cooling of process water, or not used for evaporative cooling of water from barometric jets or from barometric condensers, and in which no chromium compounds are contained.

(92) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(93) Municipal sewer systems, including wastewater treatment plants and lagoons, PROVIDED THAT they do not use anaerobic digesters or chlorine sterilization. This exemption does not include sewage sludge incinerators.

(94) Soil and groundwater remediation projects involving <15 pounds per year of benzene or vinyl chloride, <500 pounds per year of perchloroethylene, and <1,000 pounds per year of toxic air contaminants.

Landfills and Composting

(95) Passive aeration of soil, PROVIDED THAT the soil is not being used as a cover material at a landfill.

(96) Closed landfills that do not have an operating, active landfill gas collection system.

(97) Non-commercial composting.

Agriculture, Food, and Drugs

(98) Equipment used in agricultural operations, in the growing of crops, or the raising of fowl or animals.

(99) Insecticide, pesticide, or fertilizer spray equipment.

(100) Equipment used in retail establishments to dry, cook, fry, bake, or grill food for human consumption, including charbroilers, smokehouses, barbecue units, deep fat fryers, cocoa and nut roasters, but not including coffee roasters.

(101) Cooking kettles (other than deep frying equipment) and confection cookers where all the product in the kettle is edible and intended for human consumption.

(102) Bakery ovens with a total production of yeast leavened bread products <10,000 pounds per operating day, if any combustion equipment is also exempt.

(103) Equipment used to dry, mill, grind, blend, or package <1,000 tons per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch.

(104) Equipment used to convey, transfer, clean, or separate <1,000 tons per year of dry food products or waste from food production operations.

(105) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere, or that handle <1,000 tons per year.

(106) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices, coffee, flavor, fragrance extraction, dried flowers, or spices, PROVIDED THAT no organic solvents are used in the process.

(107) Equipment used to convey or process materials in bakeries or used to produce noodles, macaroni, pasta, food mixes, and drink mixes where products are edible and intended for human consumption, PROVIDED THAT no organic solvents are used in the process. This exemption does not include storage bins located outside buildings.

(108) Brewing operations at facilities producing <3 million gallons per year of beer.

(109) Fermentation tanks for wine (excluding tanks used for the commercial production of yeast for sale).

(110) Equipment used exclusively for tableting, or coating vitamins, herbs, or dietary supplements, PROVIDED THAT no organic solvents are used in the process.

(111) Equipment used exclusively for tableting or packaging pharmaceuticals and cosmetics, or coating pharmaceutical tablets, PROVIDED THAT no organic solvents are used.

Quarries, Nonmetallic Mineral Processing Plants, and Concrete and Asphalt Batch Plants

(112) Portable nonmetallic mineral processing plants.

(113) Fixed nonmetallic mineral processing plants.

(114) (Reserved).

(115) Mixers and other ancillary equipment at concrete batch plants (or aggregate product production facilities) with a rated capacity <15 cubic yards per hour.

(116) Concrete mixers with a rated working capacity of ≤1 cubic yard.

(117) Drilling or blasting (explosives detonation).

(118) Asphaltic concrete crushing/recycling equipment with a throughput <5,000 tons per year.

Construction

(119) Asphalt paving application.

(120) Asphalt (hot-tar) roofing application.

(121) Building construction or demolition, except that notification of demolitions is required under Section 4.03 of Regulation III.

Ventilation and Control Equipment

(122) Comfort air-conditioning systems, or ventilating systems (forced or natural draft), PROVIDED THAT they are not designed or used to control air contaminants generated by, or released from, sources subject to Notice of Construction.

(123) Refrigeration units, except those used as, or in conjunction with, air pollution control equipment.

(124) Refrigerant recovery and/or recycling units, excluding refrigerant reclaiming facilities.

(125) Emergency ventilation systems used exclusively to contain and control emissions resulting from the failure of a compressed gas storage system.

(126) Emergency ventilation systems used exclusively to scrub ammonia from refrigeration systems during process upsets or equipment breakdowns.

(127) Negative air machines equipped with HEPA filters used to control asbestos emissions from demolition/renovation activities.

(128) Portable control equipment used exclusively for storage tank degassing.

(129) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow <2,000 cfm.

(130) Control equipment used exclusively for sources that are exempt from Notice of Construction under Section 6.03(c) of this regulation.

(131) Routine maintenance, repair, or similar parts replacement of control equipment.

Testing and Research

(132) Laboratory testing and quality assurance/control testing equipment used exclusively for chemical and physical analysis, teaching, or experimentation, used specifically in achieving the purpose of the analysis, test, or teaching activity. Non-production bench scale research equipment is also included.

Miscellaneous

(133) Single-family and duplex dwellings.

(134) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment, if any combustion equipment used to power such equipment is also exempt.

(135) Equipment, including dryers, used exclusively for dyeing, stripping, or bleaching of textiles where no organic solvents, diluents, or thinners are used, if any combustion equipment used to power such equipment is also exempt.

(136) Chemical vapor sterilization equipment where no ethylene oxide is used, and with a chamber volume of ≤ 2 cubic feet used by healthcare facilities.

(137) Ozone generators that produce <1 pound per day of ozone.

(138) Fire extinguishing equipment.

(d) Each Notice of Construction application and Section 6.03(b) notification shall be submitted on forms provided by the Agency and shall be accompanied by the appropriate fee as required by Section 6.04 of this regulation. Notice of Construction applications shall also include any additional information required to demonstrate that the requirements of this Article are met. Notice of Construction applications shall also include an environmental checklist or other documents

demonstrating compliance with the State Environmental Policy Act.