

WSR 18-09-015
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Children's Administration)

[Filed April 10, 2018, 9:18 a.m., effective May 11, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the chapter is to have uniform statewide standards for agencies and organizations that provide domestic violence victim services and prevention efforts funded by DSHS. The standards address issues such as eligibility for funding, supportive services, emergency shelter, prevention efforts, and administrative requirements for contractors and staff. A crosswalk table of existing and new WAC sections is available upon request.

Citation of Rules Affected by this Order: New WAC 388-61A-1000, 388-61A-1005, 388-61A-1010, 388-61A-1015, 388-61A-1020, 388-61A-1025, 388-61A-1030, 388-61A-1035, 388-61A-1040, 388-61A-1045, 388-61A-1050, 388-61A-1055, 388-61A-1060, 388-61A-1065, 388-61A-1070, 388-61A-1075, 388-61A-1080, 388-61A-1085, 388-61A-1090, 388-61A-1095, 388-61A-1100, 388-61A-1105, 388-61A-1110, 388-61A-1115, 388-61A-1120, 388-61A-1125, 388-61A-1130, 388-61A-1135, 388-61A-1140, 388-61A-1145, 388-61A-1150, 388-61A-1155, 388-61A-1160, 388-61A-1165, 388-61A-1170, 388-61A-1175, 388-61A-1180, 388-61A-1185, 388-61A-1190, 388-61A-1195, 388-61A-1200, 388-61A-1205, 388-61A-1210, 388-61A-1215, 388-61A-1220 and 388-61A-1225; and repealing WAC 388-61A-0200, 388-61A-0210, 388-61A-0220, 388-61A-0230, 388-61A-0240, 388-61A-0250, 388-61A-0260, 388-61A-0270, 388-61A-0280, 388-61A-0290, 388-61A-0300, 388-61A-0310, 388-61A-0320, 388-61A-0330, 388-61A-0340, 388-61A-0350, 388-61A-0360, 388-61A-0370, 388-61A-0380, 388-61A-0390, 388-61A-0400, 388-61A-0410, 388-61A-0420, 388-61A-0430, 388-61A-0440, 388-61A-0450, 388-61A-0460, 388-61A-0470, 388-61A-0480, 388-61A-0490, 388-61A-0500, 388-61A-0510, 388-61A-0520, 388-61A-0530, 388-61A-0540, 388-61A-0550, 388-61A-0560, 388-61A-0570, 388-61A-0580, 388-61A-0590, 388-61A-0600, 388-61A-0620, 388-61A-0630, 388-61A-0640, 388-61A-0650, 388-61A-0660, and 388-61A-0670.

Statutory Authority for Adoption: Chapter 70.123 RCW.

Adopted under notice filed as WSR 18-03-150 on January 22, 2018.

A final cost-benefit analysis is available by contacting Susan Hannibal, P.O. Box 45710, Olympia, WA 98504-5710, phone 360-902-8493, email hsus300@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 46, Amended 0, Repealed 47.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 46, Amended 0, Repealed 47.

Date Adopted: April 6, 2018.

Cheryl Strange
Secretary

DEFINITIONS

NEW SECTION

WAC 388-61A-1000 What definitions apply to this chapter? The following definitions apply to this chapter:

(1) "**Advocacy**" means that the client is involved with an advocate in individual or group sessions with a primary focus of safety planning, empowerment, and education of the client through reinforcement of the client's autonomy and self-determination. Advocacy also means speaking and acting for change or justice with, or on behalf of, another person or cause. Advocacy is survivor-centered and uses non-victim blaming methods that include:

(a) Identifying barriers and strategies to enhance safety, including safety planning;

(b) Clarifying and increasing awareness of the power and control associated with domestic violence and the options one may have to obtain resources while staying safe; and

(c) Supporting independent decision making based on the unique needs and circumstances of each individual.

(2) "**Advocate**" means a trained staff person who works in a domestic violence program and provides advocacy to clients.

(3) "**Child care**" means the temporary care of a client's child or children by domestic violence program staff at the program's location or another location where the client is receiving confidential or individual services from the domestic violence program or is participating in activities sponsored by the domestic violence program, other than employment, and so long as the client remains on the premises.

(4) "**Children/youth activities**" means age-appropriate activities other than children/youth advocacy, such as recreational and educational activities.

(5) "**Children/youth advocacy**" means age-appropriate supportive services that strive to assist children/youth to express feelings about their exposure to domestic violence. It is an educational, rather than a therapeutic service and is focused on providing education about domestic violence, safety planning, and developing or enhancing problem solving skills. Advocacy can be provided on an individual basis and in group settings.

(6) "**Client**" means a victim of domestic violence who is accessing services at a domestic violence program. A client may also be referred to as a survivor, service recipient, or resident.

(7) "**Community advocate**" means a person employed or supervised by a domestic violence program who is trained to provide ongoing assistance and advocacy for victims of domestic violence in assessing and planning for safety needs, making appropriate social service, legal, and housing referrals, providing community education, maintaining contacts

necessary for prevention efforts, and developing protocols for local systems coordination.

(8) **"Community-based domestic violence program"** or **"CBDVP"** means a nonprofit program or organization that provides, as its primary purpose, assistance and advocacy for domestic violence victims. Domestic violence assistance and advocacy includes crisis intervention, individual and group support, information and referrals, and safety assessment and planning. Domestic violence assistance and advocacy may also include, but is not limited to: provision of shelter, emergency transportation, self-help services, culturally specific services, legal advocacy, economic advocacy, and accompaniment and advocacy through medical, legal, immigration, human services, and financial assistance systems. CBDVPs also provide community education and prevention efforts. Domestic violence programs that are under the auspices of, or the direct supervision of, a court, law enforcement or prosecution agency, or the child protective services section of the department as defined in RCW 26.44-.020, are not considered CBDVPs.

(9) **"Community education"** refers to information that is provided in community settings about domestic violence and services related to victims of domestic violence. Community education activities include: training, presentations, outreach to specific communities or geographic areas, community events, and media events.

(10) **"Confidential communication"** means all information, oral, written, or nonverbal, that is transmitted between a victim of domestic violence and an employee or volunteer of a domestic violence program in the course of their relationship and in confidence, which means that the employee or volunteer will not disclose the information to a third person unless authorized in writing by the victim.

(11) **"Confidential information"** includes, but is not limited to, any information, advice, notes, reports, statistical data, memoranda, working papers, records, or the like, made or given during the relationship between a victim of domestic violence and a domestic violence program, however maintained. Confidential information includes personally identifying information as defined in this chapter, and any other information that would personally identify a victim of domestic violence who seeks or has received services from a domestic violence program.

(12) **"Crisis hotline or helpline"** means a designated telephone line of the domestic violence program that operates twenty-four hours a day, three hundred sixty-five days a year. A hotline/helpline provides crisis intervention, safety planning, information, and referral services.

(13) **"Crisis intervention"** means services provided to an individual in crisis to stabilize the individual's emotions, clarify issues, and provide support and assistance to help explore options for resolution of the individual's immediate crisis and needs.

(14) **"Culturally specific supportive services and prevention efforts"** means services and prevention efforts created by and for specific cultural populations that have been historically underserved or unserved. Services and prevention efforts are typically designed by and with individuals from the specific culture who are cognizant of the specific community generated risks and protective characteristics and

often utilize the language and settings familiar to the population served.

(15) **"Department"** means the department of social and health services (DSHS).

(16) **"Domestic violence"** means the infliction or threat of physical harm against an intimate partner, and includes physical, sexual, and psychological abuse against the partner, and is a part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over that intimate partner. It may include, but is not limited to, a categorization of offenses as defined in RCW 10.99.020, committed by one intimate partner against another.

(17) **"Domestic violence program"** means an agency, organization, or program with a primary purpose and history of effective work in providing advocacy, safety assessment and planning, and self-help services for domestic violence victims in a supportive environment, and includes, but is not limited to, a CBDVP, emergency shelter, or domestic violence transitional housing program.

(18) **"Emergency shelter"** means a place of supportive services and safe, temporary lodging offered on a twenty-four hour, seven days per week basis to victims of domestic violence and their children. Domestic violence programs may use hotels and motels for victims who need safe shelter, but the domestic violence program must also have an emergency shelter that meets the requirements of this chapter. The mere act of making a referral to emergency shelter is not itself considered provision of emergency shelter.

(19) **"Intimate partner"** means a person who is or was married, in a state registered domestic partnership, or in an intimate or dating relationship with another person at the present or at some time in the past. An intimate partner is also any person who has one or more children in common with another person, regardless of whether they have been married, in a domestic partnership with each other, or lived together at any time.

(20) **"Job shadowing"** means a work experience where an individual observes and learns about a job, activity, or activities by walking through the work day as a shadow to a skilled and competent employee. The experience is planned for and structured with the goal of observing behavior and situations, engaging in interactive questions and answers, and experiencing the link between learning and practice. Job shadowing may be anywhere from a few hours, to a day, week, or more, depending on the job or activity.

(21) **"Legal advocacy"** means personal support and assistance with victims of domestic violence to ensure their interests are represented and their rights upheld within the civil and criminal legal systems and administrative hearings. It includes:

- (a) Educating and assisting victims in navigating legal systems;
- (b) Assisting victims in evaluating advantages and disadvantages of participating in legal processes;
- (c) Facilitating victims' access and participation in legal systems; and
- (d) Promoting victims' choices and rights to individuals within legal systems.

(22) "**Legal advocate**" means a person employed by a domestic violence program or court system to advocate for victims of domestic violence, within the civil and criminal legal systems and administrative hearings, by attending court proceedings, assisting in document and case preparation, and ensuring linkage with the community advocate.

(23) "**Live training**" means events that are held at a specific time and not prerecorded, where participants have the opportunity to ask questions and hear the questions of others in real time. Examples of live training include events that are in person, teleconferences, and interactive.

(24) "**Lodging unit**" means one or more rooms used for a victim of domestic violence including rooms used for sleeping or sitting.

(25) "**Personally identifying information**" is individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including, but not limited to:

- (a) First and last name;
- (b) Home or other physical address;
- (c) Contact information (including postal, email or internet protocol address or telephone or facsimile number);
- (d) Social security number;
- (e) Driver's license number, passport number, or student identification number;
- (f) Religious affiliation;
- (g) Date of birth;
- (h) Nine digit postal (ZIP) code;
- (i) Physical appearance of;
- (j) Case file or history; and
- (k) Other information that would personally identify a victim of domestic violence who seeks or has received services from a domestic violence program, or such other information which, taken individually or together with other identifying information, could identify a particular individual.

(26) "**Prevention**" means efforts that are designed to ultimately eradicate domestic violence through the promotion of healthy, respectful, and nonviolent relationships. Successful domestic violence prevention efforts address change at both the individual and community levels, and tailor messages to diverse populations. Characteristics of promising prevention practices include working to decrease risk factors for perpetration of abuse as well as victimization while at the same time promoting positive factors that protect individuals from perpetrating or experiencing abuse. Domestic violence prevention includes strategies, policies, and programs that focus on at least one of the following:

- (a) Increasing community dialogue about the root causes of intimate partner violence;
- (b) Shifting cultural norms;
- (c) Building skills for healthy relationships;
- (d) Promoting respectful and healthy relationships.

(27) "**Resident**" means a client of the domestic violence program who is residing in an emergency shelter as defined in this chapter.

(28) "**Restroom facility**" means a bathroom with at least a common-use indoor flush-type toilet, one nearby sink for hand washing, and a bathtub or shower facility.

(29) "**Safety planning**" is a process of thinking through with the victim how to increase safety for both the victim of domestic violence and any children of the victim. Safety planning addresses both immediate and long-term risks, barriers, or concerns regarding the victim and any children in the context of their communities and in relationship with the domestic violence perpetrator. It is based on knowledge about the specific pattern of the domestic violence perpetrator's tactics and the protective factors of the victim and any children. Safety planning may be done formally, informally, in writing or orally, or in any other conversational process between the victim and advocate.

(30) "**Secretary**" means the department secretary or the secretary's designee.

(31) "**Self-study**" is a form of study in which one is, to a large extent, responsible for one's own instruction. Examples of self-study include reading articles, books, academic journals, training materials, engaging in online learning opportunities, and prerecorded webinars. Self-study content must be current or have historical relevance to the domestic violence advocacy field.

(32) "**Shelter**" means temporary lodging and supportive services offered by a CBDVP to victims of domestic violence and their children.

(33) "**Staff**" means trained persons who are part of a domestic violence program and are paid or volunteer to provide services to clients.

(34) "**Support group**" means an interactive group session of two or more victims of domestic violence that is facilitated by trained staff on a regular basis. Participants share experiences, offer mutual support, and receive information and education around a specific topic of common interest. Support groups validate the experiences of victims, explore options, build on strengths, and respect participants' rights to make their own decisions. A shelter or house meeting where, for example, chores are discussed, and there is no advocacy provided, is not a support group.

(35) "**Supportive services**" means assistance and advocacy for victims of domestic violence and their children that are designed to meet the needs of victims and children and provided in accordance with the service model defined in this chapter. Supportive services include, but are not limited to, activities described in the definition of CBDVP.

(36) "**Underserved or unserved populations**" means populations who face barriers in accessing and using victim services, including populations underserved or unserved because of religion, sexual orientation, gender identity or expression, underserved or unserved racial and ethnic populations, and populations underserved or unserved because of special needs including language barriers, disabilities, immigration status, and age.

(37) "**Victim**" means an intimate partner who has been subjected to domestic violence.

(38) "**We," "us," or "our"** refers to the department and its employees.

(39) "**You," "I," or "your"** refers to the domestic violence program.

SERVICE STANDARDS

NEW SECTION

WAC 388-61A-1005 What is the legal basis for establishing minimum standards for domestic violence programs? Chapter 70.123 RCW authorizes the department to establish minimum standards for programs that receive funding from the department to provide supportive services and prevention efforts.

NEW SECTION

WAC 388-61A-1010 What is the purpose of this chapter? The rules of this chapter are to establish minimum uniform statewide standards for domestic violence supportive services, emergency shelters, and prevention efforts funded by the department.

NEW SECTION

WAC 388-61A-1015 What service model must be used to provide the services required by this chapter? Supportive services and emergency shelters for victims of domestic violence are essential to provide protection to victims from further abuse and physical harm. Research demonstrates that access to supportive services that increase a survivor's knowledge of safety planning and awareness of community resources leads to increased safety and well-being over time. Consequently, the model for providing services must incorporate all the following practices and minimum standards:

(1) Services provided to victims must include access to safety, advocacy, information about options, and referrals to helping resources.

(2) Services must use a survivor-centered and empowerment service model that:

(a) Promotes safety for all victims of intimate partner violence and their children;

(b) Is survivor-centered and treats victims with dignity and respect;

(c) Builds on the strengths and resources of individuals and families, respecting their autonomy and self-determination;

(d) Supports the relationship between victims and their children;

(e) Offers options and support for autonomous decision making that is based on the needs and circumstances of each victim and their family;

(f) Assists individuals and families in accessing protection and services that are respectful and inclusive of cultural and community characteristics;

(g) Ensures program accountability by involving victims in evaluating the services they receive from the domestic violence program; and

(h) Supports engagement and collaboration with other community agencies and systems for the purpose of developing a comprehensive response system for victims and their children.

(3) The program must refrain from engaging in activities that compromise the safety of victims or their children.

(4) The program must not provide services that blame the victim for the abuse or do not hold the abuser accountable for the violence. Such services are ineffective and will likely result in further harm to the victim, up to and including death.

NEW SECTION

WAC 388-61A-1020 Is the department required to provide funding to any program that requests funding?

(1) We are not obligated to disburse funds to all domestic violence programs that meet the minimum standards set forth in this chapter. Our goals are to:

(a) Provide for a statewide network of supportive services, including emergency shelter, and advocacy for victims of domestic violence and their children;

(b) Provide for culturally specific and appropriate services for victims of domestic violence and their children from populations that have been historically underserved or unserved; and

(c) Assist communities in efforts to increase public awareness about, and prevention of, domestic violence.

(2) Funding for this program is intended to develop and maintain domestic violence programs that are:

(a) Focused on victim advocacy, safety, empowerment, maintaining confidentiality, and safety planning;

(b) Inclusive and responsive to the ethnic, cultural, racial, and socioeconomic diversity of the state; and

(c) Flexible and designed to meet the needs of domestic violence victims at the local level.

(3) If an organization applies for funding, we will consider such things as:

(a) Geographic location;

(b) Population density;

(c) Specific population needs, including urban and rural areas, and the need for culturally and linguistically appropriate services and prevention efforts;

(d) Availability and existence of domestic violence outreach and prevention efforts;

(e) An applicant's demonstrated history and experience in providing domestic violence services and its ability to provide services that comply with the minimum standards of this chapter;

(f) The availability of other domestic violence programs in a community and the level of collaboration between and among existing programs; and

(g) The amount of funding we have available to maintain stability and support for domestic violence programs currently funded by the department under this chapter.

NEW SECTION

WAC 388-61A-1025 What services must a department-funded domestic violence program provide? (1) Supportive services provided by the domestic violence program must align with the survivor-centered and empowerment service model described in this chapter, and must also:

(a) Include a discussion of safety and options with each victim of domestic violence seeking assistance;

(b) Be respectful, respond to each client's life situation, and respect each person's right to self-determination;

(c) Be provided in a safe and supportive environment that offers the client the opportunity to examine the events that led to the need for domestic violence services; and

(d) Be provided in a private setting for the comfort of the client and to protect the client's right to confidentiality.

(2) Domestic violence programs must provide the following:

(a) A location with a private setting to meet and assist victims of domestic violence who have a need for community advocacy or supportive services;

(b) A dedicated telephone line that serves as the contact number for the domestic violence program;

(c) Language and disability access;

(d) Crisis intervention;

(e) Safety planning;

(f) Individual advocacy, including legal advocacy;

(g) Support groups;

(h) Child care assistance during individual advocacy sessions and support groups for the adult victim;

(i) Emergency transportation assistance or access to transportation;

(j) Information and referral; and

(k) Community education and prevention efforts.

NEW SECTION

WAC 388-61A-1030 What are the requirements for providing emergency shelter? (1) Programs that we contract with for emergency shelter must also provide:

(a) A crisis hotline or helpline;

(b) A place of temporary lodging that complies with the service and facility requirements of this chapter;

(c) A day program or drop in service for victims who have a need for supportive services but do not need emergency shelter;

(d) Resident access to a trained staff person twenty-four hours a day, three hundred sixty-five days a year;

(e) The opportunity for residents to receive and participate in supportive services during their stay in emergency shelter; and

(f) Age-appropriate supportive services and resources for children/youth residing in emergency shelter.

(2) Programs must not require that clients participate in supportive services as a condition of residing in emergency shelter.

(3) Your program must have written procedures regarding your emergency shelter intake process. Victims who are at immediate risk of harm or who are in immediate danger due to domestic violence must be given priority for emergency shelter.

(4) You must have a staff person available twenty-four hours a day, three hundred sixty-five days a year, who is able to assess requests for emergency shelter and arrange for immediate intake into your shelter or a hotel or motel.

(5) Where an individual is eligible for emergency shelter:

(a) A staff person must be present to admit a service recipient into the emergency shelter; and

(b) Your program must make reasonable efforts to have a staff person present to admit a service recipient into a hotel or motel.

(6) Hotels or motels may be used as a temporary emergency sheltering option but must not be used in place of an emergency shelter that meets the standards set forth in this chapter. Individuals placed in a hotel or motel or other temporary shelter option must be provided with supportive services during the time they are in emergency shelter.

(7) You must provide an individual with referrals to other services or domestic violence agencies when:

(a) Your emergency shelter is full;

(b) A client residing in emergency shelter must be transferred to another domestic violence program for client safety reasons;

(c) The person seeking emergency shelter is ineligible for your services;

(d) An inappropriate referral was made to your domestic violence program; or

(e) The person seeking emergency shelter has problems that require services of another program or programs before they receive domestic violence services.

NEW SECTION

WAC 388-61A-1035 What services and resources must be available to children/youth residing in emergency shelter? (1) With the parent's or guardian's permission, you must offer children/youth the opportunity to receive and participate in the following age-appropriate supportive services during their emergency shelter residency:

(a) Orientation to the emergency shelter;

(b) Information about domestic violence;

(c) Individual or group advocacy and support; and

(d) Information and referral to other supportive services.

(2) You must provide a safe and secure play area for children/youth residing in the emergency shelter.

(3) You must provide information to the client about resources for indoor and outdoor recreational activities in the community for children/youth residing in emergency shelter, such as outings to parks, playgrounds, movies, libraries, sports activities, youth clubs and other similar activities.

NEW SECTION

WAC 388-61A-1040 What are the requirements for a crisis hotline or helpline? (1) Emergency shelters must provide a crisis hotline/helpline telephone number for accessing the services of the domestic violence program. The telephone number must be widely distributed throughout the service area covered by the domestic violence program and be identified as the crisis hotline/helpline of the program.

(2) The crisis hotline/helpline service must comply with the following minimum requirements:

(a) It must operate twenty-four hours a day, three hundred sixty-five days a year;

(b) It must be a dedicated telephone line that serves as the crisis hotline or helpline;

(c) Staff that answer the hotline/helpline must be trained in, periodically review, and be familiar with, the crisis help-

line/hotline written procedures and all referral and intake practices of the domestic violence program;

(d) In most cases, callers to the hotline/helpline must be able to speak, within fifteen minutes, to a trained staff person who can help the caller obtain services, including access to emergency shelter;

(e) Staff must have access to a telecommunications device for the deaf (TDD) or similar technology, and they must be trained in its use; and

(f) Staff must address safety in every call.

(3) You must have crisis hotline/helpline written procedures that address the following:

(a) How crisis hotline staff will meet the needs of non English speaking and hearing impaired callers;

(b) Steps staff must take when a caller requests emergency shelter; and

(c) If you use an answering service or another similar system, how you will provide training to the staff of the answering service and monitor the services they provide to your program.

(4) If you use a call forwarding system for your domestic violence program's hotline/helpline, answering service, or any other similar system, you must guarantee that the caller's first contact is supportive.

(5) You may use an answering machine, voice mail, or similar recording device as a back up means of responding to calls to your program's crisis hotline/helpline. However, these devices must not be used as your program's primary method of answering crisis hotline/helpline calls. Messages left on your program's answering machine, voice mail, or similar recording device must be returned within the time-frame described in this section.

PREVENTION STANDARDS

NEW SECTION

WAC 388-61A-1045 What prevention efforts must you provide? Prevention is changing the social norms that allow and perpetuate domestic violence. The core strategy for preventing domestic violence is the promotion of healthy, respectful, nonviolent relationships by shifting attitudes, behaviors, and social norms at the individual, relationship, community, and societal levels. While prevention activities will vary by community and population, programs that we contract with must design and engage in efforts that:

(1) Promote attitudes, behaviors, and social conditions aimed at preventing domestic violence before it happens;

(2) Attempt to decrease risk factors for perpetration of abuse as well as victimization while also promoting positive factors that protect individuals from perpetrating or experiencing abuse;

(3) Include strategies that use varied teaching methods to address multiple learning processes;

(4) Are age and developmentally appropriate;

(5) Are culturally and linguistically applicable to the specific community;

(6) Engage with a subsection of the broader community, reaching beyond the program's community of clients;

(7) Emphasize multi-session, comprehensive activities with small, defined communities; and

(8) Include strategies, policies, and programs that are concentrated, can be sustained and expanded over time, and focus on at least one of the following:

(a) Increasing community dialogue about the root causes of intimate partner violence;

(b) Shifting cultural norms;

(c) Building skills for healthy relationships;

(d) Promoting respectful and healthy relationships.

NEW SECTION

WAC 388-61A-1050 What activities are not considered prevention? While valuable, we do not consider certain activities to be prevention. Examples of these activities include, but are not limited to:

(1) Community education as defined in this chapter;

(2) Transformative and restorative justice efforts;

(3) Single session or one-time activities, such as trainings, presentations, or events;

(4) Activities that focus on defining domestic violence, or teaching data, dynamics, and the impacts of domestic violence;

(5) Providing information on how to access domestic violence services or how to help others in accessing services;

(6) Support groups as defined in this chapter (support groups are considered a supportive service); and

(7) Activities that focus on improving responsiveness to domestic violence survivors by community members or system partners.

ADMINISTRATIVE STANDARDS

NEW SECTION

WAC 388-61A-1055 What information must be in a client's file? (1) You must have a written file for each client served by your domestic violence program. Client files must:

(a) Include an intake that clearly documents the client's eligibility for domestic violence services;

(b) Include copies of all required releases and client notices;

(c) Be brief in documenting the services provided to the client; and

(d) Document only sufficient information to identify the service provided, and do not include any of the following:

(i) References to service recipient feelings, emotional or psychological assessments, diagnoses, or similar subjective observations or judgments;

(ii) Direct quotes from the client.

(2) Where supportive services are provided to the child/youth of clients, your domestic violence program must:

(a) Maintain separate documentation for each child/youth who receives supportive services and do not include it in the parent/guardian's file;

(b) Be brief in documenting the supportive services provided to the child/youth;

(c) Document only sufficient information to identify the service provided, and do not include any of the following:

(i) References to the child/youth's feelings, emotional or psychological assessments, diagnoses, or similar subjective observations or judgments;

(ii) Direct quotes from the child/youth.

NEW SECTION

WAC 388-61A-1060 What information must the domestic violence program keep confidential? (1) Agents, employees, and volunteers of a domestic violence program must maintain the confidentiality of all personally identifying information, confidential communications, and all confidential information as defined in this chapter. Information that individually or together with other information could identify a particular victim of domestic violence must also be kept confidential.

(2) Any reports, records, working papers, or other documentation, including electronic files that are maintained by the domestic violence program and information provided to the domestic violence program on behalf of the client, must be kept confidential. Any information considered privileged by statute, rule, regulation, or policy that is shared with the domestic violence program on behalf of the client must not be divulged without a valid written waiver of the privilege that is based on informed consent, or as otherwise required by law.

(3) You must comply with the provisions of this section regarding confidential communications concerning clients regardless of when the client received the services of the domestic violence program.

NEW SECTION

WAC 388-61A-1065 What information may be disclosed? (1) You may disclose confidential information only when one or more of the following is met:

(a) The client provides informed, written consent to the waiver of confidentiality that relates only to the client or the client's dependent children;

(b) Your failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the client or other person;

(c) Disclosure is required under chapter 26.44 RCW;

(d) Release of information is otherwise required by law, court order, or following in camera review pursuant to RCW 70.123.075, with the following additional requirements:

(i) The domestic violence program must make reasonable attempts to provide notice to the person affected by the disclosure of the information; and

(ii) If personally identifying information is or will be disclosed, the domestic violence program must take steps necessary to protect the privacy and safety of the persons affected by the disclosure of information.

(2) Any disclosure of confidential information subject to any of the exceptions set forth in subsection (1) of this section must be limited to the minimum necessary to meet the requirement of the exception, and any disclosure does not void the client's right to confidentiality and privilege on any

other confidential communication between the client and the domestic violence program.

(3) In the case of an unemancipated minor, the minor and the parent or guardian must provide the written consent to disclose confidential information. Consent to disclose confidential information must not be given by a parent who has abused the minor or the minor's other parent. In the case of a disabled adult who has been appointed a guardian pursuant to Title 11 RCW, the guardian must consent to disclosure of confidential information if so authorized in the order appointing him or her as guardian, unless the guardian is the abuser of the disabled adult.

(4) To comply with federal, state, tribal, or territorial reporting, evaluation, or data collection requirements, a domestic violence program may disclose aggregated, nonpersonally identifying data about services provided to their clients and nonpersonally identifying demographic information.

(5) You must provide copy of the disclosed information to the client if the client requests it.

NEW SECTION

WAC 388-61A-1070 What are the requirements for a written waiver of confidentiality? (1) To be valid, a written waiver of confidentiality must:

(a) Be voluntary;

(b) Relate only to the client or the client's dependent children;

(c) Clearly describe the scope and any limitations of the information to be released;

(d) Include an expiration date for the release; and

(e) Inform the client that consent may be withdrawn at any time whether it is made orally or in writing.

(2) If the written waiver of confidentiality does not include an expiration date, it expires ninety days after the date it was signed.

NEW SECTION

WAC 388-61A-1075 What must you provide to clients about their right to confidentiality? (1) You must provide each client with a written "notice of rights" at the time of the initial intake and any subsequent intake into the domestic violence program. At a minimum, the notice of rights must inform clients of the following:

(a) The client's right to privacy and confidentiality of the information shared with the domestic violence program;

(b) Exceptions to confidentiality as described in this chapter;

(c) That if the client signs a written waiver of confidentiality that allows their information to be shared with others, the client does not give up their right to have that information protected under other statutes, rules, or laws;

(d) That the client has the right to withdraw a written waiver of confidentiality at any time; and

(e) That the domestic violence program will not condition the provision of services to the client based on a requirement that the client sign one or more releases of confidential information.

(2) Information on the "notice of rights" must be explained to the client at the time of intake into the domestic

violence program and then again at the time the client is considering whether to sign a written waiver of confidentiality.

NEW SECTION

WAC 388-61A-1080 What type of training is required for staff of the domestic violence program? Initial and continuing education training of domestic violence program staff is critically important. In addition, quality supervision is an integral component for the provision of excellent advocacy and in supporting staff. Advocates and advocate supervisors must be able to demonstrate an understanding of the nature and scope of domestic violence as defined by this chapter, as well as the historical and societal attitudes in which domestic violence is rooted. Training must be current and relevant to the provision of empowerment based advocacy. Domestic violence agencies should also strive to ensure that staff incorporate training on services to underserved populations as part of each advocate's annual continuing education hours. In furtherance of these goals, domestic violence program staff must meet the following minimum training requirements.

Initial training

(1) Staff providing supportive services and prevention efforts, and supervisors of staff must obtain a minimum of twenty hours of initial basic training that covers all the following topics and skills:

- (a) Theory and implementation of empowerment based advocacy;
- (b) The history of the domestic violence movement;
- (c) Active listening skills;
- (d) Legal, medical, social service, and systems advocacy;
- (e) Anti-oppression and cultural competency theory and practice;
- (f) Confidentiality and ethics;
- (g) Safety planning skills and barriers to safety;
- (h) Planning, clarifying issues and options, and crisis intervention;
- (i) Providing services and advocacy to individuals from culturally specific populations; and
- (j) Policies and procedures of the domestic violence program.

(2) Staff who will be engaged in prevention efforts must incorporate training on prevention as part of, or in addition to, the initial training requirements.

(3) Initial training must be completed prior to providing supportive services to clients or their children.

(4) The recommended format for initial trainings is live and in-person group sessions. Structured job shadowing and self-study may be included as part of the overall initial training. All domestic violence program in-house training must be based on a written training plan that covers one or more of the required initial training topics.

Continuing education and supervisor training

(5) Staff who provide either supportive services or are engaged in prevention efforts, or both, and staff supervisors must obtain an annual minimum of twenty hours of continu-

ing education training beginning in the state fiscal year after they completed their initial training, and in every year thereafter. Staff who will be engaged in prevention efforts must incorporate training on prevention as part of, or in addition to, the annual continuing education requirements.

(6) A minimum of ten hours must be live training on topics specifically focused on either serving victims of domestic violence and their children, or prevention efforts, or both.

(7) The remaining ten hours of training may be satisfied through self-study on topics specifically focused on serving victims of domestic violence and their children, or prevention efforts, or both.

(8) Within six months of being hired as an advocate supervisor and for each year thereafter, the supervisor must obtain a minimum of five hours of training on supervision. Supervision training can be counted toward the twenty hours of annual continuing education training hours required by this chapter. Examples of supervision training topics include leadership skills, job coaching and staff evaluation, multicultural supervision, and how to foster professional development of, and self-care with, advocates. While live, in-person training is the preferred method for supervision training, all methods of live and self-study training are acceptable.

Training for staff not providing supportive services or prevention activities

(9) Domestic violence program staff are not required to obtain initial and continuing education training as described in this section if they do not:

- (a) Provide supportive services to clients or their children; or
- (b) Conduct prevention efforts.

(10) Examples of staff who are included in this category are emergency shelter housekeeping staff, individuals providing child care assistance as defined in this chapter, and bookkeeping and accounting staff. We recommend, however, that staff who may come into contact with clients and their children, but who do not provide supportive services or conduct prevention efforts, receive training on the following:

- (a) Confidentiality;
- (b) Relevant policies and procedures of the domestic violence program; and
- (c) Mandated reporting of child abuse/neglect as required by chapter 26.44 RCW.

NEW SECTION

WAC 388-61A-1085 How should training be documented? Initial, continuing education, and supervisor training must be documented as required by the department.

NEW SECTION

WAC 388-61A-1090 Must supervisors of domestic violence program staff have specific experience and training? Supervisors of staff providing supportive services to domestic violence clients must have the following minimum experience and training requirements prior to being hired as a supervisor:

(1) At least two years of experience providing advocacy to victims of domestic violence within a domestic violence program; and

(2) A minimum of fifty hours of training on domestic violence issues and advocacy within three years prior to being hired as a supervisor.

NEW SECTION

WAC 388-61A-1095 What written policies or procedures do you need to have? The domestic violence program must have written policies or procedures on the following:

(1) Programs that provide emergency shelter must have procedures for the intake process, including that victims who are at immediate risk of harm or in immediate danger due to domestic violence must be given priority for emergency shelter;

(2) Confidentiality and protection of client records and communication;

(3) Nondiscrimination relating to staff, clients, and provision of services;

(4) The provision of bilingual and interpreter services to clients;

(5) Responding to calls from non English speaking and hearing impaired callers;

(6) Programs that are required to have a crisis hotline/helpline and use an answering service, or any other similar system to answer calls, must have procedures for providing training to the answering service staff and how you will monitor the services the answering service provides to your program;

(7) Responding to subpoenas and warrants;

(8) Reporting of child abuse as legally mandated;

(9) Client access to their files;

(10) Grievance procedure for clients;

(11) Prohibiting harassment of service recipients based on race, sexual orientation, gender identity (or expression), religion, and national origin, and procedures for addressing violations;

(12) Emergency procedures in the event of fire, disaster, and first aid, medical, or law enforcement intervention;

(13) Responding to disruptive or dangerous contact from abusers and other possible intruders or uninvited individuals requesting or seeking access to the domestic violence program;

(14) Records retention;

(15) Accounting procedures; and

(16) Personnel policies and procedures that include the following:

(a) Recruitment of staff and volunteers, including that programs recruit, to the extent feasible:

(i) Persons who are former victims of domestic violence; and

(ii) Persons from relevant communities to provide culturally and linguistically appropriate services;

(b) Hiring;

(c) Promotion and termination of staff;

(d) Grievance procedure for staff; and

(e) Maintaining personnel and training files, including job descriptions for paid staff and volunteers.

FACILITY STANDARDS FOR EMERGENCY SHELTER

NEW SECTION

WAC 388-61A-1100 What safety requirements are emergency shelters required to meet? You must keep your equipment and the physical structures in the emergency shelter, including furniture and appliances, safe and clean for the clients you serve. You must:

(1) Maintain the emergency shelter, premises, equipment, and supplies in a clean, safe and sanitary condition, free of hazards, and in good repair;

(2) Provide guard or handrails, as necessary, for stairways, porches, and balconies;

(3) Have a method for securing all windows, doors, and other building accesses to prevent the entry of intruders;

(4) Make sure that clients residing in emergency shelter are able to immediately enter the shelter if they do not have the ability to independently access the facility with their own key, key card, door code, or other device;

(5) Provide adequate lighting of exterior areas to ensure the safety of clients residing in emergency shelter and staff during the night;

(6) Provide a way for staff to enter any area occupied by clients should there be an emergency;

(7) Secure all unused refrigerators and freezers accessible to children in such a way that prevents them from climbing in and becoming trapped;

(8) Request an annual fire and life safety inspection from the local fire department or fire marshal and:

(a) Document and maintain the request and any report issued as a result of the inspection; and

(b) Immediately correct any violations noted by the inspector;

(9) Have at least one program staff present or on-call to go to the emergency shelter twenty-four hours a day, seven days per week when clients are residing in shelter;

(10) Provide residents with contact numbers and instructions, in the resident's primary language, on how they can access domestic violence program staff; and

(11) Make sure that emergency shelter residents have, or have access to in the shelter, at least one telephone for incoming and outgoing calls.

NEW SECTION

WAC 388-61A-1105 What are the requirements for bedrooms? The minimum requirements for bedrooms are as follows:

(1) A bed for each resident that is in good condition, with a clean and comfortable mattress;

(2) A minimum ceiling height of seven and one-half feet; and

(3) At least fifty square feet of usable floor area per bed and floor area where the ceiling is less than five feet is not considered usable floor area.

NEW SECTION

WAC 388-61A-1110 What are the requirements for cribs or bassinets? If the emergency shelter provides cribs or bassinets, the shelter must comply with the crib safety standards issued by the United States Consumer Product Safety Commission.

NEW SECTION

WAC 388-61A-1115 What kind of diaper changing area must I provide? You must provide a sanitary diaper changing area. In addition, you must develop and post in view of the changing area hygienic procedures for handling and storing diapers and sanitizing the changing area. These procedures must also be provided in writing to all residents with infants.

NEW SECTION

WAC 388-61A-1120 What are the kitchen requirements? The following are the minimum general requirements for kitchen facilities:

- (1) A sink for washing dishes;
- (2) A refrigerator or other storage equipment capable of maintaining a consistent temperature of forty five degrees Fahrenheit or lower;
- (3) A range or stove;
- (4) Covered garbage container;
- (5) Eating and cooking utensils that are clean and in good repair; and
- (6) Counter surfaces that are clean and resistant to moisture.

NEW SECTION

WAC 388-61A-1125 What are the requirements for providing food to clients residing in emergency shelter?

- (1) Your domestic violence program must provide food and beverages for the basic sustenance of clients residing in emergency shelter, unless other resources are immediately available.
- (2) You must store food and beverages, including infant formula, at the emergency shelter to provide to clients residing in shelter when other resources are not immediately available, and for emergency shelter residents who are unable to safely access other food resources.
- (3) Milk and infant formula must be available at all times for children residing in the emergency shelter.
- (4) You must purchase and provide only food and beverages that are of safe quality to clients residing in emergency shelter. Storage, preparation, and serving techniques must ensure that nutrients are retained and spoilage is prevented.
- (5) Food and beverages prepared for clients residing in emergency shelter must be prepared, served, and stored safely and in a sanitary manner.
- (6) Food must be available to prepare school lunches, if lunch is not otherwise available to the children of emergency shelter residents.

(7) Clients residing in emergency shelter must be provided, or have immediate access to, food that is in accordance with their religious or cultural beliefs and personal practices.

(8) When staff prepare and serve food to clients in communal emergency shelters, the food must be prepared in compliance with chapter 246-215 WAC, Food Service.

NEW SECTION

WAC 388-61A-1130 What are the requirements for providing clothing to clients residing in emergency shelter? (1) If an adult or child comes into emergency shelter without adequate clothing, you must assist them with access to clean, well fitting clothing appropriate to the season, and the individual's age, gender, and particular needs.

(2) Clothing that you provide must be clean and have been stored in a sanitary manner.

(3) Clothing that is provided to an individual becomes that person's personal property and must not be retrieved from the client when they leave the emergency shelter.

NEW SECTION

WAC 388-61A-1135 What personal hygiene items do I need to provide to clients residing in emergency shelter?

All clients residing in emergency shelter must be provided with personal hygiene products during their residency, such as soap, hair care products, toothbrush and paste, and deodorant. Particular attention must be paid to providing items for individuals that have special needs because of their ethnicity, disability, or medical condition.

NEW SECTION

WAC 388-61A-1140 What are the requirements for toilets, sinks, and bathing facilities? You must meet the following requirements for toilets, sinks, and bathing facilities:

(1) You must provide at least one indoor flush-type toilet, one nearby sink for hand washing, and a bathtub or shower facility. These facilities must be located within the emergency shelter building premises.

(2) Communal emergency shelters must provide at a minimum, one restroom facility (as defined under WAC 388-61A-1000(28)) for every fifteen residents who do not have access to private restroom facilities. For example, communal emergency shelters must provide one restroom facility for one to fifteen residents, two for sixteen to thirty residents, and so on.

(3) You must comply with all of the following requirements for toilet and bathing facilities:

(a) Toilet and bathing facilities must allow for privacy of emergency shelter residents;

(b) The floors of all toilet and bathing facilities must be resistant to moisture;

(c) Toilets, urinals, and hand washing sinks must be the appropriate height for the children served, or have a safe and easily cleaned step stool or platform that is water resistant;

(d) Facilities for hand washing and bathing must be provided with hot and cold running water and hot water must not exceed one hundred and twenty degrees Fahrenheit;

(e) Potty chairs and toilet training equipment for toddlers must be regularly maintained, disinfected, and kept in a sanitary condition and when in use, you must put potty chairs on washable, water resistant surfaces; and

(f) You must provide soap and clean washcloths and towels, disposable towels, or other hand drying devices to emergency shelter residents.

NEW SECTION

WAC 388-61A-1145 What types of linen do I need to provide to clients? You must provide bed linen, towels, and washcloths that are clean and in good repair. After use by a client, bed linen, towels, and washcloths must be laundered prior to use by another client.

NEW SECTION

WAC 388-61A-1150 What are the requirements for laundry facilities? The requirements for laundry facilities are as follows:

(1) You must provide adequate laundry and drying equipment or make other arrangements for getting laundry done on a regular basis. Laundry facilities in the emergency shelter must be provided free to shelter residents.

(2) You must handle and store laundry in a sanitary manner.

NEW SECTION

WAC 388-61A-1155 What are the requirements for drinking water? Water supplies that are used for human consumption must be from a water system that has been approved by the local health authority or department as safe for human consumption. This refers to both public water systems and individual systems.

NEW SECTION

WAC 388-61A-1160 What are the requirements for sewage and liquid wastes? You must discharge sewage and liquid wastes into a public sewer system or septic system that has been approved by the local health authority or department.

NEW SECTION

WAC 388-61A-1165 What kind of heating is required? (1) Rooms used by clients in the emergency shelter must be equipped with a safe and adequate source of heat that can keep the room at a healthful temperature during the time the room is occupied.

(2) The use of gas or oil fired space heaters is prohibited.

NEW SECTION

WAC 388-61A-1170 How must I ventilate the emergency shelter? You must ensure that your emergency shelter is ventilated for the health and comfort of the clients residing in shelter by meeting the following requirements:

(1) A mechanical exhaust to the outside must ventilate toilets and bathrooms that do not have windows opening to the outside;

(2) In order to prevent objectionable odors and condensation, all bathrooms, toilet rooms, laundry rooms, and other enclosed space containing wet mops and brushes, must have natural or mechanical ventilation;

(3) Bedrooms and communal living areas must have a window or opening to the outdoors that can be locked or secured from the inside; and

(4) Gas or oil fired water heaters and forced air systems must be safely vented to the outside.

NEW SECTION

WAC 388-61A-1175 How much lighting is required in the emergency shelter? You must locate light fixtures and provide lighting that promotes good visibility and comfort for clients residing in emergency shelter.

NEW SECTION

WAC 388-61A-1180 What are the requirements about pets in the emergency shelter? Pets are prohibited from the kitchen during food preparation.

NEW SECTION

WAC 388-61A-1185 What first aid supplies must I provide? You must keep first aid supplies on hand and accessible to clients residing in emergency shelter for immediate use. In instances where an adult or child has ingested a potentially poisonous chemical or substance, you must call the Washington Poison Center for further instruction. Instructions for contacting the Washington Poison Center must be included with either the first aid supplies or visibly posted for residents, or both.

NEW SECTION

WAC 388-61A-1190 What are the requirements for storing medications? (1) Clients residing in emergency shelter must be provided with a means to safely and securely store, and have direct and immediate access to, their medications such as individual lock boxes, lockers with a key or combination lock, or a similar type of secure storage.

(2) All medications, including pet medications and herbal remedies, must be stored in a way that is inaccessible to children.

NEW SECTION

WAC 388-61A-1195 What measures must I take for pest control? You must make reasonable attempts to keep the emergency shelter free from pests, such as rodents, flies, cockroaches, fleas, and other insects.

NEW SECTION

WAC 388-61A-1200 What are the requirements for labeling and storing chemicals and toxic materials? (1)

Containers of chemical cleaning agents and other toxic materials must:

- (a) Be clearly labeled with the contents; and
- (b) Include the manufacturer's instructions and precautions for use.
- (2) You must store the following items in a place that is not accessible to children:
 - (a) Chemical cleaning supplies;
 - (b) Toxic substances;
 - (c) Poisons;
 - (d) Aerosols; and
 - (e) Items with warning labels.
- (3) You must store chemical cleaning supplies, toxic substances, and poisons separately from food items, clothing, and bedding in order to prevent contamination.

NEW SECTION

WAC 388-61A-1205 Where do I keep firearms and other dangerous weapons? (1) If a resident has a firearm or other dangerous weapon, you must secure it in a locked storage container, gun safe, or another storage area made of strong, unbreakable material. Stored firearms must be unloaded.

(2) If a storage container for firearms has a glass or another breakable front, you must secure firearms with a locked cable or chain placed through the trigger guards.

(3) You must store ammunition in a place that is separate from the firearms or locked in a gun safe.

(4) You must allow access to firearms, weapons, and ammunition only to authorized persons.

COMPLIANCE WITH STANDARDS

NEW SECTION

WAC 388-61A-1210 Will the department evaluate its contractors? The department will evaluate its contractors as follows:

(1) To measure compliance with our requirements we will conduct a biennial evaluation of each contractor;

(2) Emergency shelters will be inspected during on-site evaluations of contractors to measure compliance with our facility requirements; and

(3) If a lodging unit of the emergency shelter is occupied at the time of an on-site evaluation, the contractor must give the client an opportunity to leave the unit prior to the arrival of the evaluator.

NEW SECTION

WAC 388-61A-1215 What will happen if I am out of compliance with the minimum standards or my contract?

(1) If we find that the contractor is out of compliance with the standards specified in this chapter or the terms of the contract, we will give you written notice of the deficiencies. You must correct the deficiencies according to a plan of correction we approve.

(2) We may suspend, revoke, or terminate the funding of a contractor if it is out of compliance with this chapter or the contract.

NEW SECTION

WAC 388-61A-1220 What will happen if there is a complaint to the department about the contractor? (1) If we receive information, or have reason to believe, that a contractor may be out of compliance with this chapter or the contract, we may initiate an investigation.

(2) If the investigation requires that we be on-site at your emergency shelter, you must give clients residing in lodging units an opportunity to leave the unit during the inspection.

(3) If we find that you are out of compliance with the standards specified in this chapter or the terms of the contract, we will give you written notice of the deficiencies. You must satisfactorily correct the deficiencies according to a plan of correction we approve.

(4) We may suspend, revoke, or terminate the funding of a contractor if it is out of compliance with this chapter or the contract.

NEW SECTION

WAC 388-61A-1225 May the department waive any of the minimum standards of this chapter? Under certain conditions we may waive some of the rules contained in this chapter.

(1) To request a waiver you must submit a written request that:

(a) Clearly describes the minimum standards(s) for which the waiver is requested;

(b) Describes the reason(s) why your program is unable to meet the requirements of this chapter without the waiver;

(c) Identifies whether there are other resources or services that can adequately compensate for the minimum standard(s) for which the waiver is requested;

(d) Demonstrates that granting of the waiver will not jeopardize the safety or health of clients; and

(e) Shows that the absence of granting the waiver will have a detrimental effect on the provision of services.

(2) If the written waiver request proposes any substitutions of procedures, materials, service, or equipment from those specified in this chapter, the substitutions must be at least equivalent to those required.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-61A-0200 What is the legal basis for the domestic violence shelter program?
- WAC 388-61A-0210 What is the purpose of having minimum standards for domestic violence shelters and supportive services?
- WAC 388-61A-0220 What definitions apply to this chapter?
- WAC 388-61A-0230 What service model must be used to provide the services required by these rules?

- WAC 388-61A-0240 Is DSHS required to provide funding to any domestic violence agency that requests funding?
- WAC 388-61A-0250 What are the requirements for domestic violence agencies?
- WAC 388-61A-0260 What supportive services must a domestic violence agency provide?
- WAC 388-61A-0270 What services and resources must be available to children/youth residing in emergency domestic violence shelter?
- WAC 388-61A-0280 What are the requirements for the crisis hotline or helpline?
- WAC 388-61A-0290 What are the requirements for accessing emergency domestic violence shelter?
- WAC 388-61A-0300 What information must be in a client's file?
- WAC 388-61A-0310 What information must the domestic violence agency keep confidential?
- WAC 388-61A-0320 What information can be disclosed?
- WAC 388-61A-0330 What information must be included in a written waiver of confidentiality?
- WAC 388-61A-0340 What information must be provided to clients about their right to confidentiality?
- WAC 388-61A-0350 What type of training is required for staff of the domestic violence agency?
- WAC 388-61A-0360 How should training be documented?
- WAC 388-61A-0370 Must supervisors of domestic violence agency staff have specific experience and training?
- WAC 388-61A-0380 What written policies or procedures do you need to have?
- WAC 388-61A-0390 What safety requirements are shelters required to meet?
- WAC 388-61A-0400 What are the requirements for bedrooms?
- WAC 388-61A-0410 What are requirements for cribs or bassinets?
- WAC 388-61A-0420 What kind of diaper changing area must I provide?
- WAC 388-61A-0430 What are kitchen requirements?
- WAC 388-61A-0440 What are the requirements for providing food to clients residing in shelter?
- WAC 388-61A-0450 What are the requirements for providing clothing to clients residing in shelter?
- WAC 388-61A-0460 What personal hygiene items do I need to provide to clients residing in shelter?
- WAC 388-61A-0470 What are the requirements for toilets, sinks, and bathing facilities?
- WAC 388-61A-0480 What types of linen do I need to provide to clients?
- WAC 388-61A-0490 What are the requirements for laundry facilities?
- WAC 388-61A-0500 Are there requirements for drinking water?
- WAC 388-61A-0510 What are the requirements for sewage and liquid wastes?
- WAC 388-61A-0520 What kind of heating system is required?
- WAC 388-61A-0530 How must I ventilate the shelter?
- WAC 388-61A-0540 How much lighting is required in the shelter?
- WAC 388-61A-0550 Are there any requirements about pets in the shelter?
- WAC 388-61A-0560 What first-aid supplies must I provide?
- WAC 388-61A-0570 What are the requirements for storing medications?
- WAC 388-61A-0580 What measures must I take for pest control?
- WAC 388-61A-0590 What are the requirements for labeling and storing chemicals and toxic materials?
- WAC 388-61A-0600 Where do I keep firearms and other dangerous weapons?
- WAC 388-61A-0620 What are the additional standards for shelter homes?
- WAC 388-61A-0630 What are the additional standards for safe homes?
- WAC 388-61A-0640 Will DSHS do an evaluation of the domestic violence agency?
- WAC 388-61A-0650 What will happen if I am out of compliance with the minimum standards or my contract?
- WAC 388-61A-0660 What will happen if there is a complaint to DSHS about the domestic violence agency?
- WAC 388-61A-0670 Can DSHS waive any of the minimum standards of this chapter?

WSR 18-10-001
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket TR-170780, General Order R-591—Filed April 18, 2018, 12:41 p.m., effective May 19, 2018]

In the matter of amending and adopting rules in chapter 480-62 WAC relating to contract railroad crew transportation.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 18-06-010, filed with the code reviser on February 23, 2018. The commission brings this proceeding pursuant to RCW 80.01.040, 81.04.160, and 81.61.050.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, these documents provide a complete but concise explanation of the agency's actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order adopts or amends WAC 480-62-125 Definitions, 480-62-240 Passenger carrying vehicles—Equipment, 480-62-245 Passenger carrying vehicles—Operation and 480-62-999 Adoption by reference; and adopting WAC 480-62-275 Contract crew transportation registration and permit requirements, 480-62-278 Contract crew transportation vehicle and driver safety requirements, 480-62-281 Contract crew transportation intrastate medical waivers, 480-62-284 Contract crew transportation insurance requirements, 480-62-287 Contract crew transportation passenger notice requirements, 480-62-290 Contract crew transportation safety training, 480-62-293 Contract crew transportation enforcement, 480-62-296 Contract crew transportation reporting requirements, and 480-62-299 Contract crew transportation record retention requirements.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: In the 2017 session, the legislature passed ESHB 1105, which amends chapter 81.61 RCW to include commission regulation of contract railroad crew transporta-

tion. The bill required the commission to adopt rules under chapter 34.05 RCW as necessary to regulate persons providing contract railroad crew transportation and every contract crew transportation vehicle.

8 The commission filed a preproposal statement of inquiry (CR-101) on July 20, 2017, at WSR 17-16-007. The statement advised interested persons that the commission filed with the code reviser a preproposal statement of inquiry to implement ESHB 1105. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3), and by sending notice to all transportation companies holding certificates and the commission's list of transportation attorneys. Pursuant to the notice, the commission received comments on August 28, 2017, and held a stakeholder workshop on October 5, 2017.

9 SMALL BUSINESS ECONOMIC IMPACT ANALYSIS: Chapter 19.85 RCW requires that an agency prepare a small business economic impact statement (SBEIS) if the agency's proposed rules will impose more than minor costs on businesses in an industry. On November 20, 2017, the commission mailed a notice to all stakeholders interested in the commission's rule making, providing both a copy of the draft rules and an opportunity to respond to an SBEIS questionnaire. The notice requested that regulated companies provide information about possible cost impacts of the draft rules with specific information for each rule that the company identified as causing an impact. No stakeholder responded to the survey or identified any cost impacts.

10 In addition, commission staff's analysis shows that the draft rules will impose no costs beyond those already imposed by statute. Because the proposed rules will not impose more than minor costs on passenger transportation or railroad companies, the commission concludes that no SBEIS is required.

11 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on February 23, 2018, at WSR 18-06-010. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 18-06-010 at 1:00 p.m., Thursday, April 12, 2018, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

12 WRITTEN COMMENTS: The commission received written comments on the proposed rules on March 7, 2018, March 26, 2018, and March 29, 2018. Summaries of those written comments and commission staff's responses and recommendations are contained in Appendix A, shown below, and made part of, this order.

13 RULE-MAKING HEARING: The commission considered the proposed rules for adoption at a rule-making hearing on April 12, 2018, before Commissioner Ann E. Rendahl, and Commissioner Jay M. Balasbas. The commission heard a presentation and comments from Mathew Perkinson, motor carrier safety manager, transportation safety division, representing commission staff, and oral comments from representatives from the Brotherhood of Locomotive Engineers & Trainmen (BLET), BNSF Railway Company (BNSF), and

the Sheet Metal, Air, Rail, and Transportation Union (SMART). Chairman David W. Danner listened to a recording of the April 12, 2018, hearing and participated fully in this rule making.

14 SUGGESTIONS FOR CHANGES THAT ARE REJECTED/ACCEPTED: Written and oral comments suggested changes to the proposed rules. The commission adopts staff's recommendations and reasons to accept or reject those suggestions contained in the summary matrix in Appendix A. The commission expands on its explanation for its actions in three areas, discussed below.

1. Driver Training

15 SMART and BNSF recommend changes to the proposed driver training requirements set out in WAC 480-62-290. Specifically, SMART suggests that contract railroad crew transportation drivers should be certified by independent driver training firms, and that prospective drivers should be required to pass a qualifying exam focusing on the unique and inherent risks associated with driving within railroad facilities, adjacent to railroad tracks, and frequently traversing railroad crossings.

16 We decline to adopt SMART's recommendations. RCW 81.61.050 provides that the commission must regulate the driver qualifications of persons providing contract railroad crew transportation consistent with the manner in which the commission regulates driver qualifications under chapter 81.70 RCW and Title 49 of the Code of Federal Regulations (C.F.R.). While commercial driver licenses are required to operate certain vehicles and all drivers are required to pass a road test,¹ neither chapter 81.70 RCW nor Title 49 C.F.R. require or permit the commission to impose unique certification or exam requirements on some carriers but not others. Moreover, RCW 81.61.050 requires only that all contract transportation crew drivers complete eight hours of commission-approved safety training. Nothing in the statute authorizes or requires independent certification or testing upon completion of that training.

¹ Under 49 C.F.R. Part 383, commercial driver licenses are required prior to operating the following vehicles: Single vehicles with a manufacturer's weight rating of 26,001 pounds or more; trailers with a manufacturer's weight rating of 10,001 pounds or more, and a combined vehicles' gross weight rating of 26,001 pounds or more; vehicles designed to transport sixteen or more persons (including the driver), including private and church buses; school buses, regardless of size; and vehicles used to transport any material that requires hazardous material placarding or any quantity of a material listed as a select agent or toxin in 42 C.F.R. 73. Pursuant to 49 C.F.R. Part 391.21, all persons who drive commercial motor vehicles must successfully complete a road test and be issued a certificate of driver's road test.

17 BNSF suggests that the rules be amended to allow each company providing contract railroad crew transportation to develop driver training based on written safety and operational rules provided by the railroad in lieu of requiring railroads to provide training. We decline to adopt this recommendation. RCW 81.61.050 mandates that the commission both require and approve safety training for contract railroad crew transportation providers. As such, the statute expressly grants the commission discretion to determine who is fit to provide the required training. As staff notes in its response, the railroad is uniquely qualified to provide training related to railroad yards and property, pick-up and drop-off points, and grade crossing safety. Accordingly, we conclude that a railroad or its designee is best suited to develop and provide safety training to contract railroad crew transportation driv-

ers. We note that a railroad may designate its contract carrier to provide training on its behalf. Doing so, however, neither transfers the responsibility for providing the training nor the liability for failing to do so from the railroad to the carrier.

2. Vehicle Safety Requirements

18 BNSF requests that the commission clarify by this order that the vehicle equipment safety requirements set out in WAC 480-62-278(2) apply only to those features with which the vehicle was equipped at the time of manufacture. Currently, staff applies the standards set out in the 2017 North American Standard Out-of-Service Criteria Handbook to assess whether vehicles subject to inspection violate commission safety rules. When staff conducts a safety review of vehicles that hold eight or fewer passengers, it inspects only those features originally installed by the manufacturer. For example, vehicles that were not originally manufactured with emergency exits, such as SUVs or minivans, will not be placed out of service for failing to have an emergency exit. Consistent with the manner in which the commission regulates all passenger transportation carriers, we confirm that staff will assess compliance based on the manufacturer's specifications.

19 We decline to adopt SMART's and BLET's recommendation to require studded tires on contract crew transportation vehicles that cross mountain passes in winter months. Prescribing the use of studded tires would be inconsistent with the manner in which the commission regulates passenger carriers under chapter 81.70 RCW and Title 49 C.F.R. because no similar requirement exists for other transportation companies, many of whom traverse mountain passes in inclement weather. In addition, the Washington state patrol mandates the use of tire chains or other traction devices in inclement weather according to vehicle size.² As staff notes in its response, WAC 480-62-278(1) requires drivers to "operate vehicles with due regard to circumstances or conditions at the time of operation." This necessarily includes following state laws and rules that govern the use of traction devices.

² See WAC 204-24-050.

3. Notice Requirements

20 BNSF recommends the commission modify the language in WAC 480-62-287(2) to provide a general telephone number and email address for passengers wishing to file a complaint against a contract crew transportation carrier rather than directing those complaints to a specific staff member. We agree. Complaints against carriers should be received and routed by the commission's consumer protection division, which is responsible for handling complaints filed against any company the commission regulates. Consumers may file complaints with the commission by calling a toll-free number, which is fully staffed during business hours, or filling out a form on the commission's web site. Separately assigning complaint handling duties to various areas of the commission could impede the public's ability to file a complaint, create duplicative or redundant work, or result in inefficient and inconsistent processes. As such, complaints against contract crew transportation carriers will be received through the central complaint system then subsequently routed to the appropriate staff member in motor carrier safety for investigation

and resolution. Accordingly, we adopt BNSF's recommendation as set out in Appendix A and paragraph 24, below.

21 At the adoption hearing, SMART expressed concerns about the commission's online complaint form, which contains a disclaimer stating that complaints become public records subject to disclosure under the Public Records Act (PRA). The PRA, however, specifically exempts from disclosure any personally identifying information included in safety complaints submitted under chapter 81.61 RCW.³ To address this issue, the commission will modify its online complaint form to include language explaining the relevant exemption and to add a field that allows users to indicate that their complaint qualifies for the exemption. We expect this change to be implemented on or around May 1, 2018.

3 See RCW 42.56.330(9).

22 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should adopt the rules as proposed in the CR-102 at WSR 18-06-010 with the changes described below and in Appendix A.

23 **CHANGES FROM PROPOSAL:** The commission adopts the proposal with the following changes from the text noticed at WSR 18-06-011:

- WAC 480-62-240 (1)(d) First sentence - replace "insure" with "ensure."
- WAC 480-62-240 (1)(g) First sentence - delete "The."
First sentence - insert "Prior to operating a vehicle, the" before "driver."
First sentence - replace "ensure that" with "determine whether."
- WAC 480-62-245 (5)(a) First sentence - replace first bullet point with (i).
First sentence - replace second bullet point with (ii).
First sentence - replace third bullet point with (iii).
First sentence - insert "or" following "Where traffic is controlled by crossing gate arms or an alternately flashing light signal intended to give warning of the approach of a train;".
First sentence - replace fourth bullet point with (iv).
- WAC 480-62-278(6) First sentence - replace "that" with "who."
- WAC 480-62-278(7) First sentence - replace "that" with "who."
- WAC 480-62-281(1) Second sentence - replace "passenger" with "contract crew."
- WAC 480-62-281(2) Second sentence - replace "passenger" with "contract crew."

- WAC 480-62-281(3) Second sentence - replace "passenger" with "contract crew."
- WAC 480-62-287(2) Delete first sentence.
Second sentence - delete "contact" before "information."
Second sentence - insert "necessary" after "information."
Second sentence - replace "the motor carrier safety manager" with "filing complaints, which."
Second sentence - replace "web site" with "website."
- WAC 480-62-999 Second sentence - delete "branch of the Washington state."

24 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that the sections in chapter 480-62 WAC listed in paragraph 6 above should be amended or adopted as applicable to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 9, Amended 4, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

ORDER

THE COMMISSION ORDERS:

25 (1) The commission adopts and amends chapter 480-62 WAC to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

26 (2) This order and the rule set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, April 18, 2018.

Washington Utilities and Transportation Commission

David W. Danner, Chairman
Ann E. Rendahl, Commissioner
Jay M. Balasbas, Commissioner

Appendix A
TR-170780 - Rail Crew Transportation Rule Making
Stakeholder Comments in Response to February 23, 2018, CR-102 and Opportunity to Submit Written Comments
April 3, 2018

	Commenter	Topic and WAC (if applicable)	Comment	Staff Response
1.	QM Transport Inc. (QM)	Driver Age 480-62-278(2)	QM comments that drivers should be required to be over eighteen years of age. QM states its insurance requires drivers to be twenty-five years of age or QM will incur a higher insurance fee.	Staff recommends leaving the rule as proposed in the CR-102 draft. In WAC 480-62-278(2), the commission adopts 49 C.F.R., Part 391, which requires that drivers be at least twenty-one years of age. The draft rules do not allow a driver of age eighteen. A company may impose its own requirements for the age of drivers it hires. QM may require drivers to be twenty-five years before hiring.
2.	SMART	Driver Age 480-62-278(2)	SMART comments that the legal age of drivers should be over age eighteen.	Staff recommends leaving the rule as proposed in the CR-102 draft. In WAC 480-62-278(2), the commission adopts 49 C.F.R., Part 391, which requires that drivers be at least twenty-one years of age. The draft rules do not allow a driver of age eighteen.
3.	QM	Vehicle Tires 480-62-278(1)	It appears the new rules require studded winter tires. QM believes winter traction tires would be appropriate, not studded tires.	Staff recommends leaving the rule as proposed in the CR-102 draft. The new rules do not require studded winter tires.
4.	SMART	Vehicle Tires 480-62-278(1)	SMART believes the rules should require studded tires on rail crew transport vehicles across mountain passes in winter snow and icy conditions.	Staff recommends leaving the rule as proposed in the CR-102 draft. In WAC 480-62-278(1), the proposed rules require that drivers "... operate vehicles with due regard to circumstances or conditions at the time of operation" Staff believes this includes appropriate winter tires for the conditions under which the driver is operating.
5.	QM	Driver Training 480-62-290	QM states the United Transportation Union "would like driver training to be handled by an outside source." QM believes this put an unreasonable financial strain on its company.	Staff recommends leaving the rule as proposed in the CR-102 draft. The new rules do not require that driver training be handled by an outside source.
6.	SMART	Driver Training 480-62-290	SMART asserts that professional driver training firms outside of the hiring company should be required to certify railroad crew transport drivers.	Staff recommends leaving the rule as proposed in the CR-102 draft. The proposed rules are consistent with the legislation.

	Commenter	Topic and WAC (if applicable)	Comment	Staff Response
7.	SMART	Driver Training 480-62-290	SMART suggest[s] that prospective drivers be required to pass a specifically developed qualifying exam "focusing on the unique and inherent risks associated with driving within railroad facilities, adjacent to railroad tracks and frequently traversing railroad crossings."	Staff recommends leaving the rule as proposed in the CR-102 draft. The proposed rules are consistent with the legislation. In addition, the rules require the railroads to provide training directly associated with railroad yards and property, pick-up and drop-off points, any rules or requirements imposed by the railroad, general railroad safety requirements, and grade crossing safety.
8.	BNSF	Driver Training 480-62-290 [(1)](h)	BNSF suggests that the draft rules, specifically WAC 480-62-290 [(1)](h) be amended to allow each company providing contract crew transportation "develop its safety training using written safety and operating rules provided by the railroad."	Staff recommends leaving the rule as proposed in the CR-102 draft. The proposed rules appropriately require the railroad to provide training for which it is uniquely qualified - training associated with railroad yards and property, pick-up and drop-off points, any rules or requirements imposed by the railroad, general railroad safety requirements, and grade crossing safety.
9.	QM	Medical Certificates 480-62-278(2)	QM does not believe medical certificates should be required for drivers. Current proposed rules require a medical certificate in WAC 480-62-278(2), through adoption of 49 C.F.R., Part 391.	Staff recommends leaving the rule as proposed in the CR-102 draft. The proposed rules are consistent with other areas of commission regulation, such as auto transportation and charter bus rules. Staff believes it is important that drivers are medically qualified before operating.
10.	SMART	Extend Rule Making	SMART suggests the commission allow a "strictly limited rule-making process" to remain open for the next twelve to eighteen months to review effectiveness of rules regarding driver training, hazardous loading and unloading locations, and the need for studded tires in the winter.	Staff recommends closing this rule making once rules are adopted and in effect. The commission can review the effectiveness of its rules at any time and can open a rule making to revise rules, if necessary, at any time.

	Commenter	Topic and WAC (if applicable)	Comment	Staff Response
11.	BNSF Railway (BNSF)	Vehicle Safety Requirements 480-62-278(2)	BNSF comments that the commission should specifically note that vehicle equipment safety requirements include only items that are applicable as the vehicle manufacturer originally intended.	Staff recommends leaving the rule as proposed in the CR-102 draft. BNSF's comments refer to WAC 480-62-278(2), where the commission adopts a number of federal requirements for vehicle safety. These include safety requirements that apply to contract crew transportation vehicles and for larger commercial motor vehicles. If a vehicle is not required to have certain equipment, staff would not inspect for that equipment. For example, if a vehicle is smaller and not required to have air brakes, staff would not inspect for air brakes. The proposed rules are consistent with other areas of commission regulation, such as auto transportation, and charter bus rules.
12.	BNSF	Notice Requirements 480-62-287	BNSF comments that the commission should provide a general telephone number (rather than an individual staff person, such as the motor carrier manager, as currently proposed) and email address for passengers who wish to file complaints.	Staff agrees with BNSF comments. Staff recommends changing the language as follows in WAC 480-62-287(2): (2) The telephone number and email address of the commission's motor carrier safety manager where passengers may file complaints. The contact information necessary for the motor carrier safety manager filing complaints, which can be found on the agency's public web site."

AMENDATORY SECTION (Amending WSR 04-11-023, filed 5/11/04, effective 6/11/04)

WAC 480-62-125 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Class I railroad company" means a railroad company having annual operating revenues of \$250 million or more;

"Class II railroad company" means a railroad company having annual operating revenue of less than \$250 million, but more than \$20 million; and

"Class III railroad company" means a railroad company having annual operating revenues of \$20 million or less.

"Commission" means the Washington utilities and transportation commission.

"Contract crew transportation company" means any person, organization, company or other entity that operates one or more contract crew transportation vehicles.

"Contract crew transportation vehicle" means every motor vehicle designed to transport fifteen or fewer passengers, including the driver, that is owned, leased, operated, or maintained by a person contracting with a railroad company or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers and used primarily to provide railroad crew transportation.

"Department of labor and industries" means the Washington state department of labor and industries.

"Department of transportation" means the Washington state department of transportation.

"On track equipment" means self-propelled equipment, other than locomotives, that can be operated on railroad tracks.

"Passenger carrying vehicle" means those buses (~~and~~), vans, trucks, and cars owned, operated, and maintained by a railroad company (~~which~~) primarily used to transport ~~(s)~~ railroad employees (~~in~~), other than in the cab of such vehicles, and are designed primarily for operation on roads which may or may not be equipped with retractable flanged wheels for operation on railroad tracks.

"Railroad" means every permanent road with a line of rails fixed to ties providing a track for cars or equipment drawn by locomotives or operated by any type of power, including interurban and suburban electric railroads, for the public use of conveying persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. Unless otherwise provided by rule, the term "railroad" does not include logging and industrial railroads, or street railways operating within the limits of any incorporated city or town.

"Railroad company" means every corporation, company, partnership, association, joint stock association, or person, their lessees, trustees, or receivers appointed by any

court, and any common carrier owning, operating, controlling or managing any railroad or any cars or other equipment used on, or in connection with the railroad within this state.

"Railroad police officer" means a peace officer who is commissioned in his or her state of legal residence or state of employment by a railroad company to enforce state laws for the protection of railroad property, personnel, passengers and/or cargo.

"Remote-control area" means any place remote-control operations are conducted on a railroad.

"Remote-control operations" means controlling the movement of locomotives through the use of radio transmitter and receiver systems by persons not physically located at the controls within the confines of a locomotive cab.

"Remote-control zone" means a designated area where access is restricted in which remote-control operations may occur under alternative point protection procedures.

"State" means the state of Washington.

AMENDATORY SECTION (Amending WSR 10-03-044, filed 1/14/10, effective 2/14/10)

WAC 480-62-240 Railroad owned or operated passenger carrying vehicles—Equipment. (1) Equipment requirements for all vehicles.

(a) Vehicles must comply with all applicable equipment requirements of Title 46 RCW.

(b) Vehicles must have exhaust systems that prevent exposure of passengers to the vehicle's emissions.

(c) Vehicles must have two external rear vision mirrors, one at each side of the cab. The mirrors must be firmly attached to the motor vehicle at a point where the driver is provided a view of the highway to the rear along both sides of the vehicle. An outside mirror may be placed only on the driver's side on vehicles in which the driver has a view to the rear by means of an interior mirror.

(d) Vehicles must be equipped with a steering system maintained to ~~((insure))~~ ensure that lash or prelay do not exceed those values set forth in 49 C.F.R., Parts 570.7 and 570.60 (Vehicle in Use Inspection Standards). Information about Title 49 C.F.R. regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(e) Vehicles must have a heating system that will maintain an ambient temperature of at least fifty-five degrees in passenger areas.

(f) Vehicles must have at least three red-burning fuses, three red portable emergency reflectors, or at least two red cloth flags suitable for warning the motoring public in an emergency. The driver must ensure that such equipment is in the vehicle and is maintained in good condition. Any devices that may create a spark or open flame must be carried in a separate compartment or a closed metal container provided for that purpose.

(g) Prior to operating a vehicle, the driver must determine whether such equipment is in the vehicle and is maintained in good condition.

(h) Any devices that may create a spark or open flame must be carried in a separate compartment or a closed metal container provided for that purpose.

(i) Vehicles must have a two and one-half pound dry chemical fire extinguisher or its equivalent, properly filled and located where it is readily accessible for use. The extinguisher must allow visual determination of the state of its charge at all times. The extinguishing agent must be nontoxic and ~~((preferably))~~ noncorrosive. The fire extinguisher must be suitable for attachment to the motor vehicle, bear the label of approval by the Underwriters Laboratories, Inc., and be kept in good working condition at all times.

~~((h))~~ (j) Vehicles must have a first-aid kit located where it is readily accessible. The kit must contain all of the items specified in ANSI Z308.1-2009, Minimum Requirements for Workplace First Aid Kits. Additionally, the kit must contain gloves capable of preventing exposure to blood-borne pathogens. Items used from first-aid kits must be replaced before the next shift, and kits must be checked for compliance with this rule if the seal on the kit is broken. Information about ANSI Z308.1-2009 regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) Equipment requirements for specified vehicles.

(a) Coupling devices used on a vehicle equipped with retractable flange wheels for operation on railroad tracks must be substantial and made of metal. The devices must be equipped with safety chains or straps of sufficient strength to prevent separation in the event of accidental uncoupling.

(b) A passenger compartment separate from the cab of the vehicle must be made of metal and be fastened directly to the frame of the vehicle. The compartment must have an interior lining sufficient to absorb condensation, and padded seats and backrests firmly secured in place. The floor of the compartment must be constructed to bear the weight of all cargo and passengers. The floor must not have unnecessary openings, and it must be constructed to prevent the entry of noxious fumes or permeation with flammable materials. The compartment must have a curtain of nonpermeable material of sufficient weight and size to close off the rear opening and a tailgate ~~((which))~~ that must be closed whenever the vehicle is in motion. If the bottom of the entrance to the passenger compartment is more than three feet six inches above ground level, the vehicle must have permanent or temporary steps designed for the safe boarding and discharge of passengers.

(c) Communication between a cab and a separated passenger compartment must be provided by means of a light or audible device mounted in the cab of the vehicle that may be activated by a passenger in the rear compartment.

(d) On vehicles designed to transport nine or more passengers, an emergency exit must be placed at the end of the vehicle opposite the regular entrance. The exit must be at least six and one-half square feet in area, and the smallest dimension must be at least eighteen inches. The route to and from the emergency exit must be unobstructed at all times.

AMENDATORY SECTION (Amending WSR 01-04-026, filed 1/30/01, effective 3/2/01)

WAC 480-62-245 Railroad owned or operated passenger carrying vehicles—Operation. (1) **General.**

(a) All passenger carrying motor vehicles must be operated in compliance with state law no matter where the vehicle is operated.

(b) Drivers must operate vehicles in a careful and prudent manner and at reasonable and proper speeds, with due regard to circumstances and to the use of highways by others.

(2) Minimum age, skill, and physical condition of drivers.

(a) Drivers of passenger carrying vehicles must be at least eighteen years old.

(b) Before being allowed to drive or operate a passenger carrying vehicle, drivers must have demonstrated the physical capability of handling the controls of the vehicle with ease.

(c) Before driving a vehicle, drivers or operators must obtain either a valid Washington state driver's license or a valid license from the state of the driver's residence. The driver must carry the license at all times while operating a vehicle. If the passenger carrying vehicle is a type for which the state of Washington requires an extraordinary license or endorsement, the driver must have such license or endorsement.

(3) **Driver's daily hours of service.** No driver of any passenger carrying vehicle may drive for more than ten hours without resting afterward for a minimum of eight consecutive hours.

(4) **Refueling.** No driver or any employee of a railroad company operating within the state may:

(a) Fuel a passenger carrying vehicle with the engine running;

(b) Smoke or expose any flame in the vicinity of a vehicle being fueled;

(c) Fuel a passenger carrying vehicle unless the nozzle of the fuel hose is continuously in contact with the intake pipe of the fuel tank;

(d) Insofar as practicable, permit any other person to engage in activities that might result in a fire or explosion((-);

(e) Except on buses, all occupants of the vehicle, except the driver and those within the operating cab, must dismount and stand clear while the vehicle is being refueled.

(5) Driving rules.

(a) Drivers must bring vehicles to a complete stop not less than fifteen feet from the nearest rail of any at-grade crossing before crossing the track except:

(-)(i) Where traffic is controlled by a police officer or a duly authorized flagger;

(-)(ii) Where traffic is regulated by a traffic control signal;

(-)(iii) Where traffic is controlled by crossing gate arms or an alternately flashing light signal intended to give warning of the approach of a train; or

(-)(iv) Where an official traffic control device as designated by the commission pursuant to RCW 81.53.060 (i.e., an "EXEMPT" sign, specified as R15-3 by the Manual on Uniform Traffic Control Devices) gives notice that the stopping requirement imposed by this section does not apply. Information about the Manual on Uniform Traffic Control Devices regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(b) Drivers must not change gears while crossing any railroad tracks.

(c) No driver may (~~drink intoxicating liquors~~) consume alcohol or ingest any controlled substance while on duty, or drive while affected by the use of intoxicating liquor or other substance (~~which~~) that might impair the ability to drive.

(d) No driver may proceed down a grade with the gears in neutral or the clutch disengaged.

(e) At the beginning of his or her use of a vehicle, the driver must perform a brake test immediately before, and immediately after, the vehicle begins moving to ensure that the brakes are functioning properly.

(6) Loading and carrying of passengers.

(a) Drivers are in charge of the vehicle and must require passengers to observe vehicle rules.

(b) Passengers may not enter or exit from the vehicle while it is in motion, or ride on running boards, fenders, bumpers, tops of cabs, or with any part of their body projecting beyond the sides or the ends of the vehicle. (~~When equipment or tools are carried inside the vehicle, they must be stored in enclosed racks or boxes that are secured to the vehicle in a manner that prevents employees from being struck in the event of sudden starts, stops, or turns. The driver must assure that tools and materials are properly secured before moving the vehicle.~~)

(7) Carrying equipment or tools.

(a) When equipment or tools are carried inside the vehicle, they must be stored in enclosed racks or boxes that are secured to the vehicle in a manner that prevents employees from being struck in the event of sudden starts, stops, or turns.

(b) All tools and equipment, including cylinders, containers, or drums must be properly secured so they will not interfere with the use of any exit.

(c) The driver must ensure that equipment and tools are properly secured before moving the vehicle.

(8) Limitation on transportation of explosives, gasoline, and other hazardous materials on passenger carrying vehicles.

(a) Explosives other than track torpedoes and fusees may not be carried in or on any vehicle while the vehicle is being used to transport crew members in a passenger compartment.

(b) If track torpedoes or fusees are carried in a passenger carrying vehicle, they must be carried in a separate compartment or container provided for that purpose.

(c) Gasoline, or other hazardous materials, must not be carried in either the cab or in the passenger compartment; however, oxygen or acetylene cylinders may be carried if gauges and regulators have been removed with caps in place before loading.

(d) Passenger carrying vehicles may be used to carry flammable materials when they are located outside of and isolated from the passenger carrying area, and are stored in containers approved by the Underwriters Laboratories, Inc. Containers for fuel must be vented in a manner that prevents the hazardous concentration of fumes. (~~All tools and equipment, including cylinders, containers, or drums, must be properly secured where they will not interfere with the use of any exit.~~)

(e) A passenger carrying vehicle containing hazardous materials must not be parked within three hundred feet of an open fire.

(f) Smoking is prohibited within fifty feet of a vehicle carrying explosive or flammable materials.

NEW SECTION

WAC 480-62-275 Contract crew transportation registration and permit required. (1) A person must register with, and receive a permit from, the commission before operating as a contract crew transportation company in the state of Washington.

(2) The company name is the name of the permit holder.

(a) A company electing to conduct operations under a trade name must first register the trade name with the commission.

(b) A company must conduct all operations under the company name, a registered trade name, or both.

NEW SECTION

WAC 480-62-278 Contract crew transportation vehicle and driver safety requirements. (1) Every contract crew transportation company must operate its vehicles in compliance with state law, no matter where the vehicle is operated.

Drivers must operate vehicles in a careful and prudent manner, at reasonable and proper speeds, with due regard to circumstances or conditions at the time of operation.

(2) Companies must comply with the parts of 49 C.F.R. adopted by reference that are shown in the chart in subsection (4) of this section. Information about 49 C.F.R. including the version adopted by the commission and where to obtain copies is set out in WAC 480-62-999.

(3) The commission will place out-of-service any motor vehicle having safety defects identified in the *North American Uniform Out-Of-Service Criteria*. Information about the *North American Uniform Out-Of-Service Criteria* including the version adopted and where to obtain copies is set out in WAC 480-62-999. A company must not operate any vehicle placed out-of-service until proper repairs have been completed.

(4) The commission will place out-of-service any driver meeting criteria identified in the *North American Uniform Out-Of-Service Criteria*. A company must not allow a driver who has been placed out-of-service to operate a motor vehicle until the conditions causing the driver to be placed out-of-service have been corrected.

49 C.F.R. Part:		Notes:
Part 379 -	Preservation of Records	Entire Part 379 is adopted and applies to Washington intrastate operations.
Part 385 -	Safety Fitness Procedures	Entire Part 385 is adopted and applies to Washington intrastate operations.
Part 390 -	Safety Regulations, General	Entire Part 390 is adopted and applies to Washington intrastate operations, with the following exceptions:
		(1) The terms "motor vehicle," "commercial motor vehicle," and "private vehicle" are not adopted. Instead, where those terms are used in Title 49 C.F.R., they have the meanings assigned to "contract crew transportation vehicle" in WAC 480-62-125 (Definitions). (2) Whenever the term "director" is used in Title 49 C.F.R., it means the commission.
Part 391 -	Qualification of Drivers	Entire Part 391 is adopted, with the following exceptions:
		(1) Part 391.49 (alternative physical qualification standards for the loss or impairment of limbs) is not adopted for drivers who operate vehicles exclusively in intrastate commerce. Instead refer to WAC 480-62-281 for intrastate medical waivers.
Part 392 -	Driving of Motor Vehicles	Entire Part 392 is adopted and applies to Washington intrastate operations.
Part 393 -	Parts and Accessories Necessary for Safe Operation	Entire Part 393 is adopted and applies to Washington intrastate operations.
Part 395 -	Hours of Service of Drivers	Entire Part 395 is adopted and applies to Washington intrastate operations.
Part 396 -	Inspection, Repair, and Maintenance	Entire Part 396 is adopted and applies to Washington intrastate operations.
Part 397 -	Transportation of Hazardous Materials, Driving and Parking Rules	Entire Part 397 is adopted and applies to Washington intrastate operations.

(5) Companies operating a contract crew transportation vehicle must:

(a) Comply with all state and local laws and rules governing licensing, vehicle safety, and driver safety.

(b) Maintain all motor vehicles in a safe and sanitary condition.

(c) Ensure that vehicles are free of defects likely to result in an accident or breakdown.

(6) Persons who drive for companies operating a contract crew transportation vehicle must be immediately and automatically disqualified from operating a contract crew transportation vehicle for a period of three years if:

(a) The person is convicted of, or is found to have committed, two or more traffic violations that result in suspension or revocation of the person's driver's license within a three-year period for a reason other than failure to pay fines.

(b) The person is convicted of, or is found to have committed, any of the following offenses:

(i) Any drug or alcohol-related traffic offense.

(ii) Using a vehicle to commit a felony.

(iii) Leaving the scene of an accident.

(iv) Prohibited passing of another vehicle.

(v) A railroad-highway grade crossing offense identified in RCW 46.25.090(8).

(vi) Driving with a suspended, revoked, or canceled license.

(7) Persons who drive for companies operating a contract crew transportation vehicle that sustain a conviction or traffic violation as outlined in subsection (5) of this section, must report the conviction or infraction to the company within ten days of the date of the conviction or infraction.

(8) No company operating a contract crew transportation vehicle, its agents, officers, or employees, will allow any article, commodity, or substance to be loaded in or on any vehicle used by the company to transport passengers that is:

(a) Dangerous to the lives and safety of passengers.

(b) Prohibited by the hazardous materials rules in Title 49 C.F.R. from being transported on passenger-carrying vehicles.

(9) No company operating a contract crew transportation vehicle may carry more passengers than the vehicle was originally manufactured to carry.

(10) All vehicles operated under the provisions of this chapter are at all times subject to inspection by the commission or its duly authorized representatives.

(11) All contract crew transportation companies must implement a controlled substance and alcohol testing program to include:

(a) Preemployment testing: A preemployment controlled substance and alcohol test must be administered prior to a driver performing a safety-sensitive function.

(b) Postaccident testing.

(i) An alcohol test must be administered as soon as practicable but no longer than eight hours following an accident where the accident involved the loss of human life, a driver receives a citation for a moving traffic violation arising from the accident if the accident involved bodily injury to any person who, as a result of the injury immediately receives medical treatment away from the scene of the accident or one or more motor vehicles incurring disabling damage as a result of

the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(ii) A controlled substance test must be administered within thirty-two hours following an accident where the accident involved the loss of human life, a driver receives a citation for a moving traffic violation arising from the accident if the accident involved bodily injury to any person who, as a result of the injury immediately receives medical treatment away from the scene of the accident or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(c) Random testing.

(i) Every driver shall submit to random alcohol and controlled substance testing.

(ii) The minimum annual percentage rate for random alcohol testing shall be ten percent of the average number of driver positions.

(iii) The minimum annual percentage rate for random controlled substances testing shall be twenty-five percent of the average number of driver positions.

(d) Reasonable suspicion testing.

(i) All persons designated to supervise drivers shall receive at least sixty minutes of training on alcohol misuse and receive at least an additional sixty minutes of training on controlled substances use.

(ii) The training will be used by supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

NEW SECTION

WAC 480-62-281 Contract crew transportation intrastate medical waivers. (1) **Department of licensing intrastate medical waiver.** A contract crew transportation company may use a driver that is not physically qualified to drive a commercial motor vehicle under 49 C.F.R. Part 391.41, if the driver:

(a) Only operates motor vehicles intrastate, wholly within the state of Washington; and

(b) Has obtained from the Washington state department of licensing an intrastate medical waiver to drive a commercial motor vehicle.

For the purposes of a department of licensing medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating over 26,000 lbs.;

(ii) Transporting sixteen or more passengers, including the driver; or

(iii) With a manufacturer's seating capacity of sixteen or more passengers, including the driver.

(2) **Doctor's statement of intrastate medical waiver.** A contract crew transportation company may use a driver that is not physically qualified to drive a commercial motor vehicle under 49 C.F.R. Part 391.41, if the driver:

(a) Holds a valid Washington state driver's license;

(b) Has received a doctor's statement that:

(i) The driver's medical condition is not likely to interfere with the driver's ability to safely operate a commercial motor vehicle; and

(ii) The doctor's opinion is that the driver's condition is likely to remain stable for the two years that the medical certificate is valid.

(c) Operates commercial motor vehicles intrastate wholly within the state of Washington. For the purposes of a doctor's statement of intrastate medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating under 26,001 lbs.;

(ii) Transporting fifteen or fewer passengers, including the driver; or

(iii) With a manufacturer's seating capacity of fifteen or fewer passengers, including the driver.

(3) **Driver qualification files.** A contract crew transportation company that uses a driver under an intrastate medical waiver must maintain in the driver's qualification file a copy of the doctor's statement of intrastate medical waiver.

NEW SECTION

WAC 480-62-284 Contract crew transportation insurance requirements. (1) Companies operating a contract crew transportation vehicle must meet the following minimum insurance requirements:

(a) Five million dollars combined single limit coverage for bodily injury and property damage liability coverage.

(b) One million dollars uninsured and underinsured motorist coverage.

(2) Insurance policies must:

(a) Be written by an insurance company authorized to write insurance in the state of Washington.

(b) Include the Uniform Motor Carrier Bodily Injury and Property Liability Endorsement (Form F).

(3) A company must file and maintain a Uniform Motor Carrier Bodily Injury Property Damage Certificate of Insurance (Form E). Form E is a standard motor carrier insurance form recognized by the insurance industry and is filed with the commission by an insurance company.

(a) The Form E must be issued in the company name exactly as it appears on the company's permit.

(b) The Form E must remain in effect until canceled by a Notice of Cancellation (Form K). The Form K must be filed with the commission by the insurance company not less than thirty days before the cancellation effective date.

(c) The commission will accept an insurance certificate or binder for up to sixty days pending receipt of the Form E.

(d) A company may file a Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G) in place of a Form E.

(4) If a company's insurance filing is canceled and a new filing is not received prior to the cancellation date, the commission may dismiss a company's application for a permit or cancel an existing permit.

(5) If a contract crew transportation company hires a driver to drive a vehicle owned by the contract crew transportation company to transport a railroad crew, the insurance requirements outlined in subsection (1) of this section, apply.

(a) The insurance requirements may be met by either the contract crew transportation company, the third party, or the railroad company.

(b) It is the responsibility of the contract crew transportation company to obtain and retain proof of insurance coverage for the third-party driver.

NEW SECTION

WAC 480-62-287 Contract crew transportation passenger notice requirements. Companies operating a contract crew transportation vehicle must post adequate notice in a conspicuous location in all vehicles that advises passengers of:

(1) Their right to submit a complaint to the commission regarding alleged unsafe driver or vehicle conditions.

(2) The information necessary for filing complaints, which can be found on the agency's public web site.

NEW SECTION

WAC 480-62-290 Contract crew transportation safety training. (1) Companies providing contract crew transportation must provide at least eight hours of safety training that includes, but is not limited to:

(a) Vehicle safety awareness.

(b) Passenger safety awareness.

(c) Rail yard safety.

(d) Grade crossing safety.

(e) Load securement.

(f) Distracted driving.

(g) Fatigued driving.

(h) Familiarization with:

(i) Railroad yards, property, pick-up points and drop-off points where the driver is expected to operate the vehicle.

(ii) Any rules or requirements imposed by the railroad at the locations where the driver is expected to operate the vehicle.

(iii) General railroad safety requirements.

(iv) Grade crossing safety.

(i) The training required in subsection (h) of this section must be provided by the railroad for whom the driver will be transporting railroad crews. The railroad may contract with a third party or other designee to provide training, however, such delegation does not absolve the railroad of responsibility to ensure compliance with this section.

(2) Each company providing contract crew transportation must provide to the commission a description of its safety training program for approval prior to implementing the program at the company.

(3) Each company must require existing drivers to attend the safety training within six months of approval of the training program by the commission.

(4) If the commission finds driver safety behavior is such that refresher training is warranted, the commission may require such training.

NEW SECTION

WAC 480-62-293 Contract crew transportation enforcement. (1) The commission will investigate safety

complaints related to contract crew transportation. Information included in safety complaints that identifies the employee who submitted the complaint is exempt from public inspection and copying pursuant to RCW 42.56.330.

(2) The commission may, in enforcing rules and orders, inspect any contract crew transportation vehicle.

Contract crew transportation companies are required to inspect, or have inspected, every vehicle as required in WAC 480-62-278 through adoption of 49 C.F.R., Part 396.

(3) The commission may take enforcement action, based on a complaint or on its own motion, as follows:

(a) Assess penalties as warranted.

(b) Suspend or revoke a permit after notice and opportunity for hearing.

NEW SECTION

WAC 480-62-296 Contract crew transportation reporting requirements. Companies operating a contract crew transportation vehicle must, at the request of the commission, provide data relevant to any complaints and accidents, including:

- (1) Location;
- (2) Time of day;
- (3) Visibility;
- (4) Description of the event;
- (5) Any resulting property damage or personal injuries;
- (6) Any corrective action taken by the railroad company, person operating the contract crew transportation vehicle, or the commission.

NEW SECTION

WAC 480-62-299 Contract crew transportation record retention requirements. A contract crew transportation company must keep and provide or make available to the commission on request, and within forty-eight hours, the following records for the specified time periods:

- (1) All documents related to driver hours of service for a period of at least six months;
- (2) Verification of each driver's qualifications for the duration of the driver's employment and for three years thereafter;
- (3) All documents related to alcohol and controlled substance testing for a period of three years;
- (4) All documents related to vehicle maintenance for a period of twelve months; and
- (5) All documents related to any vehicle collisions or other accidents that occur for a period of at least three years from the date of the accident. Such records must include copies of all accident reports and any other documents that identify the date and geographic location of the accident, the driver name, the number of fatalities or persons injured and a description of those injuries.

AMENDATORY SECTION (Amending WSR 17-15-054, filed 7/13/17, effective 8/13/17)

WAC 480-62-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available

for inspection at the commission ((branch of the Washington state)) library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, ((2016)) 2017.

(b) This publication is referenced in WAC 480-62-160 (Compliance policy), WAC 480-62-200 (Roadway worker safety and operating rules and statutes), WAC 480-62-205 (Track safety standards), WAC 480-62-210 (Crossing signal circuitry), WAC 480-62-215 (Hazardous materials regulations), WAC 480-62-235 (Flaggers), ((and)) WAC 480-62-240 (Passenger carrying vehicles—Equipment), and WAC 480-62-278 (Contract crew transportation vehicle and driver safety requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on December 31, ((2016)) 2017.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices) and WAC 480-62-235 (Flaggers).

(c) Copies of the MUTCD are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **ANSI Z308.1 - 2015 American National Standard for Minimum Requirements for Workplace First Aid Kits** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on December 31, ((2016)) 2017.

(b) This publication is referenced in WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of ANSI Z308.1 - 2015 American National Standard for Minimum Requirements for Workplace First Aid Kits and Supplies are available from IHS Global Engineering Documents in Englewood, Colorado.

(4) **ANSI/ISEA ((207-2014)) 207-2015 - American National Standard for High-Visibility Public Safety Vests** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on December 31, ((2016)) 2017.

(b) This publication is referenced in WAC 480-62-235 (Flaggers).

(c) Copies of ANSI/ISEA ((207-2014)) 207-2015 - American National Standard for High-Visibility Public Safety Vests are available from IHS Global Engineering Documents in Englewood, Colorado.

(5) **North American Standard Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2017.

(b) This publication is referenced in WAC 480-62-278 (Contract crew transportation vehicle and driver safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA.

WSR 18-10-003

PERMANENT RULES

SECRETARY OF STATE

[Filed April 19, 2018, 9:20 a.m., effective May 20, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The amendments provide statewide consistency in election administration and voter registration. The [This] includes clarification of a voter's signature for ballots and state petitions, the ballot declaration, ballot postmark, recounts, voter intent, replacement ballots, ballot processing, testing of tabulation programming and accessible voting units, validation statistics, secure storage and locations.

Citation of Rules Affected by this Order: Amending WAC 434-230-015, 434-250-080, 434-250-110, 434-250-120, 434-261-045, 434-261-086, 434-261-102, 434-262-013, 434-262-017, 434-264-110, 434-324-115, 434-335-330, 434-335-550, 434-335-560, 434-379-012, and 434-379-020.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 18-06-087 on March 6, 2018.

Changes Other than Editing from Proposed to Adopted Version: Amendment of WAC 434-261-050 is not part of this adoption, a date was changed in WAC 434-230-015 from December 31, 2018, to May 31, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 16, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 16, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 16, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 18, 2018.

Mark Neary
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 17-12-090, filed 6/6/17, effective 7/7/17)

WAC 434-230-015 Ballots and instructions. (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes if candidate races appear on the ballot.

(3) Instructions that accompany a ballot must:

(a) Instruct the voter how to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notify the voter that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;

(c) Explain how to complete and sign the ballot declaration. The following declaration must accompany the ballot:

"I do solemnly swear or affirm under penalty of perjury that I am:

A citizen of the United States;

A legal resident of the state of Washington;

At least 18 years old on election day;

Voting only once in this election;

Not under the authority of the Department of Corrections for a Washington felony conviction; ~~((and))~~

Not disqualified from voting due to a court order~~((:))~~;

Not voting in any other jurisdiction in the United States for this election; and

It is illegal to forge a signature or cast another person's ballot. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this declaration is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both."

The declaration must include space for the voter to sign and date the declaration, for the voter to write his or her phone number, and for two witnesses to sign if the voter is unable to sign.

(d) Explain how ~~((to))~~ the voter may make a mark, witnessed by two other people, if the voter is unable to ~~((sign the declaration))~~ write their signature;

(e) Explain that a power of attorney cannot be used to sign a ballot for someone else;

(f) Explain how to place the ballot in the security envelope and place the security envelope in the return envelope;

~~((f))~~ (g) Explain how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

~~((g))~~ (h) If applicable, explain that postage is required, or exactly how much postage is required. See WAC 434-250-200 on return postage;

~~((h))~~ (i) Explain that, in order for the ballot to be counted, it must be either postmarked no later than election day or deposited at a ballot drop box no later than 8:00 p.m. election day;

~~((i))~~ (j) Explain how to learn about the locations, hours, and services of voting centers and ballot drop boxes, including the availability of accessible voting equipment;

~~((j))~~ (k) Include, for a primary election that includes a partisan office other than a presidential primary race, a notice on an insert explaining:

"In each race, you may vote for any one candidate listed. The two candidates who receive the most votes in the primary will advance to the general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

~~((4))~~ (1)(i) Include, for a general election that includes a partisan office, the following explanation:

"If a primary election was held for an office, the two candidates who received the most votes in the primary advanced to the general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice president appear on the general election ballot, the following must be added to the statement required by ~~((4))~~ (1)(i) of this subsection:

"The election for president and vice president is different. Candidates for president and vice president are the official nominees of their political party."

(4) Instructions that accompany a special absentee ballot authorized by RCW 29A.40.050 must also explain that the voter may request and subsequently vote a regular ballot, and that if the regular ballot is received by the county auditor, the regular ballot will be tabulated and the special absentee ballot will be voided.

(5) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(6)(a) If the ballot includes a partisan office other than a presidential primary race, the ballot must include the following notice in bold print immediately above the first partisan congressional, state or county office: "READ: Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(b) When the race for president and vice president appears on a general election ballot, instead of the notice required by (a) of this subsection, the ballot must include the following notice in bold print after president and vice president but immediately above the first partisan congressional, state or county office: "READ: Each candidate for president and vice president is the official nominee of a political party. For other partisan offices, each candidate may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(c) The same notice may also be listed in the ballot instructions.

(7) Counties may use varying sizes and colors of ballots, provided such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate various types of ballots.

(8) Ballots shall be formatted as provided in RCW 29A.36.170.

(9) Removable stubs are not considered part of the ballot.

(10) If ballots are printed with sequential numbers or other sequential identifiers, the county auditor must take steps to prevent ballots from being issued sequentially, in order to protect secrecy of the ballot.

Counties may use ballot envelopes and instruction in stock until May 31, 2019.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-080 Replacement ballots. The county auditor ~~((may))~~ shall issue a replacement ballot, as authorized by RCW 29A.40.070, if the request is received prior to 8:00 p.m. on election day. Requests may be made in person, in writing, by telephone, or electronically, by the voter, a family member, or a registered domestic partner.

Each county auditor shall allow access to an electronic ballot system to both active and inactive voters for replacement ballots no later than the eighth day prior to election day.

If a voter appears in person at a county auditor's office before 8:00 p.m. election day and requests a ballot, the county auditor must determine if the voter is registered to vote in Washington.

(1) If the voter is registered in the same county, issue a replacement ballot.

(2) If the voter is registered in another county, access and print a replacement ballot from that county, if the electronic ballot system is available.

(3) If the voter is not registered within the state or the electronic ballot system is not available, the county auditor must offer the voter a provisional ballot.

Replacement ballots or the original ballot, whichever is received first, shall be credited to the voter's registration file and tabulated if the ballot meets all requirements for tabulation. If the auditor receives additional ballots from a voter, as indicated by the fact that the voter is already credited with voting, the additional ballots shall not be counted and shall be forwarded to the county canvassing board for rejection.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-250-110 Processing ballots. (1) "Initial processing" means all steps taken to prepare ballots for tabulation. Initial processing includes, but is not limited to:

(a) Verification of the signature and postmark on the ballot declaration;

(b) Removal of the security envelope from the return envelope;

(c) Removal of the ballot from the security envelope;

(d) Manual inspection for damage, write-in votes, and incorrect or incomplete marks;

(e) Duplication of damaged and write-in ballots;

(f) Scanning and resolution of ballots on a digital scan voting system; and

(g) Other preparation of ballots for final processing.

(2) "Final processing" means the reading of ballots by an optical scan voting system for the purpose of producing returns of votes cast, but does not include tabulation.

(3) "Tabulation" means the production of returns of votes cast for candidates or ballot measures in a form that can be read by a person, whether as precinct totals, partial cumulative totals, or final cumulative totals.

(4) Prior to initial processing of ballots, the county auditor shall notify the county chair of each major political party of the time and date on which processing shall begin, and shall request that each major political party appoint official observers to observe the processing and tabulation of ballots. If any major political party has appointed observers, such observers may be present for initial processing, final processing, or tabulation, if they so choose, but failure to appoint or attend shall not preclude the processing or tabulation of ballots.

(5) Initial processing of voted ballots(~~(, which may include scanning and resolving ballots on a digital scan voting system,)~~) may begin as soon as voted ballots are received. Initial processing includes digital scanning and resolution of ballots where tabulation does not take place. All ballots must be kept in secure storage until final processing. Secure storage must employ the use of numbered seals and logs, or other security measures which will detect any inappropriate or unauthorized access to the secured ballot materials when they are not being prepared or processed by authorized personnel. The county auditor must ensure that all security envelopes and return envelopes are empty, either by a visual inspection of the punched hole to confirm that no ballots or other materials are still in the envelopes, or by storing the envelopes with a tie, string, or other object through the holes.

(6) Final processing of voted ballots, which may include scanning ballots on an optical scan voting system, may begin after 7:00 a.m. on the day of the election. Final processing may begin after 7:00 a.m. the day before the election if the county auditor follows a security plan that has been submitted by the county auditor and approved by the secretary of state to prevent tabulation until after 8:00 p.m. on the day of the election.

(7) Tabulation may begin after 8:00 p.m. on the day of the election.

(8) In counties tabulating ballots on an optical scan vote tallying system, the vote tallying system must reject all over-votes and blank ballots.

(a) All rejected ballots shall be outstacked for additional manual inspection.

(b) The outstacked ballots shall be inspected in a manner similar to the original inspection with special attention given to stray marks, erasures, and other conditions that may have caused the vote-tallying device to misread and reject the ballot.

(c) If inspection reveals that a ballot must be duplicated in order to be read correctly by the vote tallying system, the ballot must be duplicated.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-250-120 Verification of the signature and return date. (1) A mail ballot shall be counted if:

(a) The ballot declaration is signed with a valid signature. A valid signature may be the voter's name or a distinctive mark or symbol signed by the voter.

(i) If the voter is unable to sign his or her name, the voter may make a mark or symbol with two witnesses' signatures. A signature stamp accompanied by two witness signatures is an acceptable mark.

(ii) A power of attorney cannot be used as a signature for a voter;

(b) The signature has been verified pursuant to WAC 434-379-020(~~(, or if the voter is unable to sign his or her name, two other persons have witnessed the voter's mark));~~ and

(c)(i) The envelope is postmarked not later than the day of the election and received not later than the day before certification of the election. A postmark is any official mark, imprint, or application that verifies when a ballot entered the U.S. postal system. The postmark on the envelope is the official date of mailing. If there are two postmarks, the earlier postmark is the date of mailing. A hand cancellation by an agent of the U.S. Postal Service is a postmark.

If the postmark is illegible or missing, the date of the voter's signature is the date of mailing as per RCW 29A.40.-110. If the postmark is illegible or missing and the voter did not include a date with their signature, county auditors may use available U.S. Postal Service tools to verify the date of mailing;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) The ballot is received by fax or email no later than 8:00 p.m. on election day. If the ballot is from a voter who is neither a service nor overseas voter, a hard copy of the ballot and ballot declaration must also be received no later than the day before certification of the election.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas voter, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.100.

(3) The signature on the ballot declaration must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on a ballot declaration may not be rejected merely because the signature is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of his or her duties. Personnel shall be instructed in the signature verification process prior to actu-

ally canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.

(4)(a) For ballots returned by fax or email, the county auditor must apply procedures to protect the secrecy of the ballot. If returned by email, the county auditor must print the email and attachments; the printed email and signed declaration page must be processed and retained like other ballot declarations, and the printed ballot must be processed and retained like other ballots. The electronic versions of the email, ballot declaration, and ballot are exempt from public disclosure in order to maintain secrecy of the ballot. Voted ballots returned by email may be returned with multiple attachments or as multiple emails.

(b) If the ballot is from a voter who is neither a service nor overseas voter, the voter must also return a hard copy of the ballot and ballot declaration no later than the day before certification.

(i) Consistent with WAC 434-250-080, the first valid ballot and declaration received is counted; subsequently received versions are not counted.

(ii) In order to maintain secrecy of the ballot, the hard copy ballot may not be compared to the ballot received electronically.

(iii) Voted ballots returned electronically no later than 8:00 p.m. on election day are timely even if the hard copy subsequently returned contains a postmark after election day.

(c) Ballots returned electronically with a missing or mismatched signature are processed as established in RCW 29A.60.165 and WAC 434-261-050.

(5) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

WAC 434-261-045 Secure storage. ~~((Received ballots and ballot images must be maintained))~~ Secure storage is a container or room that stores voted ballots and electronic data containing voted ballot images. Secure storage must employ the use of numbered seals and logs, or other security measures, that document each individual's access to the voted ballots or voted ballot images, and detect inappropriate access to the secure storage. Voted ballots and voted electronic ballot images must remain in secure storage except during processing, duplication, resolution, inspection by the canvassing board, or tabulation. ((Secure storage must employ the use of numbered seals and logs, or other security measures that will detect any inappropriate access to the secured materials. Ballots and)) Unsecured ballots must be accompanied by at least two county auditor staff at all times.

A secure location is a room or other facility where programming and equipment used for ballot tabulation are stored. A secure location must use the same security measures as for voted ballots and voted ballot images.

Use of numbered seals requires:

(1) A seal log that documents the numbers of the seals and the individuals applying or removing seals; and

(2) At least two individuals present when seals are applied or removed. Both must sign the seal log.

Closing of unstaffed ballot boxes must follow WAC 434-250-100. Voted ballots and voted ballot images may only be accessed in accordance with RCW 29A.60.110 and 29A.60.125.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-261-086 Statewide standards on what is a vote. (1) Pursuant to 42 U.S.C. § 15481 (a)(6) and *Bush v. Gore*, 531 U.S. 98 (2000), the following standards determine whether irregular marks on a ballot constitute a valid vote that may be counted.

(a) Target area. Any marks made in the target area shall be counted as valid votes, with the exceptions below. Any marks made outside of the target area shall be valid only if they form a pattern of similar marks as outlined in (b) of this subsection, or qualify as written instructions in (e) of this subsection. Marks that trace or outline the target area are not valid votes unless they form a pattern of similar marks as outlined in (b) of this subsection. The following marks in the target area are exceptions that are not valid votes:

(i) Obvious stray marks;

(ii) Hesitation marks;

(iii) Parts of written notes; and

(iv) Corrected votes, as described in (c) and (e) of this subsection.

(b) Pattern of similar marks. Marks made outside of the target area shall be counted as valid votes as long as those marks form a pattern of similar marks. All races and issues for which the voter has indicated a choice outside the target area must have a similar mark.

(i) Marks made outside of the target area may be counted as valid votes even if one pattern of similar marks is used on one page of the ballot and another pattern of similar marks is used on another page of the ballot.

(ii) Marks made outside of the target area shall be counted as valid votes if one pattern of similar marks is used for measures and another pattern of similar marks is used for candidate races.

(iii) If some marks are in the target area and some are not, but the same *type* of mark is used, all such marks shall be counted as valid votes.

(iv) If the marks strike through candidate names or ballot measure responses in a pattern of similar marks throughout the ballot, all such marks shall be counted as valid votes.

(v) A mark outside the target area on a ballot that contains only one race or measure is not required to form a pattern.

(c) Corrected votes.

(i) If the voter has followed the instructions for correcting a vote, the stricken vote shall not be counted.

(ii) If a second choice is marked, it shall be counted as a valid vote. If a second choice is not marked, the race shall be considered undervoted.

(iii) If the voter has marked two target areas and placed an 'X' or slash over one of the marked areas, the choice without the 'X' or slash shall be counted as a valid vote.

(d) Not a correction. If the voter has both marked a choice correctly and placed an 'X' in the same target area, but has not marked a second target, it shall be counted as a valid vote. Changes made by the voter to wording printed on the ballot will not invalidate votes cast for that race or measure.

(e) Written instructions. If the voter has attempted to vote or correct a vote by providing written instruction regarding his or her intent, it shall be counted as the voter instructed. Written instructions can include words, circles, lines, or arrows.

(f) Identifying marks. Marks identifying the voter, such as initials, signatures, or addresses do not disqualify a ballot.

(g) Overvotes. Races or issues that have more target areas marked than are allowed are overvotes. No votes for that race or issue shall be counted. An exception is write-in votes for a candidate already printed on the ballot, as provided in (i) of this subsection.

(h) Write-in: Blank target area. If a name is written on a write-in line, it shall be counted as a valid write-in vote regardless of whether the corresponding target area is marked.

(i) Write-in: Already on the ballot. If the name of a candidate who is already printed on the ballot is written in, that vote shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate. This applies even if both target areas are marked or no target areas are marked.

(j) Write-in: Name variations. If a write-in vote is cast for a *declared* write-in candidate using a commonly recognizable nickname or spelling variation, it shall be counted as a valid vote for that candidate.

(k) Write-in: Blank line. If the write-in target area is marked, but no name is written on the line, it shall not be counted as a valid vote, even though it may be tallied as a write-in vote by the tabulation system.

(l) Write-in: Blank line and candidate. If a candidate's target area is marked, *and* the write-in target area is marked but no name is written on the line, it shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate.

(m) Write-in: Name combinations. If a write-in vote is cast for a candidate with a combination of names already on the ballot, it shall NOT be counted as a vote for either printed candidate, but rather shall be counted as a valid vote for the name as written.

(n) Write-in: ~~((Overvotes))~~ Candidate and write-in response area. If a candidate's target area is marked, the write-in target area is also marked, and something other than that candidate's name is written in the write-in response area, it shall be counted as an overvote and not a valid vote for any candidate. ~~((This applies whether or not the target area for the write-in is marked.))~~ If a candidate's target area is marked and the write-in target area is not marked, it shall be counted as a valid vote for the marked candidate. If the voter's intent cannot be ascertained, the ballot shall be referred to the canvassing board.

(o) Write-in: Not eligible. A write-in vote for a race not appearing on the voter's ballot shall not be counted.

Exception: If a provisional ballot has been cast and the voter has written in an office or measure that is not on the ballot, that vote shall be counted if it is determined, based on the voter's registration, that he or she is eligible to vote for that office or measure.

(p) Write-in: Vote in the wrong place. A write-in vote for a race appearing elsewhere on the ballot shall be counted as a valid vote, as long as all other requirements are fulfilled and the office, position number and political party, if applicable, are clearly indicated.

(q) Messy marks. When otherwise valid votes marked in a target area partially extend into the response area, it shall be counted as a vote if most of the mark is in the target area and intent can easily be discerned.

(r) Pattern of partisan voting. Voter intent in any single contest shall not be determined based on a pattern of partisan voting on the ballot.

Exception: On a federal write-in absentee ballot (FWAB) in which the voter has not written in a candidate's name but has written in the name of a political party, the written instructions may be counted as a vote if the canvassing board can discern that a candidate's party preference is consistent with the voter's instructions. The canvassing board shall not count the instructions as a vote if no candidate's party preference is consistent with the voter's instructions, or if multiple candidates' party preferences are consistent with the voters' instructions.

(s) Anything else. Voter intent on questionable marks not covered by the rules in this manual must be determined by county canvassing boards according to all applicable laws of the state of Washington and the canvassing board manual. Where more than one rule may apply, the county canvassing board has authority to determine which rule is most appropriate.

(2) The secretary of state shall publish an illustrated version of these standards in each optical scan and digital scan voting system used in the state. The secretary of state shall distribute the illustrated version to each county canvassing board and post it on the web site.

(3) The secretary of state shall periodically review and update the manual as necessary, and seek input from county canvassing boards and other interested parties to ensure that the standards remain current and comprehensive.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-261-102 Resolving ballots on digital scan vote tallying systems. In counties tabulating ballots on a digital scan vote tallying system, two staff designated by the auditor's office must resolve each ballot~~((s))~~ identified as requiring resolution. Staff resolving ballots must have completed training on voter intent rules as outlined in WAC 434-261-086. A log of the resolutions must be printed linking staff conducting the resolutions to the ballots resolved. The log must be signed by the two staff.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-262-013 Crediting voters. (1) A voter may not be credited for voting if the ballot was voted after election day, was received later than the day before certification of the election, or will otherwise not be counted.

(2) The crediting of voters in the county election management system must be completed prior to certification of the election.

(3) The reconciliation of voters credited with ballots counted shall be completed prior to certification of the election. The certification must include, but is not limited to, information indicating that the number of ballots counted equals the number of voters credited. If these numbers do not match, the county auditor must take steps to reconcile the numbers and any discrepancies. If the county auditor cannot reconcile the numbers, documentation of steps taken to reconcile and any other applicable information must be included with the official reconciliation.

(4) Changes to the list of registered voters, such as new registrations, transfers, or cancellations, may not be made following a general election until the crediting reconciliation is complete. Correction of errors is allowed.

(5) The county auditor shall make an electronic or paper copy of the list of registered voters immediately following this reconciliation. ~~((Using this data))~~ Following each general election, the county auditor shall ~~((also))~~ use this data to produce ~~((validation statistics))~~ the number of voters participating in the election for each ~~((minor))~~ taxing district in the county as required by WAC 434-262-017. Once the list is copied and the ~~((validation statistics are))~~ taxing district voter turnout report is complete, changes to the database may be made.

(6) Following certification of the election, each credited voter's history of voting must be updated in the statewide voter registration database.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-262-017 ~~((Calculating validation figures and results for))~~ General election turnout for validation of bonds and levies. ~~((1) For bonds and levies other than school district levies, before determining a jurisdiction's validation figures,))~~ Following each general election, the county auditor must determine the number of ~~((votes cast in the jurisdiction))~~ voters participating in the ~~((last))~~ general election ~~((must be determined. For levies, the state Constitution states, "...the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the total votes cast in such taxing district at the last preceding general election..." For example:~~

~~10,000 votes cast in the jurisdiction in the last general election x 40% = 4,000 votes x 3/5 = 2,400 votes~~

~~These numbers should be calculated based on the number of voters credited for voting in each jurisdiction, before adding, deleting, or transferring voters following the general election.~~

~~(2) When determining the results of a specific bond or levy, county auditors must not include overvotes or undervotes in the calculation. Rounding must not be used to reach the percentage of "yes" votes required for a bond or levy to pass)) for each taxing district in the county and provide this number to each district. Districts may use that number to determine the number of votes required for bond and levy passage in the next year.~~

The county auditor is not responsible for determining minimum turnout or yes votes required for ballot measures and shall not determine if ballot measures meet requirements for passage.

AMENDATORY SECTION (Amending WSR 09-12-078, filed 5/29/09, effective 6/29/09)

WAC 434-264-110 Manual recount—Process. The counting board may only count the responses for one race or measure at a time. The following process to count the ballots shall be used during a recount.

(1) Each counting board shall be given the ballots one precinct or batch at a time. The results from the original count shall not be given to the counting board with the ballots. The precinct or batch number must be made available to any observers.

(2) ~~The~~ the ~~((ballots))~~ counting board shall ~~((be sorted))~~ sort the ballots into separate stacks for each of the candidates or side of a ballot measure. Additional stacks may be created for overvotes, undervotes, and write-ins.

(3) ~~((Each stack of ballots must be))~~ Members of the counting board must manually ~~((counted))~~ count each sorted stack at least twice to confirm the number of votes ~~((in each stack))~~. The results of the manual count shall not be shared until ~~((both persons have counted the ballots))~~ each stack's count has been confirmed.

(4) ~~((Individual tallies for each stack shall be compared.))~~ If the manual stack counts match, the counting board shall report the results ~~((shall be reported))~~ to the designated staff person and the results shall be compared to the precinct or batch results previously certified.

(5) If the ~~((two))~~ manual counts do not match the precinct or batch results previously certified, the ballots shall be counted by the same counting board one more time. If the manual counts still do not match the precinct or batch results previously certified, the discrepancy must be reported to the designated staff person and the ballots referred to another counting board to be confirmed.

(6) Once the results are confirmed, the canvassing board shall amend both the cumulative and precinct abstracts to reflect the results of the recount as required by RCW 29A.64.061.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-324-115 Challenge of voter's registration. (1) All county auditors and the secretary of state shall furnish

to the public on request forms that allow a registered voter to challenge the registration of another voter pursuant to RCW 29A.08.810 through 29A.08.850. The secretary of state must make the form available on its web site.

(2) Voter registration challenges filed with the county auditor shall be published on the county auditor's web site as required by RCW 29A.08.835. The final decision of the county auditor or canvassing board shall also be posted on the county auditor's web site. The challenge and final decision must remain on the county auditor's web site for one month after the final decision was made.

AMENDATORY SECTION (Amending WSR 16-13-063, filed 6/13/16, effective 7/14/16)

WAC 434-335-330 Logic and accuracy test certification. (1) The official logic and accuracy test shall be certified by the county auditor or deputy, the secretary of state representative, and any political party observers for a state primary or general election in accordance with RCW 29A.12.130. Additionally, the county auditor must verify in writing that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions.

(2) The county auditor shall provide the secretary of state representative copies of the following documents:

- (a) Test results;
- (b) A zero report;
- (c) Signed verification of the version numbers;
- (d) Signed certification of the official logic and accuracy test;
- (e) A test log of:
 - (i) The number of accessible voting units to be used in the primary or election; and
 - (ii) The electronic duplication system, if electronic duplication will be used in the primary or election; and
- (f) Any other documentation requested by the secretary of state representative in advance of the official test.

(3) Copies of the certification documents must be retained by the secretary of state and the county auditor. All test results, test ballots, the signed certification, and a copy of the tabulation programming or the actual tabulation equipment must be kept in secure storage ~~((until the equipment is used for a primary or election. The secure storage must use numbered seals and logs that will detect any inappropriate access))~~ as defined in WAC 434-261-045 until ballots are to be tabulated.

(4) If, for any reason, changes are made to the ballot counting programming after the official logic and accuracy test, an emergency logic and accuracy test must be conducted pursuant to WAC 434-335-310.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

WAC 434-335-550 Direct recording electronic target area tests. Each county employing a direct recording electronic voting device must conduct a test to confirm that the target area indicated on each ballot face is programmed correctly. If the direct recording electronic device is going to be employed as an electronic ballot marker, the county must fol-

low the requirements of WAC 434-335-560. Otherwise, the county must test ~~((all ballot styles on at least one))~~ each device to ensure that the programming is correctly counting and accumulating every office, measure, and selection by the voter.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-560 Electronic ballot marker test. Each county employing an electronic ballot marker must conduct a test to confirm the target area indicated on each ballot face is programmed correctly. The county must test all ballot styles ~~((on at least one device to ensure the programming is correctly marking the target area for every office, measure, and selection by the voter))~~ using the ballot marker programming and test all devices to ensure each device is marking ballots correctly.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-379-012 Acceptance of signatures. (1) The secretary of state must determine if the person who signed a petition is registered to vote. The information may be researched in voter registration records using first name, last name, address, or any combination thereof. A signature may not be rejected merely because:

- (a) The person signed with a middle name, nickname, or initials instead of the first name in the voter registration records, as long as the handwriting is clearly the same;
- (b) The last name on the petition differs from the last name in the voter registration records, as long as the addresses and the handwriting on the first name are clearly the same;
- (c) The last name on the petition or in the voter registration records is hyphenated while the last name in the other source is not;
- (d) The first name and last name on the petition are reversed in the voter registration records;
- (e) The address on the petition does not match the address in the voter registration records;
- (f) The handwriting on the printed name or address does not match the handwriting on the signature; or
- (g) The voter is on inactive status.

(2) If the secretary of state is unable to locate the person in the voter registration records, the signature shall be rejected as not registered to vote.

(3) If the person is registered to vote, the signature on the petition sheet must be matched to the signature in the person's voter registration record using the standards in WAC 434-379-020. If the signature on the petition:

- (a) Is handwritten and matches the signature in the voter registration record according to the standards in WAC 434-379-020, the signature must be accepted.
- (b) Does not match the signature in the voter registration record, the signature must be rejected.

(c) Matches the signature in the voter registration record but another signature on the petition has already been accepted for that voter, the subsequent signature must be rejected as a duplicate.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

WAC 434-379-020 Signature verification standard.

A signature on a petition sheet must be matched to the signature on file in the voter registration records. The following characteristics must be utilized to evaluate signatures to determine whether they are by the same writer:

(1) The signature is handwritten.

(2) Agreement in style and general appearance, including basic construction, skill, alignment, fluency, and a general uniformity and consistency between signatures;

~~((2))~~ (3) Agreement in the proportions of individual letters, height to width, and heights of the upper to lower case letters;

~~((3))~~ (4) Irregular spacing, slants, or sizes of letters that are duplicated in both signatures;

~~((4))~~ (5) After considering the general traits, agreement of the most distinctive, unusual traits of the signatures.

A single distinctive trait is insufficient to conclude that the signatures are by the same writer. There must be a combination or cluster of shared characteristics. Likewise, there must be a cluster of differences to conclude that the signatures are by different writers.

**WSR 18-10-014
PERMANENT RULES
HEALTH CARE AUTHORITY**

[Filed April 23, 2018, 8:27 a.m., effective May 24, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This section is being revised to:

(1) Clarify when a valid Social Security number (SSN) or proof of application for an SSN is not required to be provided to be eligible for apple health or tailored supports for older adults (TSOA).

(2) Clarify requirements for exceptions to not providing an SNN [SSN].

(3) Clarify the requirement for confirming with the agency that the exception to providing an SSN still applies.

(4) Clarify what must be provided if an SSN is not known or has not been issued.

(5) Clarify that if a household member is required to provide an SSN and fails to do so, it may result in denial or termination.

Citation of Rules Affected by this Order: Amending WAC 182-503-0515.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 18-04-065 on February 1, 2018.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
Original WAC 182-503-0515 Washington apple health—Social Security number requirements.		
Proposed	<u>(7) If you are a household member required under subsection (2)(b) of this section to provide an SSN (such as a spouse, community spouse, parent, or sponsor), and you do not meet any other exception under subsection (2) of this section, failure to provide your SSN may result in denial or termination because we cannot verify your household's resource eligibility.</u>	In response to stakeholder comments, the agency revised subsection (7).
Adopted	<u>(7) If you are required to provide an SSN under this section, and you do not meet an exception under subsection (2) of this section, failure to provide your SSN may result in: (a) Denial of your application or termination of your coverage because we cannot determine your household's eligibility; or (b) Inability to apply the community spouse resource allocation (CSRA) or monthly maintenance needs allowance (MMNA) for a client of long-term services and supports (LTSS).</u>	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 23, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-503-0515 Washington apple health—Social Security number requirements. (1) To be eligible for Washington apple health ~~((WAH))~~ (medicaid), or tailored supports for older adults (TSOA) described in WAC 182-513-1610, you (the applicant or recipient) must provide

your valid Social Security number (SSN) or proof of application for an SSN to the medicaid agency or the agency's designee, except as provided in subsections ~~((5))~~ (2) and (6) of this section.

~~(2) (If you are not able to provide your SSN, either because you do not know it or it has not been issued, you must provide:~~

~~(a) Proof from the Social Security Administration (SSA) that you turned in an application for an SSN; and~~

~~(b) The SSN when you receive it.~~

~~(3) Your WAH coverage will not be delayed, denied or terminated while waiting for SSA to send you your SSN.~~

~~(4) If you do not provide your SSN, then you will not receive WAH coverage except if you:~~

~~(a) Refused to apply for or provide your SSN for religious reasons;~~

~~(b) Claim good cause for not providing your SSN because of domestic violence;~~

~~(c) Have a newborn as described in WAC 182-505-0210(1). A newborn is eligible for WAH coverage until the baby's first birthday.~~

~~(5) There is no SSN requirement for the following:~~

~~(a) WAH refugee medical;~~

~~(b) WAH alien emergency medical;~~

~~(c) WAH programs for children and pregnant women who do not meet citizenship criteria described in WAC 182-503-0535;~~

~~(d) A household member who is not applying for WAH coverage.~~

~~(6) If you are a "qualified" or "nonqualified" alien as defined in WAC 182-503-0530 who is not authorized to work in the U.S., you do not have to apply for a nonwork SSN:))~~

An SSN is not required if you are:

(a) Not eligible to receive an SSN or may only be issued an SSN for a valid nonwork reason described in 20 C.F.R. 422.104;

(b) A household member who is not applying for apple health coverage, unless verification of that household member's resources is required to determine the eligibility of the client;

(c) Refusing to obtain an SSN for well-established religious objections as defined in 42 C.F.R. 435.910 (h)(3); or

(d) Not able to obtain or provide an SSN because you are a victim of domestic violence.

(3) If you are receiving coverage because you meet an exception under either subsection (2)(c) or (d) of this section, we (the agency) will confirm with you at your apple health renewal, consistent with WAC 182-503-0050, that you still meet the exception.

(4) If we ask for confirmation that you continue to meet an exception in subsection (2) of this section and you do not respond in accordance with subsection (3) of this section, or if you no longer meet an exception and do not provide your SSN, we will terminate your apple health coverage according to WAC 182-518-0025.

(5) If you are not able to provide your SSN, either because you do not know it or it has not been issued, you must provide:

(a) Proof from the Social Security Administration (SSA) that you turned in an application for an SSN; and

(b) The SSN when you receive it.

(i) Your apple health coverage will not be delayed, denied, or terminated while waiting for SSA to send you your SSN. If you need help applying for an SSN, assistance will be provided to you.

(ii) We will ask you every ninety days if your SSN has been issued.

(6) An SSN is not required for the following apple health programs:

(a) Refugee medical assistance program described in WAC 182-507-0130;

(b) Alien medical programs described in WAC 182-507-0115, 182-507-0120, and 182-507-0125;

(c) Newborn medical program described in WAC 182-505-0210 (2)(a);

(d) Foster care program for a child age eighteen and younger as described in WAC 182-505-0211(1); or

(e) Medical programs for children and pregnant women who do not meet citizenship or immigration status described in WAC 182-503-0535 (2)(e)(ii) and (iii).

(7) If you are required to provide an SSN under this section, and you do not meet an exception under subsection (2) of this section, failure to provide your SSN may result in:

(a) Denial of your application or termination of your coverage because we cannot determine your household's eligibility; or

(b) Inability to apply the community spouse resource allocation (CSRA) or monthly maintenance needs allowance (MMNA) for a client of long-term services and supports (LTSS).

WSR 18-10-016
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed April 23, 2018, 10:19 a.m., effective May 24, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-805-400 Continuing education requirements for a licensed behavior analyst (LBA) and licensed assistant behavior analyst (LABA) and 246-805-410 Continuing competency for a certified behavior technician (CBT), the department of health is adopting new rules to set enforceable standards for continuing education and competency for LBAs, LABAs and CBTs. Completing continuing education and continuing competency requirements will help applied behavior analysis (ABA) providers to acquire knowledge and skills that will help them maintain professional competency, which will assist with providing competent ABA services to clients.

Citation of Rules Affected by this Order: New WAC 246-805-400 and 246-805-410.

Statutory Authority for Adoption: RCW 18.380.110.

Adopted under notice filed as WSR 18-02-068 on January 2, 2018.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-805-400 (5)(c) was changed by adding "Licensee-led" to "instruction of a CE course." This change was applied to provide additional clarity as to what type of instruction qualifies for CE hours.

A final cost-benefit analysis is available by contacting Brett Lorentson, Washington State Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4611, fax 360-236-2901, TTY 360-833-6388 or 711, email Brett.Lorentson@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: April 23, 2018.

John Wiesman, DrPH, MPH
Secretary

NEW SECTION

WAC 246-805-400 Continuing education requirements for an LBA and LABA. An LBA or LABA must attest to completing the continuing education (CE) requirements in this section as a condition of renewing the license every two years. CE must be completed during the first full CE reporting period after July 1, 2018.

(1) Maintaining certification from the BACB or another national certification board approved by the secretary that requires CE as part of certification meets CE requirements as described in this section.

(2) An LBA shall complete a minimum of thirty-two hours of CE related to the practice of applied behavior analysis.

(a) A minimum of twenty hours of activities must directly address:

(i) Behavior analytic skill development; and

(ii) Current practices in clinical practice of applied behavior analysis.

(b) At least four hours must pertain to professional ethics and boundaries of a behavior analyst.

(c) No more than eight hours may be in professional development activities that enhance the licensee's business practice as an LBA.

(3) An LABA shall complete twenty hours of CE related to the practice of applied behavior analysis.

(a) A minimum of ten hours of activities must directly address:

(i) Behavior analytic skill development; and

(ii) Current practices in clinical practice of applied behavior analysis.

(b) At least four hours must pertain to professional ethics and boundaries of a behavior analyst.

(c) No more than six hours may be in professional development activities that enhance the licensee's business practice as an LABA.

(4) Fifty minutes of CE contact time or direct instruction is equivalent to one CE hour.

(5) The CE hours must be obtained through one or more of the following:

(a) Courses from a college or university accredited by the United States Department of Education may meet all of the required CE hours.

(i) One academic semester credit is equivalent to fifteen CE hours.

(ii) One academic quarter credit is equivalent to ten CE hours.

(b) Courses from a CE provider.

(i) Courses from providers approved by the BACB or a national certification board affiliated with behavior analysis approved by the secretary may meet all of the required CE hours.

(ii) Courses from providers not approved by a national certification board affiliated with behavior analysis may meet no more than eight CE hours.

(c) Licensee-led instruction of a CE course.

(i) College or university instruction may meet no more than sixteen CE hours.

(ii) Any other type of instruction may meet no more than eight CE hours.

(iii) Repeated instruction in the same course may only qualify for CE credit one time in a single CE reporting period.

(iv) Instruction must be related to applied behavior analysis.

(d) The following activities are eligible for up to eight CE hours and only count during the CE time period when the article was published or reviewed:

(i) Publication of an applied behavior analysis article in a peer-reviewed journal is equivalent to eight CE hours;

(ii) Completion of reviewing an applied behavior analysis article for a peer-reviewed journal is equivalent to one CE hour; or

(iii) Serving as an action editor of an applied behavior analysis article for a peer-reviewed journal is equivalent to one CE hour.

(6) An LBA and LABA shall comply with the requirements of chapter 246-12 WAC, Part 7; and shall keep and provide CE documentation upon request. Acceptable documentation depends on the CE activity and includes:

(a) Course syllabus and transcript from college or university;

(b) Certificate or letter from a CE provider that includes the course topic and CE hours completed;

(c) Title, description, and dates of course of instruction on a letter from the academic institution or education provider;

(d) Copy of the final publication of article listing the credential holder as the author;

(e) Letter of attestation from the action editor reporting the credential holder's name as a reviewer of an applied behavior analysis article; or

(f) Editorial decision letter reporting the credential holder's name as an action editor of an applied behavior analysis article.

NEW SECTION

WAC 246-805-410 Continuing competency requirements for a CBT. A CBT must attest to completing the continuing competency requirements in this section as a condition of renewing the certification. The requirements in this section are effective for a certification renewed on or after July 1, 2018.

(1) A CBT must complete continuing education or demonstrate continuing competency by either:

(a) Maintaining certification from the BACB or another national certification board approved by the secretary; or

(b) Within three months prior to renewal obtaining an assessment by an LBA or LABA or otherwise qualified supervisor on performance or demonstration of the following applied behavior analysis tasks:

- (i) Measurement;
- (ii) Assessment;
- (iii) Skill acquisition;
- (iv) Behavior reduction;
- (v) Documentation and reporting; and
- (vi) Professional conduct and scope of practice.

(2) A CBT shall keep and provide documentation upon request.

(3) A CBT shall comply with the requirements of chapter 246-12 WAC, Part 7.

WSR 18-10-024

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed April 24, 2018, 9:52 a.m., effective June 1, 2018]

Effective Date of Rule: June 1, 2018.

Purpose: The agency is amending and repealing WAC to create a process that allows a medicaid client to keep more of their income that would have otherwise been paid towards the client's cost care, in order to compensate and reimburse their guardian. The purpose of new WAC 182-513-1530 is to combine the former WAC sections and modify the existing process into one WAC section.

Citation of Rules Affected by this Order: New WAC 182-513-1530; repealing WAC 182-513-1505, 182-513-1510 and 182-513-1520; and amending WAC 182-513-1515 and 182-513-1525.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 18-04-056 on February 1, 2018.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
Original WAC 182-513-1530 Maximum guardianship fee and related cost deductions allowed from a client's participation or room and board on or after June 1, 2018.		
Proposed	(2)(b)(i) The total deduction for costs directly related to establishing a guardianship for a client cannot exceed \$1,400.	The agency increased the maximum deduction allowed to establish a guardianship based on stakeholder comments.
Adopted	(2)(b)(i) The total deduction for costs directly related to establishing a guardianship for a client cannot exceed \$1,400 <u>\$1,850</u> .	
Proposed	(2)(b)(iii) The amount of the monthly deduction for guardianship fees cannot exceed \$225 per month.	The agency increased the maximum monthly deduction for guardianship fees based on stakeholder comments.
Adopted	(2)(b)(iii) The amount of the monthly deduction for guardianship fees cannot exceed \$225 <u>\$235</u> per month.	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 3.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 3.

Date Adopted: April 24, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-15-042, filed 7/14/16, effective 7/14/16)

WAC 182-513-1515 Maximum guardianship fees and related costs before June 1, 2018. ~~((The superior court may allow guardianship fees and administrative costs in an amount set out in an order.))~~ (1) This section sets the maximum guardianship fees and related costs when:

- (a) The court order was entered before June 1, 2018; and
- (b) The client under guardianship was receiving medic-aid-funded long-term care before June 1, 2018.

(2) For court orders entered ((after June 15, 1998)) before June 1, 2018, where the order establishes or continues a legal guardianship for a ((department client, and requires a future review or accounting; then unless otherwise modified by the process described in WAC 388-79-040:

(1) The amount of) client:

~~(a) Guardianship fees ((shall)) must not exceed ((one hundred seventy-five dollars)) \$175 per month;~~

~~((2) The amount of administrative)) (b) Costs directly related to establishing a guardianship for a ((department)) client ((shall)) must not exceed ((seven hundred dollars)) \$700; and~~

~~((3) The amount of administrative costs shall)) (c) Costs to maintain the guardianship must not exceed ((a total of six hundred dollars)) \$600 during any three-year period.~~

AMENDATORY SECTION (Amending WSR 16-15-042, filed 7/14/16, effective 7/14/16)

WAC 182-513-1525 Procedure for allowing guardianship fees and related costs from client participation ((after September 1, 2003)) before June 1, 2018. (1) ((After September 1, 2003, where a client is subject to a guardianship the department shall be entitled to notice of proceedings as described in RCW 11.92.150.

~~(2) The notice must be served to the department's regional administrator of the program that is providing services to the client. A list of the regional administrators will be furnished upon request.~~

~~(3) If the fees and costs requested and established by the order are equal to or less than the maximum amounts allowed under WAC 388-79-030, then the department will)) This section describes the procedure for allowing guardianship fees and related costs from client participation when:~~

~~(a) A court order was entered before June 1, 2018; and~~

~~(b) The client under guardianship was receiving medic-aid-funded long-term care before June 1, 2018.~~

~~(2) The medicaid agency or the agency's designee, after receiving the court order, adjusts the client's current participation to reflect the amounts, as allowed ((upon receipt by the department of the court order setting the monthly amounts.~~

~~(4) Should fees and costs in excess of the amounts allowed in WAC 388-79-030 be requested:~~

~~(a) At least ten days before filing the request with the court, the guardian must present the request in writing to the appropriate regional administrator to allow the department an opportunity to consider whether the request should be granted on an exceptional basis.~~

~~(b) In considering a request for extraordinary fees or costs, the department must consider the following factors:~~

~~(i) The department's obligation under federal and state law to ensure that federal medicaid funding is not jeopardized by noncompliance with federal regulations limiting deductions from the client's participation amount;~~

~~(ii) The usual and customary guardianship services for which the maximum fees and costs under WAC 388-79-030 must be deemed adequate for a medicaid client, including but not limited to:~~

~~(A) Acting as a representative payee;~~

~~(B) Managing the client's financial affairs;~~

~~(C) Preserving and/or disposing of property;~~

~~(D) Making health care decisions;~~

~~(E) Visiting and/or maintaining contact with the client;~~

~~(F) Accessing public assistance programs on behalf of the client;~~

~~(G) Communicating with the client's service providers; and~~

~~(H) Preparing any reports or accountings required by the court.~~

~~(iii) Extraordinary services provided by the guardian, such as:~~

~~(A) Unusually complicated property transactions;~~

~~(B) Substantial interactions with adult protective ser- vices or criminal justice agencies;~~

~~(C) Extensive medical services setup needs and/or emer- gency hospitalizations; and~~

~~(D) Litigation other than litigating an award of guardian- ship fees or costs.~~

~~(e) Should the court determine after consideration of the facts and law that fees and costs in excess of the amounts allowed in WAC 388-79-030 are just and reasonable and should be allowed, then the department will adjust the client's current participation to reflect the amounts allowed upon receipt by the department of the court order setting the monthly amounts.~~

~~(5) In no event may a client's)) under WAC 182-513- 1380, 183-515-1509, or 183-515-1514.~~

~~(3) A client's participation cannot be prospectively or retrospectively reduced to pay guardianship fees and related costs incurred;~~

~~(a) Before ((the effective date of)) the client's long-term care medicaid eligibility effective date; ((or))~~

~~(b) During any ((subsequent)) time ((period)) when the client was not eligible for((s)) or did not receive long-term care services; or~~

~~(c) After the client has died. ((There is no client partici- pation towards DDD-certified and contracted supported liv- ing services under chapter 388-820 WAC, so the department has no responsibility to reimburse the client for guardianship fees when those fees result in the client having insufficient income to pay their living expenses.~~

~~(6) If)~~

~~(4) The fees and costs allowed by the court at the final accounting must not exceed the amounts advanced and paid to the guardian from the client's participation if:~~

~~(a) The court, at a prior accounting, ((has)) allowed the guardian to receive guardianship fees and related costs from the client's ((monthly income)) participation in advance of services rendered by the guardian((s)); and~~

~~(b) The client dies before the next accounting((, the fees and costs allowed by the court at the final accounting may be less than, but may not exceed, the amounts advanced and paid to the guardian from the client's income.~~

~~(7) Guardians must furnish the regional administrator with complete packets to include all documents filed with the court and with formal notice clearly identifying the amount requested)).~~

NEW SECTION

WAC 182-513-1530 Maximum guardianship fee and related cost deductions allowed from a client's participa- tion or room and board on or after June 1, 2018. (1) Gen- eral information.

(a) This section sets the maximum guardianship fee and related cost deductions when:

- (i) A court order was entered on or after June 1, 2018; or
- (ii) The client under guardianship began receiving medicaid-funded long-term services and supports on or after June 1, 2018.

(b) This section only applies to a client who is:

(i) Eligible for and receives institutional services under chapter 182-513 WAC or home and community-based waiver services under chapter 182-515 WAC, and who is required to pay participation under WAC 182-513-1380, 182-515-1509, or 182-515-1514; or

(ii) Eligible for long-term services and supports under chapter 182-513 or 182-515 WAC, and who is required to pay only room and board.

(c) All requirements of this section remain in full force whether or not the agency appears at a guardianship proceeding.

(d) In this section, the agency does not delegate any authority in determining eligibility or post-eligibility for medicaid clients.

(i) Under the authority granted by RCW 11.92.180, the agency does not deduct more than the amounts allowed by this section from participation or room and board.

(ii) The eligibility rules under Title 182 WAC remain in full force and effect.

(e) The agency does not reduce a client's participation or room and board under this section for guardianship fees or related costs accumulated during any month that a client was not required to pay:

(i) Participation under WAC 182-513-1380, 182-515-1509, or 182-515-1514; or

(ii) Room and board under chapter 182-513 or 182-515 WAC.

(f) If the client has another fiduciary, payee, or other principal-agency relationship and the agent is allowed compensation, any monthly guardianship fee approved under this section is reduced by the agent's compensation.

(2) Maximum guardianship fee and related cost deductions.

(a) The maximum guardianship fee and related cost deductions under this section include all guardianship services provided to the client, regardless of the number of guardians appointed to a client during a period of time, or whether the client has multiple guardians appointed at the same time.

(b) Maximum guardianship fees and related cost deductions are as follows:

(i) The total deduction for costs directly related to establishing a guardianship for a client cannot exceed \$1,850;

(ii) The total deduction for guardianship-related costs cannot exceed \$1,200 during any three-year period; and

(iii) The amount of the monthly deduction for guardianship fees cannot exceed \$235 per month.

(3) For people under subsection (1)(b)(i) of this section - Participation deductions.

(a) After receiving the court order, the agency or its designee adjusts the client's current participation to reflect the deductions under WAC 182-513-1380, 182-515-1509, or 182-515-1514.

(b) The amounts of the participation deductions are the amounts under subsection (2) of this section, or the court order, whichever are less.

(c) For clients who pay room and board in addition to participation, if the client's amount of participation is insufficient to allow for the amounts under subsection (2) of this section, then, regardless of any provision of chapter 182-513 or 182-515 WAC, the client's room and board will be adjusted to allow the amounts under subsection (2) of this section.

(4) For people under subsection (1)(b)(ii) of this section - Room and board deductions.

(a) The agency adjusts the client's room and board after receiving the court order, regardless of any provision of chapter 182-513 or 182-515 WAC.

(b) The amounts of the room and board deductions are the amounts under subsection (2) of this section, or the court order, whichever are less.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-513-1505 Purpose.

WAC 182-513-1510 Definitions.

WAC 182-513-1520 Procedure to revise award letter after June 15, 1998, but before September 1, 2003.

WSR 18-10-025

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 24, 2018, 9:58 a.m., effective May 25, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule change eliminates WAC 392-121-415(2), which currently requires the office of superintendent of public instruction to deduct proceeds from state forest payments under RCW 79.22.040 and 79.22.050 from school district and charter school basic education apportionment payments. Eliminating the requirement to treat state forest revenue as a deductible revenue will allow approximately eighty school districts, mostly rural, to keep approximately \$13 to \$17 million in funds from which they currently get no benefit.

Citation of Rules Affected by this Order: Amending WAC 392-121-415.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.710.220.

Other Authority: RCW 28A.232.010, 28A.150.315.

Adopted under notice filed as WSR 18-06-106 on March 7, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 23, 2018.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-415 Basic education allocation—Deductible revenues. In addition to those funds appropriated by the legislature for basic education allocation purposes, the following locally available general fund revenues shall be included in the computation of the total annual basic education allocation of each school district or charter school pursuant to RCW 28A.150.250 and 28A.150.260 and shall be deducted from payments made pursuant to WAC 392-121-400:

(1) Proceeds from the sale, rental or lease of stone, minerals, timber, forest products, other crops and matter, and improvements from or on tax title real property managed by a county pursuant to chapter 36.35 RCW;

(2) ~~((Proceeds from state forests pursuant to RCW 79.22.040 and 79.22.050;~~

~~((3)))~~ Federal in lieu of tax payments made pursuant to RCW 84.72.020; and

~~((4)))~~ (3) Proceeds from the sale of lumber, timber, and timber products on military reservations or facilities in accordance with U.S.C. §2665, Title 10, and P.L. 97-99.

~~((5)))~~ (4) Local in lieu of tax payments including but not limited to payments made pursuant to RCW 35.82.210, 35.83.040, and 79.19.110.

Otherwise deductible revenues from any of the foregoing sources received by a school district due solely to the district's levy of a capital projects fund or debt service fund excess tax levy shall constitute nongeneral fund revenues and shall not be deducted in the computation of the district's annual basic education allocation for that school year.

WSR 18-10-030

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed April 25, 2018, 7:19 a.m., effective May 19, 2018]

Effective Date of Rule: May 19, 2018.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This rule needs to take effect before thirty-one days after filing as a condition of RCW 34.05.380 (3)(c). This rule was adopted as an emergency order under WSR 18-03-117 and is set to expire May 19, 2018. Without adoption of the rule change ending the department's collection of an applicant's place of birth, there is a risk that collection of information that does not prove identity and establishes a Washington resident's national origin could be lawfully obtained by federal law enforcement agencies for federal immigration enforcement purposes, or otherwise could be used to discriminate against a person based on national origin. See Governor's Executive Order 17-01.

Purpose: The department's current regulations require an applicant for a driver's license to provide the applicant's place of birth. A person's place of birth is not necessary for ascertaining a person's identity and should be removed. This adopted language will permanently update the department's policy and procedures for processing applications for driver licenses, identification cards, and instruction permits.

Citation of Rules Affected by this Order: Amending WAC 308-104-014 Application for driver's license or identification card.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.119.

Other Authority: Executive Order 17-01.

Adopted under notice filed as WSR 18-07-007 on March 9, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 25, 2018.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-23-184, filed 11/22/17, effective 12/23/17)

WAC 308-104-014 Application for driver's license or identification card. A person applying for a driver's license, instruction permit, or identification card must provide the following information:

(1)(a) The person's full name, current mailing and Washington residential address, and telephone number;

(b) A person applying for an identicard who does not have a permanent primary resident address may be issued an identicard at the cost of production if the person:

- (i) Is under the age of eighteen;
- (ii) Applies in person;
- (iii) Attests to a lack of permanent primary resident address at each application; and
- (iv) Provides a temporary mailing address where the identicard can be mailed.

(2) The person's physical description, including sex, height, weight, and eye color;

(3) The person's date ((and place)) of birth;

(4)(a) The person's Social Security number, if the Social Security number is required by state or federal law. If the person's Social Security number is not required by state or federal law, the person may voluntarily provide his or her Social Security number in order to assist the department in verifying identity;

(b) If the Social Security number is required by state or federal law and the person has not been issued a Social Security number, the person must submit a sworn affidavit, under penalty of perjury, stating that he or she does not have a Social Security number. The department may require that a person who is applying for a license and who has signed an affidavit under this subsection provide additional documentation satisfactory to the department establishing the person's Washington residence address;

(5) The person's mother's maiden name and whether the person is one of multiple siblings born at the same time;

(6) If the application is for a driver's license or instruction permit, whether the person has been previously licensed, where such license was issued, and under what name;

(7) If the application is for a driver's license or instruction permit, whether the person has ever had his or her driver's license or driving privilege suspended, revoked, canceled, disqualified, withheld, or denied, and if so, where and when such driving sanction was imposed and the reason for such action;

(8) If the application is for a driver's license or instruction permit, whether the person has had a mental or physical condition or is taking any medication which could impair his or her ability to operate a motor vehicle;

(9) If the application is for a driver's license and the person is under the age of eighteen, a declaration by the person's parent, guardian, or employer that he or she has read and understands the intermediate license restrictions, and a declaration by the person that he or she has read and understands the intermediate license restrictions;

(10) The person's signature and, if the application is for a driver's license or instruction permit and the person is under the age of eighteen, the signature of the person's custodial parent or legal guardian; and

(11) Any supplementary documentation as may be necessary to verify any of the information required by this section.

WSR 18-10-033

PERMANENT RULES

WENATCHEE VALLEY COLLEGE

[Filed April 25, 2018, 10:53 a.m., effective May 26, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Wenatchee Valley College has proposed amendments to its rules concerning access to public records as codified in chapter 132W-277 WAC. The purpose of the proposal is to update the college's rules to reflect recent statutory amendments to the Washington Public Records Act, chapter 42.56 RCW. In regards to WAC 132W-277-080, the amendment would repeal the college's requirement that requests for public records adhere to a specific format. In regards to WAC 132W-277-090, the college has determined that calculating the actual cost of copying public records is unduly burdensome and proposes adopting the schedule of allowable charges allowed for by RCW 42.56.120.

Citation of Rules Affected by this Order: Amending WAC 132W-277-080 and 132W-277-090.

Statutory Authority for Adoption: RCW 28B.50.140.

Other Authority: RCW 42.56.080, 42.56.120.

Adopted under notice filed as WSR 18-03-134 on April 18 [January 22], 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 18, 2018.

Jim Richardson
President

AMENDATORY SECTION (Amending WSR 14-08-013, filed 3/20/14, effective 4/20/14)

WAC 132W-277-080 Requests for public records. (1) Requests for public records shall be made in person at, or mailed to the administrative office of the district at Wenatchee Valley College, 1300 5th St, Wenatchee, WA 98801 or emailed to the address located at www.wvc.edu. In accordance with the requirements of RCW 42.56.100 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, ~~((public records are obtainable by members of the public only when those members of the public comply with the following procedures:~~

(1) A request shall be made in writing upon a form prescribed by the district which shall be available at the district administrative office. The form shall be presented to the public records officer or, if the public records officer is not available, to any member of the district's staff at the district administrative office during customary office hours. The request shall include the following information)) the district shall honor only public records requests made in person during normal office hours or by mail or email to the addresses listed above, for identifiable public records not subject to an exemption under chapter 42.56 RCW. A public records request must be for identifiable public records. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records under chapter 42.56 RCW, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records. The district shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(8) or 42.56.240(14), or other statute which exempts or prohibits disclosure of specific information or records to certain persons. The district's facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the district.

(2) No official format is required for making a records request. To help expedite the process of requesting records the district recommends that requests be made in writing upon a form prescribed by the district, which shall be available at the district administrative office or at www.wvc.edu. The district recommends that the form be presented to the public records officer or, if the public records officer is not available, to any member of the district's staff at the district administrative office during customary office hours, or mail to the district office or by email to the email address located at www.wvc.edu. The request should include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request was made;
- (c) ~~((The nature of the request;~~
- (d) ~~If the information requested is referenced within the current index maintained by the public records officer, a reference to the requested record as it is described in such current index; and~~
- (e) ~~If the requested information is not identifiable by reference to the current index, an appropriate description of the record requested.~~

(2)) A description of the record(s) requested.

(3) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer, or person to whom the request is made, to assist the member of the public in succinctly identifying the public record requested.

(4) The district may deny a bot request that is one of multiple requests from the requestor to the district within a twenty-four-hour period, if the district establishes that responding to the multiple requests would cause excessive

interference with other essential functions of the district. For purposes of this subsection, "bot request" means a request for public records that the district reasonably believes was automatically generated by a computer program or script.

AMENDATORY SECTION (Amending WSR 01-12-015, filed 5/25/01, effective 6/25/01)

WAC 132W-277-090 Copying. No fee shall be charged for the inspection of public records. ~~((The district may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records and such charges shall not exceed the amount necessary to reimburse the district for its actual costs incident to such copying.)) Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce district resources to conduct a study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending requested records. Instead of calculating the actual costs of charges for records, the district president or designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the district charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b). The district may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with the requestor. The district may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective. No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate district official. ((All charges must be paid by money order, cashier's check, or cash in advance.))~~

**WSR 18-10-045
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed April 26, 2018, 10:30 a.m., effective May 27, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order revises the alternative learning experience (ALE) rules found in WAC 392-121-182 to ensure that the statutory requirements governing full-day kindergarten (FDK), RCW 28A.150.315, are implemented in an ALE setting.

The office of superintendent of public instruction (OSPI) convened a workgroup to provide recommendations on the final rules for FDK in ALE. The workgroup included representation from OSPI's alternative learning, early learning, and learning and teaching departments, as well as ALE programs offering FDK, and ESD WaKIDS coordinators with

experience in ALE and traditional kindergarten classrooms. Additionally, OSPI performed several site visits to ALE programs to observe how they were meeting the FDK requirements.

The final rules reflect input from the collected survey information, the workgroup recommendations, site visit observations, and the recommendations of the alternative learning and learning and teaching department staff.

Citation of Rules Affected by this Order: Amending WAC 392-121-182.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.710.220.

Other Authority: RCW 28A.232.010, 28A.150.315.

Adopted under notice filed as WSR 18-06-105 on March 7, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 26, 2018.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

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 or public charter school 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 and charter schools;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts and charter schools must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district or charter school 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 and charter schools 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. This section does not apply to alternative learning experiences offered by charter schools pursuant to charter contract terms governing the operation of alternative learning experience in the school.

(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 charter school, 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 or charter school'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 charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, 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, email, 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) "Full-day kindergarten" means a program that is eligible for state-funded full-day kindergarten, as provided for in RCW 28A.150.315 in which any student's alternative learning experience enrollment is claimed as greater than 0.50 full-time equivalent.

(f) "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))~~ (g) "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))~~ (h) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

~~((h))~~ (i) "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))~~ (j) "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 or when a charter school is in session;

~~((j))~~ (k) "School-based support staff" means an employee of a school district or a charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate;

~~((k))~~ (l) "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 or charter school adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

~~((h))~~ (m) "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))~~ (n) "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))~~ (o) "WaKIDS" means the Washington kindergarten inventory of developing skills assessment provided under RCW 28A.655.080.

(p) "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 speci-

fied 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 or charter school; and

(ix) For students enrolled in full-day kindergarten:

(A) A description of curriculum activities that assist students in:

(I) Developing initial skills in the academic areas of reading, mathematics, and writing;

(II) Developing a variety of communication skills;

(III) Providing experiences in science, social studies, arts, health, physical education, and a world language other than English;

(IV) Acquiring large and small motor skills;

(V) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and

(VI) Learning through hands-on experiences.

(B) A description of learning environments that are developmentally appropriate and promote creativity.

(4) Alternative learning experience program requirements:

(a) Each student participating in an alternative learning experience must have a written student learning plan developed 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 or charter school 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 and charter schools 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 or charter school.

(d) Alternative learning experience programs providing full-day kindergarten must have:

(i) Multiple weekly, in-person, and on-site observations of students by certificated teachers each week during the eight-week WaKIDS assessment window.

(ii) At least a one thousand annual hour instructional program.

(5) Required school district or charter school board policies for alternative learning experiences: The board of directors of a school district or charter school board 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) or charter school official(s) responsible for overseeing the district's or charter school'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 or charter school board 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 or charter school'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 or charter schools 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, or charter school or charter school 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 and charter schools 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 or charter school'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 or charter school 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 or charter school'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 or charter school's regular instructional program. Items so purchased remain the property of the school district or charter school upon program completion.

(i) School districts and charter schools 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 or charter school's regular instructional program. This prohibition extends to a district's or charter school's contracted providers of alternative learning experience programs, and each district and charter school shall be responsible for monitoring the compliance of its contracted providers. Nothing herein shall:

(i) Prohibit school districts or charter schools from contracting with school district or charter school employees to provide services or experiences to students; or

(ii) Prohibit school districts or charter schools 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 or charter schools that contract with school district or charter school employees to provide services or experiences to students, 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 or charter school 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 under-

standing of the difference. Such documentation must be retained by the district or charter school and made available for audit.

(ii) In the event a school district or charter school cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district or charter school 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 or charter school 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, or charter school or charter school contractor, is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district or charter school 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 and charter schools 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, school district contractor, charter school, or charter school 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 or charter school 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 or charter school.

(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.

(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 and charter schools 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 dis-

trict's or charter school'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 or charter school 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 or charter school 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 or charter school. 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 or charter school 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 district 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.

(d) School districts and charter schools offering alternative learning experience courses or course work to students enrolled in full-day kindergarten under RCW 28A.150.315 must administer WaKIDS to identify the skills, knowledge, and characteristics of kindergarten students at the beginning of the school year in order to support social-emotional, physical, and cognitive growth and development of individual children; support early learning provider and parent involvement; and inform instruction.

To maintain fidelity to the state WaKIDS assessment protocol, the WaKIDS assessment requires multiple weekly, in-person, and on-site observations of students by certificated teachers each week during the eight-week assessment window.

(9) Reporting requirements:

(a) Each school district or charter school 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. Each school district offering alternative learning experience courses or course work must further report monthly to the superintendent information about the resident and serving districts of such students.

(b) Each school district or charter school 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 or charter school's regular instructional program.

(c) Each school district or charter school 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.

(iii) The number of students enrolled in full-day kindergarten at any time during the school year.

(iv) The number of students enrolled in full-day kindergarten who participated in the WaKIDS assessment prior to the assessment deadline.

(d) Each school district or charter school 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. School districts and charter schools must designate alternative learning experience courses as such when reporting course information to the *Comprehensive Education Data and Research System*.

(10) Documentation and record retention requirements: School districts and charter schools 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 and charter schools 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 or charter school board 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 18-10-049
PERMANENT RULES
OFFICE OF THE
STATE TREASURER

[Filed April 26, 2018, 2:37 p.m., effective May 27, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule is to add a new rule regarding the Public Records Act copying fees. The new WAC is enacted as WAC 474-01-091 Copying fees, and the old WAC is repealed WAC 474-01-090 Copying. As per RCW 42.56.120, chapter 304, Laws of 2017, the office of the state treasurer has adopted the act's default copy fee schedule because the office has found and placed in a rule that it is not calculating the actual costs of copying since to do so would be unduly burdensome.

Citation of Rules Affected by this Order: New WAC 474-01-091; and repealing WAC 474-01-090.

Statutory Authority for Adoption: RCW 42.56.100, 42.56.040 (1)(d), 42.56.120, 43.08.050.

Other Authority: Chapter 304, chapter 2017, Laws of 2018 [Chapter 304, Laws of 2017].

Adopted under notice filed as WSR 18-07-100 on March 20, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 26, 2018.

Shawn D. Myers
Assistant State Treasurer

NEW SECTION

WAC 474-01-091 Copying fees—Payments. (1) The following copy fees and payment procedures apply to the office's copying of records on or after the effective date of this rule.

(2) Pursuant to RCW 42.56.120 (2)(b), the office is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons: (i) The office does not have the resources to conduct a study to determine all its actual copying costs; (ii) to conduct such a study would interfere with other essential agency functions; and, (iii) through the 2017 legislative process, the public and requesters have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4). Therefore, as authorized in RCW 42.56.120, the agency shall implement a fee schedule consistent with the Public Records Act, as it is more cost efficient, expeditious and in the public interest for the agency to adopt the state legislature's approved fees and costs for most of the agency's records.

(3) The office will charge for copies of records pursuant to the default fees in RCW 42.56.120(3). Under RCW 42.56.-

130, the office may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The office may enter into an alternative fee agreement with a requester under RCW 42.56.120(4). The charges for copying methods used by the office are summarized in the fee schedule available on the office's website at www.tre.wa.gov.

(4) Requesters are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions.

(a) It is within the discretion of the public records officer to waive copying fees when: (i) all of the records responsive to an entire request are paper copies only and are fifty pages or fewer; or (ii) all of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requester will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The office will notify the requester of when payment is due.

(7) Payment should be made by check or money order to the Office of the State Treasurer. The office prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The office will close a request when a requester fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 474-01-090 Copying

**WSR 18-10-052
PERMANENT RULES**

**OFFICE OF
FINANCIAL MANAGEMENT**

[Filed April 26, 2018, 4:08 p.m., effective May 27, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To establish official pay dates for state officers and employees for calendar year 2019.

Citation of Rules Affected by this Order: Amending WAC 82-50-021.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Adopted under notice filed as WSR 18-04-092 on February 5, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 26, 2018.

Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-13-073, filed 6/16/17, effective 7/17/17)

WAC 82-50-021 Official lagged, semimonthly pay dates established. Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semimonthly pay dates for calendar years (~~2017 and~~) 2018 and 2019:

CALENDAR YEAR 2017	CALENDAR YEAR 2018
Tuesday, January 10, 2017	Wednesday, January 10, 2018
Wednesday, January 25, 2017	Thursday, January 25, 2018
Friday, February 10, 2017	Friday, February 9, 2018
Friday, February 24, 2017	Monday, February 26, 2018
Friday, March 10, 2017	Friday, March 9, 2018
Friday, March 24, 2017	Monday, March 26, 2018
Monday, April 10, 2017	Tuesday, April 10, 2018
Tuesday, April 25, 2017	Wednesday, April 25, 2018
Wednesday, May 10, 2017	Thursday, May 10, 2018
Thursday, May 25, 2017	Friday, May 25, 2018
Friday, June 9, 2017	Monday, June 11, 2018
Monday, June 26, 2017	Monday, June 25, 2018
Monday, July 10, 2017	Tuesday, July 10, 2018
Tuesday, July 25, 2017	Wednesday, July 25, 2018
Thursday, August 10, 2017	Friday, August 10, 2018
Friday, August 25, 2017	Friday, August 24, 2018
Monday, September 11, 2017	Monday, September 10, 2018
Monday, September 25, 2017	Tuesday, September 25, 2018
Tuesday, October 10, 2017	Wednesday, October 10, 2018
Wednesday, October 25, 2017	Thursday, October 25, 2018

<u>((CALENDAR YEAR 2017</u>	<u>CALENDAR YEAR 2018</u>
<u>Thursday, November 9, 2017</u>	<u>Friday, November 9, 2018</u>
<u>Wednesday, November 22, 2017</u>	<u>Monday, November 26, 2018</u>
<u>Monday, December 11, 2017</u>	<u>Monday, December 10, 2018</u>
<u>Friday, December 22, 2017</u>	<u>Monday, December 24, 2018</u>))
<u>CALENDAR YEAR 2018</u>	<u>CALENDAR YEAR 2019</u>
<u>Wednesday, January 10, 2018</u>	<u>Thursday, January 10, 2019</u>
<u>Thursday, January 25, 2018</u>	<u>Friday, January 25, 2019</u>
<u>Friday, February 9, 2018</u>	<u>Monday, February 11, 2019</u>
<u>Monday, February 26, 2018</u>	<u>Monday, February 25, 2019</u>
<u>Friday, March 9, 2018</u>	<u>Monday, March 11, 2019</u>
<u>Monday, March 26, 2018</u>	<u>Monday, March 25, 2019</u>
<u>Tuesday, April 10, 2018</u>	<u>Wednesday, April 10, 2019</u>
<u>Wednesday, April 25, 2018</u>	<u>Thursday, April 25, 2019</u>
<u>Thursday, May 10, 2018</u>	<u>Friday, May 10, 2019</u>
<u>Friday, May 25, 2018</u>	<u>Friday, May 24, 2019</u>
<u>Monday, June 11, 2018</u>	<u>Monday, June 10, 2019</u>
<u>Monday, June 25, 2018</u>	<u>Tuesday, June 25, 2019</u>
<u>Tuesday, July 10, 2018</u>	<u>Wednesday, July 10, 2019</u>
<u>Wednesday, July 25, 2018</u>	<u>Thursday, July 25, 2019</u>
<u>Friday, August 10, 2018</u>	<u>Friday, August 9, 2019</u>
<u>Friday, August 24, 2018</u>	<u>Monday, August 26, 2019</u>
<u>Monday, September 10, 2018</u>	<u>Tuesday, September 10, 2019</u>
<u>Tuesday, September 25, 2018</u>	<u>Wednesday, September 25, 2019</u>
<u>Wednesday, October 10, 2018</u>	<u>Thursday, October 10, 2019</u>
<u>Thursday, October 25, 2018</u>	<u>Friday, October 25, 2019</u>
<u>Friday, November 9, 2018</u>	<u>Friday, November 8, 2019</u>
<u>Monday, November 26, 2018</u>	<u>Monday, November 25, 2019</u>
<u>Monday, December 10, 2018</u>	<u>Tuesday, December 10, 2019</u>
<u>Monday, December 24, 2018</u>	<u>Tuesday, December 24, 2019</u>

WSR 18-10-054
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed April 27, 2018, 7:45 a.m., effective June 1, 2018]

Effective Date of Rule: June 1, 2018.

Purpose: The Washington department of fish and wildlife (WDFW) adopts amendments to sections in chapter 220-660 WAC, Hydraulic code rules, these rules regulate aspects of construction projects in state waters for the protection of fish life. The purpose of this rule making is to incorporate statutory changes, accommodate other changed conditions to protect fish life, or respond to requests by customers and other interested parties for improved clarity.

WDFW's primary objective for initiating rule making at this time is to adopt emergency rule (WSR 17-22-013) modifying authorized work times under WAC 220-660-300 for the Sultan River as a permanent rule.

Other subjects WDFW has identified for rule making include the following:

- Consistency with chapter 77.55 RCW with respect to the curtailment of application fees (WAC 220-660-050);
- Ensure authorized work times in WAC 220-660-300 for the Similkameen and Sultan rivers are based on the best available science;
- Update the department's mailing address published in WAC 220-660-460 and 220-660-470; and
- Make other essential changes to WAC 220-660-050 and 220-660-300 that clarify language or accommodate administrative changes.

Hydraulic code rules in chapter 220-660 WAC are significant legislative rules under RCW 34.05.328.

Citation of Rules Affected by this Order: Amending WAC 220-660-050 Procedures, 220-660-300 Mineral prospecting, 220-660-460 Informal appeals, and 220-660-470 Formal appeals.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.047, 77.55.021, 77.55.091, 77.55.051, 77.55.081, 34.05.328, and 34.05.350.

Adopted under notice filed as WSR 18-03-145 on January 22, 2018.

Changes Other than Editing from Proposed to Adopted Version: Two changes were made in response to public comments and one change corrects an error made in articulating the original proposal:

WAC 220-660-050 (9)(c)(iii)(A), language is modified to clarify that an easement holder signature is acceptable as consent for department staff entering the property on which the project is located to inspect the project site or work. WDFW responded to comments from utility companies and consulted with assistant attorneys general in devising the final language.

WAC 220-660-050 (11)(c), language is modified so documentation of and justification for an expedited or emergency hydraulic project approval (HPA) must be placed in the record within three days of issuing the written HPA. The proposed language would have required that documentation be filed before the HPA was issued, which commenters were concerned would delay permit issuance.

WAC 220-660-300(7), authorized work time for the Sultan River from the mouth to the diversion dam at river mile 9.4 is modified to match the work time for the new segment immediately above the diversion dam. The segment below the diversion dam had been overlooked for amendment in the initial proposal.

A final cost-benefit analysis is available by contacting Randi Thurston, P.O. Box 43234, Olympia, WA 98504-3234, phone 360-902-2602, fax 360-902-2946, TTY 360-902-2207, email HPARules@dfw.wa.gov, HPA rule-making web site <http://wdfw.wa.gov/licensing/hpa/rulemaking/>, the final cost-benefit analysis is contained in the 2018 Hydraulic code rule change—Final regulatory analyses document that also contains the least burdensome alternative analysis, Regulatory Fairness Act compliance discussion, and significant legislative rule procedural requirements. This document is available at the HPA rule making web site <http://wdfw.wa.gov/licensing/hpa/rulemaking/>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 20, 2018.

Brad Smith, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

WAC 220-660-050 Procedures—Hydraulic project approvals. (1) Description:

(a) There are six categories of HPAs: Standard, emergency, imminent danger, chronic danger, expedited, and pamphlet. These categories are discussed in more detail throughout this section. Most HPAs issued by the department are standard HPAs. Guidance for applying for an HPA is provided on the department's web site.

(b) HPAs do not exempt a person from obtaining other necessary permits and following the rules and regulations of local, federal, and other Washington state agencies.

(2) **Fish life concerns:** Construction and other work activities in or near water bodies can kill or injure fish life directly and can damage or destroy habitat that supports fish life. Damaged or destroyed habitat can continue to cause lost fish life production for as long as the habitat remains altered. HPAs help ensure construction and other work is done in a manner that protects fish life.

(3) **Standard HPA:**

(a) The department issues a standard HPA when a hydraulic project does not qualify for an emergency, imminent danger, chronic danger, expedited or pamphlet HPA. An individual standard HPA is limited to a single project site. Some special types of standard HPAs may cover multiple project sites.

(b) Special types of standard HPAs:

(i) Fish habitat enhancement project (FHPEP) HPA.

(A) Projects must satisfy the requirements in RCW 77.55.181(1) to be processed as a fish habitat enhancement project.

(B) Projects that are compensatory mitigation for a development or other impacting project are not eligible. This includes proposals for mitigation banks or in-lieu fee mitigation proposals. The sole purpose of the project must be for fish habitat enhancement.

(C) The department may reject an FHPEP proposed under RCW 77.55.181 if the local government raises concerns during the comment period that impacts from the project cannot be mitigated by conditioning the HPA. The department will reject an FHPEP if the department determines that the size

and the scale of the project raises public health or safety concerns. If the department rejects a project for streamlined processing, the department must provide written notice to the applicant and local government within forty-five days of receiving the application.

(D) An applicant whose fish habitat enhancement project is rejected may submit a new complete written application with project modifications or additional information required for streamlined processing. An applicant may request that the department consider the project under standard HPA processing procedures by submitting a new complete written application for standard processing.

(ii) Multisite HPA.

(A) A standard HPA may authorize work at multiple project sites if:

(I) All project sites are within the same water resource inventory area (WRIA) or tidal reference area;

(II) The primary hydraulic project is the same at each site so there is little variability in HPA provisions across all sites; and

(III) Work will be conducted at no more than five project sites to ensure department staff has sufficient time to conduct site reviews.

(B) The department may make an exception for projects the department has scoped prior to application submittal or when no prepermit issuance site visits are needed.

(iii) General HPA.

(A) The department may issue general HPAs to government agencies, organizations, or companies to perform the same work in multiple water bodies across a large geographic area.

(B) To qualify for a general HPA, projects must protect fish life:

(I) Technical provisions in the HPA must fully mitigate impacts to fish life;

(II) The projects must be relatively simple so that the HPA provisions are the same across all sites, and can therefore be permitted without site-specific provisions; and

(III) The projects must have little or no variability over time in site conditions or work performed.

(C) The general HPA will include a requirement that notice be given to the department when activities utilizing heavy equipment begin. The department may waive this requirement if the permittee and department meet annually to review scheduled activities for the upcoming year.

(D) The department and the applicant may negotiate the scope and scale of the project types covered. The department and the applicant must agree on the fish protection provisions required before the application is submitted.

(E) The department may reject applications for a general HPA if:

(I) The proposed project does not meet the eligibility requirements described in subsection (3)(b)(iii)(B) of this section; or

(II) The department and the applicant cannot agree on the fish protection provisions.

(F) The department must provide written notice of rejection of a general HPA application to the applicant. The applicant may submit a new complete written application with project modifications or additional information required for

department consideration under standard HPA processing procedures.

(iv) "Model" HPA.

(A) The department will establish a "model" HPA application and permitting process for qualifying hydraulic projects. To qualify, an individual project must comply with the technical provisions established in the application. Hydraulic projects that qualify for the model process must:

(I) Fully mitigate impacts to fish life in the technical provisions of the HPA;

(II) Be a low complexity project that minimizes misinterpretation of the HPA provisions allowing the HPA to be permitted without site-specific provisions; and

(III) Meet all of the eligibility requirements described in the model application.

(B) If needed to confirm project eligibility, the department may conduct a site visit before approving or rejecting a model application.

(C) The department may reject applications for model HPAs if:

(I) The plans and specifications for the project are insufficient to show that fish life will be protected; or

(II) The applicant or authorized agent does not fill out the application completely or correctly.

(D) The department must provide written notice of rejection of an application to the applicant. The applicant may submit a new complete written application with project modifications or additional information required for department consideration under standard HPA processing procedures under this section, or may submit a new model application if the department rejected the application because the person did not fill out the original application correctly.

(4) Emergency HPA:

(a) Declaring an emergency.

(i) Authority to declare an emergency, or continue an existing declaration of emergency, is conveyed to the governor, the department, or to a county legislative authority by statute. An emergency declaration may be made when there is an immediate threat to life, the public, property, or of environmental degradation;

(ii) The county legislative authority must notify the department, in writing, if it declares an emergency;

(iii) Emergency declarations made by the department must be documented in writing;

(iv) When an emergency is declared, the department must immediately grant verbal approval upon request for work to protect life or property threatened by waters of the state because of the emergency, including repairing or replacing a stream crossing, removing obstructions, or protecting stream banks. The department may also grant written approval if the applicant agrees.

(b) If the department issues a verbal HPA, the department must follow up with a written HPA documenting the exact provisions of the verbal HPA within thirty days of issuing the verbal HPA.

(c) Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for emergency HPAs.

(d) The department may require a person to submit an as-built drawing within thirty days after the hydraulic project authorized in the emergency HPA is completed.

(e) Within ninety days after a hydraulic project authorized in an emergency HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

(5) Imminent danger HPA:

(a) Authority to declare imminent danger is conveyed to the department or county legislative authority by statute. The county legislative authority must notify the department in writing if it determines that an imminent danger exists.

(b) Imminent danger declarations made by the department must be documented in writing.

(c) When imminent danger exists, the department must issue an expedited HPA upon request for work to remove obstructions, repair existing structures, restore banks, and to protect fish life or property.

(d) When imminent danger exists, and before starting work, a person must submit a complete written application to the department to obtain an imminent danger HPA. Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for imminent danger HPAs.

(e) Imminent danger HPAs must be issued by the department within fifteen calendar days after receiving a complete written application. Work under an imminent danger HPA must be completed within sixty calendar days of the date the HPA is issued.

(f) Within ninety days after a hydraulic project authorized in an imminent danger HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

(6) Chronic danger HPA:

(a) The department must issue a chronic danger HPA upon request for work required to abate the chronic danger. This work may include removing obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish life, or protecting property.

(b) Authority to declare when a chronic danger exists is conveyed to a county legislative authority by statute. A chronic danger is a condition in which any property, except for property located on a marine shoreline, has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway.

(c) The county legislative authority must notify the department in writing when it determines a chronic danger exists.

(d) When chronic danger is declared, and before starting work, a person must submit a complete written application to the department to obtain a chronic danger HPA. Unless the project also satisfies the requirements for fish habitat enhancement projects identified in RCW 77.55.181 (1)(a)(ii), compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is required. Projects that meet the requirements in RCW 77.55.181 (1)(a)(ii), will be processed under RCW 77.55.181(3), and the provisions of chapter 43.21C RCW will not be required.

(7) Expedited HPA:

(a) The department may issue an expedited HPA when normal processing would result in significant hardship for the applicant or unacceptable environmental damage would occur.

(b) Before starting work, a person must submit a complete written application to the department to obtain an HPA.

(c) Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for expedited HPAs. The department must issue expedited HPAs within fifteen calendar days after receipt of a complete written application. Work under an expedited HPA must be completed within sixty calendar days of the date the HPA is issued.

(d) Within ninety days after a hydraulic project authorized in an expedited HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

(8) Pamphlet HPA:

(a) There are two pamphlet HPAs, *Gold and Fish* and *Aquatic Plants and Fish*, that cover the most common types of mineral prospecting and removing or controlling aquatic plants, respectively. A person must follow the provisions in the pamphlet. If a person cannot follow the provisions, or disagrees with any provision, the permittee must apply for a standard HPA before starting the hydraulic project.

(b) A person must review a pamphlet HPA before conducting the authorized hydraulic project.

(c) When a pamphlet HPA is used, the permittee must have the pamphlet HPA on the job site when conducting work and the pamphlet must be immediately available for inspection by the department upon request.

(d) All persons conducting the project must follow all provisions of the pamphlet HPA.

(e) The department may grant exceptions to a pamphlet HPA only if a person applies for a standard individual HPA for the project.

(f) Pamphlet HPAs do not exempt a person from obtaining other appropriate permits and following the rules and regulations of local, federal, and other Washington state agencies.

(9) How to get an HPA:

(a) How to get a pamphlet HPA: A person can download and save or print a pamphlet HPA from the department's web site. A person may also request a pamphlet HPA from the department either verbally or in writing.

(b) How to get an emergency HPA: Upon an emergency declaration, and before starting emergency work, a person must obtain a verbal or written HPA from the department. A complete written application is not required. However, a person must provide adequate information describing the proposed action. Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act), is not required for emergency HPAs. A person may request a verbal or written emergency HPA from the biologist who issues HPAs for the geographic area where the emergency is located (~~(during normal business hours,)~~ Monday through Friday ~~(;)~~ from 8:00 a.m. to 5:00 p.m. If the biologist cannot be contacted or it is after business hours, a person must contact

the emergency hotline at 360-902-2537 to request an emergency HPA.

(c) How to get a standard, expedited, or chronic danger HPA:

(i) A person must submit a complete written application to the department to obtain an HPA unless the project qualifies for one of the following:

(A) A pamphlet HPA, subsection (3) of this section; or

(B) An emergency HPA, subsection (5) of this section.

(ii) When applying for an HPA, a person must submit one of the following application forms to the department:

(A) The electronic online application developed by the department;

(B) The current version of the JARPA;

(C) The current version of the JARPA including the most recent version of the application for streamlined processing of fish habitat enhancement projects when applying for streamlined processing under RCW 77.55.181. These may be submitted to the department as attachments to the online application form;

(D) The most recent version of the model HPA application or other department-approved alternative applications available from the department's public web site; or

(E) The current version of the JARPA if applying for approval of a watershed restoration project under RCW 77.55.171. This may be submitted to the department as an attachment to the online application form.

(iii) A complete application package for an HPA must contain:

(A) A completed application form signed and dated by the applicant, ~~((landowner))~~ landowner(s) or landowner ~~((representative))~~ representative(s) of any project site or off-site mitigation location, and the authorized agent, if any. Completing and submitting the application forms through the department's online permitting system is the same as providing signature and date, if all documents required during the online application process are submitted to the department. The property owner, if different than the applicant, or easement holder must consent to the department staff entering the property where the project is located to inspect the project site or any work;

(B) Plans for the overall project;

(C) Complete plans and specifications for all aspects of the proposed construction or work waterward of the mean higher high water line in salt water, or waterward of the ordinary high water line in fresh water;

(D) A description of the measures that will be implemented for the protection of fish life, including any reports assessing impacts from the hydraulic project to fish life and habitat that supports fish life, and plans to mitigate those impacts to ensure the project results in no net loss;

(E) For a standard or chronic danger HPA application, a copy of the written notice from the lead agency demonstrating compliance with any applicable requirements of the State Environmental Policy Act under chapter 43.21C RCW, unless otherwise provided for in chapter 77.55 RCW; or the project qualifies for a specific categorical exemption under chapter 197-11 WAC;

(F) Written approval by one of the entities specified in RCW 77.55.181 if the applicant is proposing a fish enhancement project;

~~(G) ((Payment of the application fee required under chapter 77.55 RCW. This fee must be submitted with the application or paid under a billing agreement established in advance with the department unless the project is one of the following project types that are exempt from the application fee:~~

~~(I) Project type approved under pamphlet permits;~~

~~(II) Mineral prospecting and mining;~~

~~(III) Projects on farm and agricultural land, as defined in RCW 84.34.020;~~

~~(IV) Projects reviewed by a department biologist on contract with the applicant; or~~

~~(V) Modification of permits issued for projects applied for before July 10, 2012; and~~

~~(H) Applicants seeking approval under the farm and agricultural land fee exemption must provide a copy of the county assessor's classification of the property on which the project occurs as farm and agricultural land as that term is defined in RCW 84.34.020.) For an expedited application, an explanation of why normal processing would result in significant hardship for the applicant or unacceptable environmental damage.~~

(iv) HPA application submission:

(A) A person must submit the complete application package:

(I) Using the department's online permitting system;

(II) Sending the package via mail to:

Department of Fish and Wildlife

P.O. Box 43234

Olympia, ~~((Washington))~~ WA 98504-3234;

(III) Email: HPAapplications@dfw.wa.gov;

(IV) Fax: 360-902-2946;

(V) Uploading to a file transfer protocol site acceptable to the department; or

(VI) ~~((Hand-delivering))~~ Hand delivering to the department at 1111 Washington Street S.E., Olympia, WA 98504, Habitat Program, Fifth Floor. The department will not accept applications submitted elsewhere or by other than the applicant or authorized agent.

(B) Dimensions of printed documents submitted with the application package may not be larger than eleven inches by seventeen inches. Pages of documents submitted may not be bound except by paper clips or other temporary fastening.

(C) A person must submit applications and supporting documents with a combined total of thirty or more pages as digital files rather than printed documents. All digital files must be in formats compatible with Microsoft Word, Microsoft Excel, or Microsoft Access programs or in PDF, TIFF, JPEG, or GIF formats.

(D) Applications submitted to the habitat program during normal business hours are deemed received on the date the habitat program receives the application. The department may declare applications received by the habitat program after normal business hours as received on the next business day.

(10) Incomplete applications:

(a) Within ten days of receipt of the application, the department must determine whether an application meets the requirements of this section. If the department determines the application does not meet the requirements, the department will provide written or emailed notification of an incomplete application to the applicant or authorized agent. This written or emailed notification must include a description of information needed to make the application complete. The department may return the incomplete application to the applicant or authorized agent or hold the application on file until it receives the missing information. The department will not begin to process the application until it receives all information needed to complete the application.

(b) The applicant or authorized agent must submit additional information in response to a written notification of incomplete application through the department's online permitting system or to the department's habitat program, Olympia headquarters office. The department will not accept additional information submitted elsewhere or by other than the applicant or authorized agent.

(c) The department may ~~((not process))~~ close any application that has been incomplete for more than ~~((six))~~ twelve months. The department must provide the applicant or authorized agent with written notification at least one week before closing the application and must provide the option for the applicant or authorized agent to postpone the closure for up to one year. The department must provide the applicant with written notification at the time it closes the application ~~((expires))~~. After an application is closed, the applicant or authorized agent must submit a new complete application to receive further consideration of the project.

~~((Refund of application fee: The application fee is nonrefundable except when the application fee was paid but the proposed project is not a hydraulic project and therefore does not require an HPA, or the project is exempt from the fee. Upon determination that an application qualifies for a refund, the department must issue the refund within one week.~~

~~((12))~~ Application review period:

(a) Once the department determines an application is complete, the department will provide to tribes and local, state, and federal permitting or authorizing agencies a seven-calendar-day review and comment period. The department will not issue the HPA permit before the end of the review period to allow all interested tribes and agencies to provide comments to the department. The department may consider all written comments received when issuing or provisioning the HPA. The review period is concurrent with the department's overall review period. Emergency, imminent danger, expedited, and modified HPAs are exempt from the review period requirement.

(b) Except for emergency, imminent danger, and expedited HPAs, the department will grant or deny approval within forty-five calendar days of the receipt of a complete written application. The department will grant approval of imminent danger and expedited HPAs within fifteen days of the receipt of a complete written application. The department will grant approval of emergency HPAs immediately upon request if an emergency declaration has been made.

~~((13))~~ (c) If the department declares an imminent danger, applicant hardship, or immediate threat regarding an application for expedited or emergency HPA, the department must place written documentation of that declaration and justification for it in the application record within three days of issuing the written HPA.

(12) Suspending the review period:

(a) An applicant or authorized agent may request a delay in processing a standard HPA. The applicant or authorized agent must submit a written request for the delay through the department's online permitting system or to the habitat program's Olympia headquarters office. The department may not accept delay requests submitted elsewhere or by a person other than the applicant or authorized agent.

(b) If the department suspends the review period, the department must immediately notify the applicant in writing of the reasons for the delay. The department may suspend the review period (with or without the applicant's concurrence) if:

(i) The site is physically inaccessible for inspection or not in a condition to be evaluated (i.e., snow cover, frozen);

(ii) The applicant or authorized agent remains unavailable or unable to arrange for a field evaluation of the proposed project within ten working days of the department's receipt of the application;

(iii) The applicant or authorized agent submits a written request for a delay;

(iv) The department is issuing a permit for a stormwater discharge and is complying with the requirements of RCW 77.55.161 (3)(b); or

(v) The department is reviewing the application as part of a multiagency permit streamlining effort, and all participating permitting and authorizing agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(c) The department may ~~((not process))~~ close any application if the application has been delayed for processing more than ~~((six))~~ twelve months for any of the reasons identified in subsection ~~((13))~~ (12)(a) or (b) of this section. The department must provide the applicant or authorized agent with written notification at least one week before closing the application and must provide the option for the applicant or authorized agent to postpone the closure for up to one year. The department must provide the applicant with written notification at the time it closes the application ((expires)). After an application is closed, the applicant or authorized agent must submit a new complete application to receive further consideration of the project.

~~((14))~~ **(13) Issuing or denying a hydraulic project approval:**

(a) Protection of fish life is the only grounds upon which the department may deny or provision an HPA, as provided in RCW 77.55.021. The department may not unreasonably withhold or condition approval of a permit. The HPA provisions must reasonably relate to the project and must ensure that the project provides proper protection for fish life. The department may not impose provisions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(b) The department may not deny an emergency, imminent danger, chronic danger, or an expedited HPA, as provided in RCW 77.55.021. In addition, the department may not deny an HPA for a project that complies with the conditions of RCW 77.55.141. However, these projects must meet the mitigation provisions in WAC 220-660-080 and the provisions in WAC 220-660-100 through 220-660-450 that are included in an HPA. The department will deny any other type of HPA or request to change an existing HPA when the project will not protect fish life, unless enough mitigation can be assured by provisioning the HPA or modifying the proposal. If the department denies approval, the department must provide the applicant with a written statement of the specific reasons why and how the proposed project would adversely affect fish life, as provided in RCW 77.55.021.

(c) The department may place specific time limitations on project activities in an HPA to protect fish life.

(d) The department may require a person to notify the department before construction starts, upon project completion, or at other times that the department deems necessary while the permit is in effect. The department may also require a person to provide periodic written reports to assess permit compliance.

(e) The HPA must contain provisions that allow for minor modifications to the work timing, plans, and specifications of the project without requiring the reissuance of the permit, as long as the modifications do not adversely affect fish life or the habitat that supports fish life. The permittee should contact the habitat program's Olympia headquarters office through email or the department's online permit application system to request a minor modification.

(f) A person may propose or conduct a hydraulic project under an environmental excellence program agreement authorized under chapter 43.21K RCW. These projects must be applied for and permitted under the requirements of chapter 43.21K RCW.

~~((15))~~ **(14) Hydraulic project approval expiration time periods:**

(a) Except for emergency, imminent danger, expedited, and pamphlet HPAs, the department may grant standard HPAs that are valid for up to five years. The permittee must demonstrate substantial progress on construction of the portion of the project authorized in the HPA within two years of the date of issuance.

(b) Imminent danger and expedited HPAs are valid for up to sixty days, and emergency HPAs are valid for the expected duration of the emergency hydraulic project.

(c) Pamphlet HPAs remain in effect indefinitely until modified or rescinded by the department.

(d) The following types of agricultural hydraulic project HPAs remain in effect without the need for periodic renewal; however, a person must notify the department before starting work each year:

(i) Seasonal work that diverts water for irrigation or stock watering; and

(ii) Stream bank stabilization projects to protect farm and agricultural land if the applicant can show that the problem causing the erosion occurs annually or more frequently. Evidence of erosion may include history of permit application,

approval, or photographs. Periodic floodwaters alone do not constitute a problem that requires an HPA.

~~((16))~~ **(15) Requesting a time extension, renewal, modification, or transfer of a hydraulic project approval:**

(a) The permittee may request a time extension, renewal, ~~((or))~~ modification, or transfer of an active HPA. Before the HPA expires, the permittee or authorized agent must submit a written request through the department's online permitting system or to the habitat program's Olympia headquarters office. The department may not accept requests for delay, renewal, ~~((or))~~ modification, or transfer of an HPA submitted elsewhere or by a person other than the permittee or authorized agent. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the ~~((control))~~ permit number or application identification number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA if requesting a time extension, renewal, or modification, the reason for the requested change, the date of the request, ~~((payment of the application fee if the request is for a major modification and the original application was subject to an application fee,))~~ and the requestor's signature. Requests for transfer of an HPA to a new permittee or authorized agent must additionally include a signed, written statement that the new permittee or authorized agent agrees to the conditions of the HPA, that they agree to allow the department access to the project location to inspect the project site, mitigation site, or any work related to the project, and that they will not conduct any project activities until the department has issued approval.

(b) Requests for time extensions, renewals, or modifications of HPAs are deemed received on the date received by the department. The department may declare applications submitted to habitat program after normal business hours as received on the next business day.

(c) Within forty-five days of the requested change, the department must approve or deny the request for a time extension, renewal, ~~((or))~~ modification, ~~((or))~~ or transfer of an approved HPA.

(d) Unless the new permittee or authorized agent requests a time extension, renewal, or modification of an approved HPA, the department may change only the name and contact information of the permittee or authorized agent and must not alter any provisions of the HPA except the project or location start dates when granting a transfer.

(e) A permittee may request a modification or renewal of an emergency HPA until the emergency declaration expires or is rescinded. Requests for changes to emergency HPAs may be verbal, but must contain all of the information in (a) of this subsection ~~((except that modifications requiring an application fee do not require payment of the fee at the time of the request. The department will invoice the permittee upon committing the HPA to writing)).~~

~~((or))~~ (f) The department must not modify or renew an HPA beyond the applicable five-year or sixty-day periods. A person must submit a new complete application for a project needing further authorization beyond these time periods.

~~((or))~~ (g) The department will issue a letter documenting an approved minor modification(s) and a written HPA documenting an approved major modification(s) or transfer.

~~((17))~~ **(16) Modifications of a hydraulic project approval initiated by the department:**

(a) After consulting with the permittee, the department may modify an HPA because of changed conditions. The modification becomes effective immediately upon issuance of a new HPA.

(b) For hydraulic projects that divert water for agricultural irrigation or stock watering, or when the hydraulic project or other work is associated with stream bank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the department must show that changed conditions warrant the modification in order to protect fish life.

~~((c) The department may not charge an application fee for modifications to HPAs initiated by the department.~~

~~(18) Requesting a transfer of a hydraulic project approval: An HPA is not transferable to another person. A person wishing to conduct a hydraulic project must submit a new complete application package.)~~

(17) Revoking an HPA.

(a) The department may revoke an HPA under the following conditions:

(i) At the written request of the permittee or authorized agent;

(ii) As the result of an informal or formal appeal decision;

(iii) As the result of a court ruling finding that the department issued the HPA in error;

(iv) Following change of a determination of nonsignificance or mitigated determination of nonsignificance to a determination of significance by a lead agency under chapter 43.21C RCW that applies to the hydraulic project approved by the HPA;

(v) The applicant did not correctly identify compliance with the requirements of chapter 43.21C RCW in the application for an HPA and the department was unaware of the error until after the permit was issued;

(vi) Changed physical or biological conditions at the site of the hydraulic project have occurred before project initiation such that fish life cannot be protected if the project proceeds under the requirements of the existing HPA;

(vii) The permittee has not demonstrated substantial progress on construction of the hydraulic project within two years of the date of issuance as required in RCW 77.55.021 (9)(a). Substantial progress means initiation of work at any of the project locations identified in the HPA;

(viii) Duplicate HPAs have been issued for the same hydraulic project.

(b) The department must provide the permittee or authorized agent with written notification before revoking the HPA.

(c) The department must notify the permittee or authorized agent in writing immediately upon revoking the HPA.

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

WAC 220-660-300 Mineral prospecting. (1) Description: Mineral prospecting projects excavate, process, or classify aggregate using hand-held mineral prospecting tools and mineral prospecting equipment. When prospectors locate

valuable minerals through prospecting, they may attempt to recover larger quantities of the minerals using a variety of small motorized equipment, including suction dredges, high bankers, and heavy equipment. The rules in this section apply to using hand-held mineral prospecting tools and small motorized equipment.

(2) **Fish life concerns:** Mineral prospecting and mining activities can harm fish life and habitat that supports fish life.

(a) Direct impacts from mineral prospecting and mining activities may include:

(i) Mortality from the physical effects of disturbing eggs or fry incubating within the bed;

(ii) Mortality from passing vulnerable fish through mineral prospecting equipment; and

(iii) Lower environmental productivity resulting from habitat modifications such as altered stream beds or lowered water quality.

(b) Indirect impacts may include changes in food resources and human disturbances.

(c) The department minimizes impacts of mineral prospecting by restricting the type of mining equipment allowed, limiting excavation zones within streams, and setting allowable timing windows.

(3) **General requirements:**

(a) A copy of the current *Gold and Fish* pamphlet is available from the department, and it contains the rules that a person must follow when using the pamphlet as the HPA for the mineral prospecting project.

(b) Alternatively, a person may request exceptions to the *Gold and Fish* pamphlet by applying for a standard individual written HPA as described in WAC ((220-660-060)) 220-660-050. The department must deny an HPA when, in the judgment of the department, the project will result in direct or indirect harm to fish life, unless enough mitigation can be assured by provisioning the HPA or modifying the proposal. The department may apply saltwater provisions to written HPAs for tidally influenced areas upstream of river mouths and the mainstem Columbia River downstream of Bonneville Dam.

(c) Nothing in chapter 220-660 WAC relieves a person of the duty to obtain landowner permission and any other required permits before conducting any mineral prospecting activity.

(4) **Mineral prospecting in freshwater without timing restrictions:**

(a) A person may mineral prospect year-round in all fresh waters of the state, except lakes. A person must follow the rules listed below, but does not need to have the *Gold and Fish* pamphlet on the job site when working in fresh waters of the state.

(b) When mineral prospecting without timing restrictions, a person may use only hand-held mineral prospecting tools and the following mineral prospecting equipment:

(i) Pans;

(ii) Spiral wheels; and

(iii) Sluices, concentrators, mini rocker boxes, and mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment.

(c) A person may not use vehicle-mounted winches. A person may use one hand-operated winch to move boulders

or large woody material that is not embedded or located within the wetted perimeter. A person may use additional cables, chains, or ropes to stabilize boulders, or large woody material that is not embedded.

(d) A person may work within the wetted perimeter only from one-half hour before official sunrise to one-half hour after official sunset.

(e) A person may not disturb fish life or redds within the bed. If a person observes or encounters fish life or redds within the bed, or actively spawning fish when collecting or processing aggregate, a person must relocate their operation. A person must avoid areas containing live freshwater mussels. If a person encounters live mussels during excavation, a person must relocate the operation.

(f) **Aggregate excavation, collection, and removal:**

(i) A person may excavate only by hand or with hand-held mineral prospecting tools.

(ii) A person may not excavate, collect, or remove aggregate from within the wetted perimeter. See Figures 1 and 2.

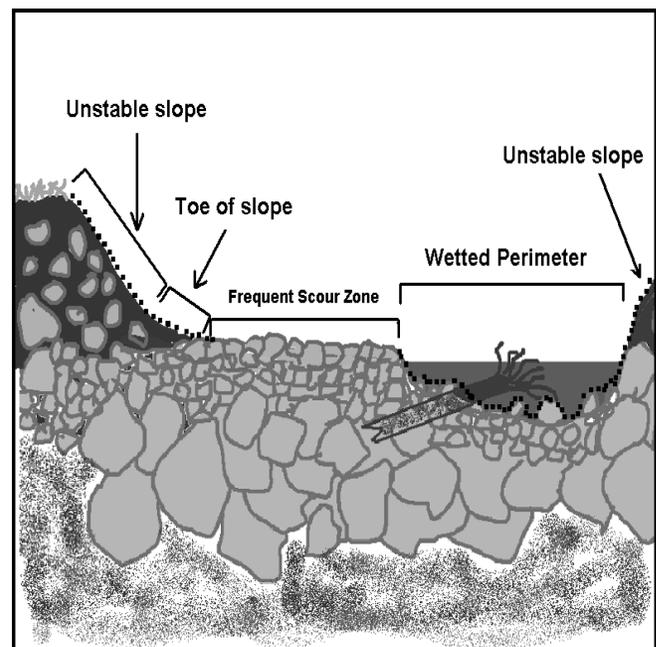


Figure 1: Cross section of a typical body of water, showing areas where excavation is not permitted under rules for mineral prospecting without timing restrictions. Dashed lines indicate areas where excavation is not permitted.

(ii) A person may work in only one excavation site at a time. However, a person may use a second excavation site as a settling pond. Multiple persons may work within a single excavation site.

(iv) When collecting or excavating aggregate, a person may not stand within, or allow aggregate to enter, the wetted perimeter.

(v) A person must fill all excavation sites and level all tailing piles before moving to another excavation site or abandoning an excavation site. If a person moves boulders, a

person must return them, as well as possible, to their original location.

(vi) A person may not undermine, move, or disturb large woody material embedded in the slopes or located wholly or partially within the wetted perimeter. A person may move large woody material and boulders located entirely within the frequent scour zone, but a person must keep them within the frequent scour zone. A person may not cut large woody material. See Figure 2.

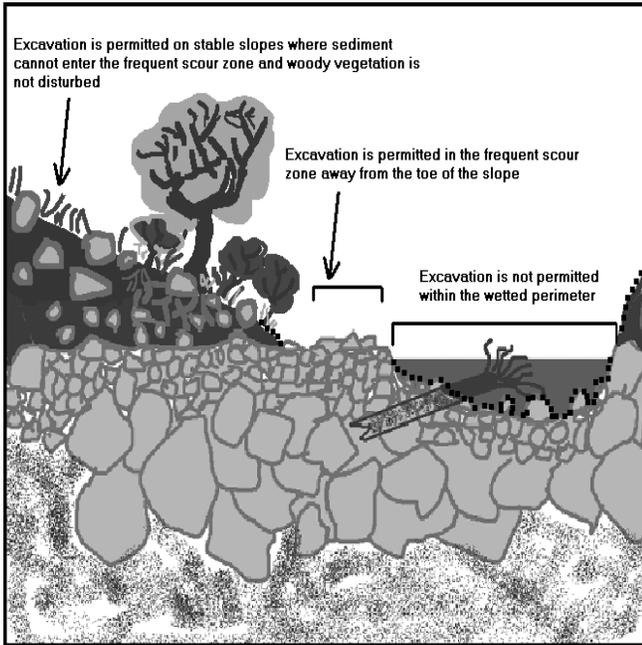


Figure 2: Permitted and prohibited excavation sites in a typical body of water under rules for mineral prospecting without timing restrictions. Dashed lines indicate areas where excavation is not permitted.

(vii) A person may not undermine, cut, or disturb live, rooted woody vegetation of any kind.

(viii) A person may not excavate, collect, or remove aggregate from the toe of the slope. A person also may not excavate, collect, or remove aggregate from an unstable slope or any slope that delivers, or might deliver sediment to the wetted perimeter or frequent scour zone. See Figures 3 and 4.

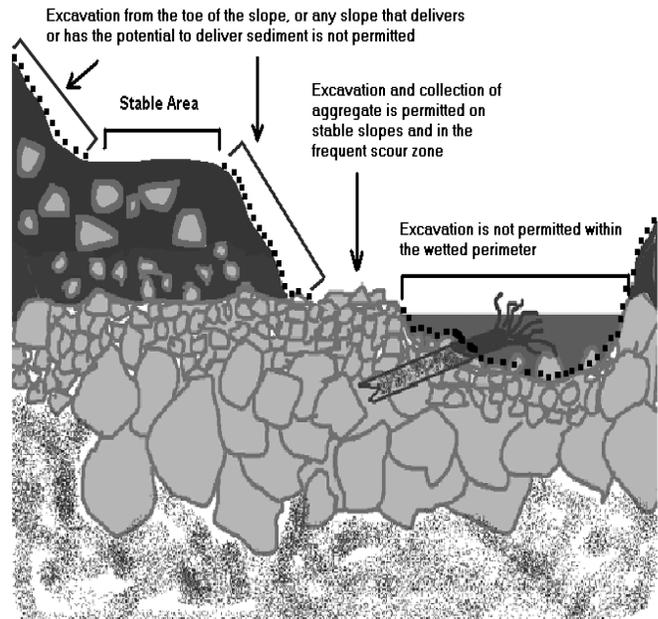


Figure 3: Limits on excavating, collecting, and removing aggregate on stream banks.

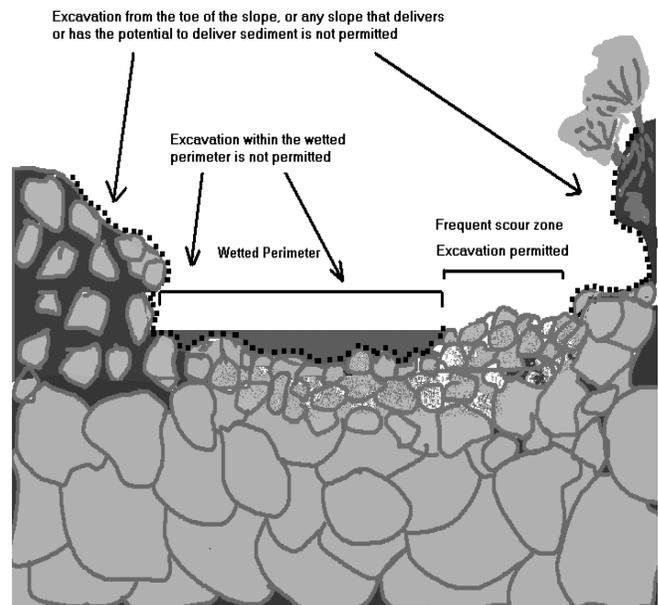


Figure 4: Excavating, collecting and removing aggregate within the wetted perimeter is not permitted.

(g) Processing aggregate:

(i) A person may stand within the wetted perimeter when processing aggregate with pans, spiral wheels, and sluices.

(ii) A person may not stand on or process directly on redds, or disturb incubating fish life. A person may not allow

tailings or visible sediment plumes (visibly muddy water) to enter redds or areas where fish life are located within the bed.

(iii) A person may not level or disturb tailing piles that remain within the wetted perimeter after processing aggregate.

(iv) If a person collected or excavated aggregate outside of the frequent scour zone, a person must classify it at the collection or excavation site before processing.

(v) When using a sluice, a person may process only classified aggregate within the wetted perimeter.

(vi) The maximum width of a sluice, measured at its widest point, including attachments, must not exceed twenty-five percent of the width of the wetted perimeter at the point of placement.

(vii) A person may process with a sluice only in areas within the wetted perimeter that are composed mainly of boulders and bedrock. A person must separate sluice locations by at least fifty feet. A person may not place structures within the wetted perimeter to check or divert the water flow.

(viii) A person may operate mini high-bankers or other concentrators only outside the wetted perimeter. A person may not allow visible sediment or muddy water to enter the wetted perimeter. A second excavation site may be used as a settling pond.

(ix) As provided in RCW 77.57.010 and 77.57.070, any device a person uses for pumping water from fish-bearing waters must be equipped with a fish guard to prevent fish from entering the pump intake. A person must screen the pump intake with material that has openings no larger than five sixty-fourths inch for square openings, measured side to side, or three thirty-seconds inch diameter for round openings, and the screen must have at least one square inch of functional screen area for every gallon per minute (gpm) of water drawn through it. For example, a one hundred gpm-rated pump would require a screen with a surface area of at least one hundred square inches.

(x) A person may not excavate, collect, remove, or process aggregate within four hundred feet of any fishway, dam, or hatchery water intake.

(xi) A person may not disturb existing fish habitat improvement structures or stream channel improvements.

(xii) All equipment fueling and servicing must be done so that petroleum products do not enter the wetted perimeter or frequent scour zone. If a petroleum sheen or spill is observed, a person must immediately stop work, remove the equipment from the body of water, and contact the Washington military department emergency management division. A person may not return the equipment to the water until the problem is corrected. A person must store fuel and lubricants outside the frequent scour zone, and in the shade when possible.

(xiii) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately cease operations and notify the department and the Washington military department emergency management division of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

(5) Mineral prospecting in fresh waters with timing restrictions:

(a) A person may mineral prospect in fresh waters of the state only during the times and with the mineral prospecting equipment limitations identified in subsection (7) of this section. A person must have the *Gold and Fish* pamphlet on the job site and comply with the provisions listed below.

(b) When mineral prospecting with timing restrictions, a person may use only hand-held mineral prospecting tools and the following mineral prospecting equipment:

(i) Pans;

(ii) Spiral wheels;

(iii) Sluices, concentrators, rocker boxes, and high-bankers with riffle areas totaling ten square feet or less, including ganged equipment;

(iv) Suction dredges that have suction intake nozzles with inside diameters that should be five inches or less, but must be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size. See Figure 5.



Figure 5: Dredge intake nozzle

(v) Power sluice/suction dredge combinations that have riffle areas totaling ten square feet or less, including ganged equipment; suction intake nozzles with inside diameters that should be five inches or less, but must be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle; and pump intake hoses with inside diameters of four inches or less. The inside diameter of the dredge hose attached to the suction intake nozzle may be no greater than one inch larger than the nozzle size. See Figure 5; and

(vi) High-bankers and power sluices that have riffle areas totaling ten square feet or less, including ganged equipment, and pump intake hoses with inside diameters of four inches or less.

(c) The widest point of a sluice, including attachments, must not exceed twenty-five percent of the width of the wetted perimeter at the point of placement.

(d) The suction intake nozzle and hose of suction dredges and power sluice/suction dredge combinations must

not exceed the diameters allowed in the listing for the stream or stream reach where a person is operating, as identified in subsection (7) of this section.

(e) A person may not use vehicle-mounted winches. A person may use one motorized winch and one hand-operated winch to move boulders and large woody material that is not embedded, and additional cables, chains, or ropes to stabilize them.

(f) Equipment separation:

(i) A person may use hand-held mineral prospecting tools; pans; spiral wheels; or sluices, mini rocker boxes, or mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment, as close to other mineral prospecting equipment as desired.

(ii) When operating any sluice or rocker box with a riffle area larger than three square feet (including ganged equipment), suction dredge, power sluice/suction dredge combination, high-banker, or power sluice within the wetted perimeter, a person's equipment must be at least two hundred feet from all others also operating this type of equipment. This separation is measured as a radius from the center of the equipment the person is operating. A person may locate this equipment closer than two hundred feet if only one piece of equipment is actually operating within that two hundred foot radius. See Figure 6.

(iii) When operating any sluice or rocker box with a riffle area larger than three square feet (including ganged equipment), suction dredge, power sluice/suction dredge combination, high-banker, or power sluice outside of the wetted perimeter that discharges tailings or wastewater to the wetted perimeter, a person's equipment must be at least two hundred feet from all others also operating this type of equipment. This separation is measured as a radius from the center of the equipment the person is operating. A person may locate this equipment closer than two hundred feet if only one piece of equipment is actually operating within that two hundred-foot radius. See Figure 6.

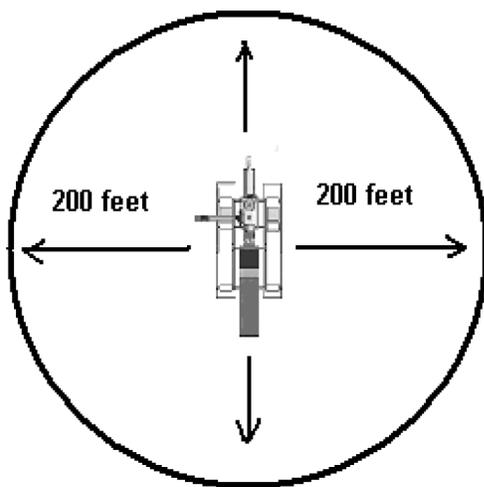


Figure 6: Equipment separation requirement.

(g) As provided in RCW 77.57.010 and 77.57.070, any device a person uses for pumping water from fish-bearing waters must be equipped with a fish guard to prevent fish

from entering the pump intake. A person must screen the pump intake with material that has openings no larger than five sixty-fourths inch for square openings, measured side to side, or three thirty-seconds inch diameter for round openings, and the screen must have at least one square inch of functional screen area for every gallon per minute (gpm) of water drawn through it. For example, a one hundred gpm-rated pump would require a screen with a surface area of at least one hundred square inches.

(h) All equipment fueling and servicing must be done so that petroleum products do not enter the wetted perimeter or frequent scour zone. If a petroleum sheen or spill is observed, a person must immediately stop work, remove the equipment from the body of water, and contact the Washington military department emergency management division. A person may not return the equipment to the water until the problem is corrected. A person must store fuel and lubricants outside the frequent scour zone, and in the shade when possible.

(i) A person may work within the wetted perimeter or frequent scour zone only from one-half hour before official sunrise to one-half hour after official sunset. If a person's mineral prospecting equipment exceeds one-half the width of the wetted perimeter of the stream, a person must remove the equipment from the wetted perimeter or move it so that at least fifty percent of the wetted perimeter is free of equipment from one-half hour after official sunset to one-half hour before official sunrise.

(j) A person may not excavate, collect, remove, or process aggregate within four hundred feet of any fishway, dam, or hatchery water intake.

(k) A person must not disturb existing fish habitat improvement structures or stream channel improvements.

(l) A person may not undermine, move, or disturb large woody material embedded in the slopes or located wholly or partially within the wetted perimeter. A person may move large woody material and boulders located entirely within the frequent scour zone, but a person must keep them within the frequent scour zone. A person may not cut large woody material.

(m) A person may not undermine, cut, or disturb live, rooted woody vegetation of any kind.

(n) A person may work in only one excavation site at a time. However, a person may use a second excavation site as a settling pond. Multiple individuals may work within a single excavation site.

(o) A person must fill all excavation sites and level all tailing piles before moving to another excavation site or abandoning an excavation site.

(p) A person may not excavate, collect, or remove aggregate from the toe of the slope. A person also may not excavate, collect, or remove aggregate from an unstable slope or any slope that delivers, or might deliver, sediment to the wetted perimeter or frequent scour zone. See Figures 7 and 8.

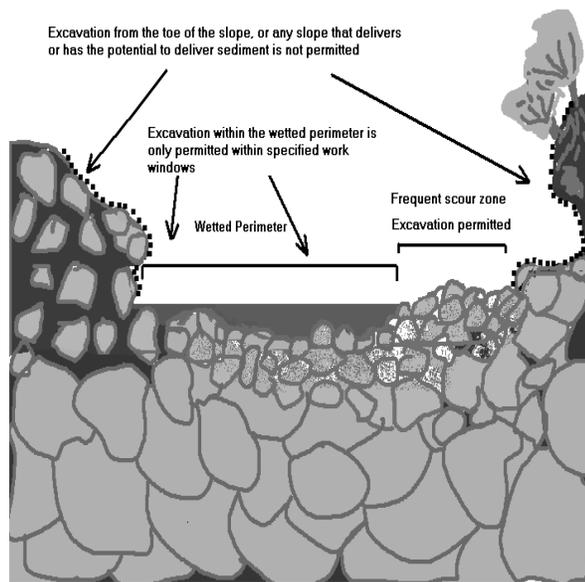


Figure 7: Cross section of a typical body of water showing unstable slopes, stable areas, and permitted excavation sites under rules for mineral prospecting with timing restrictions. Dashed line indicates areas where excavation is not permitted.

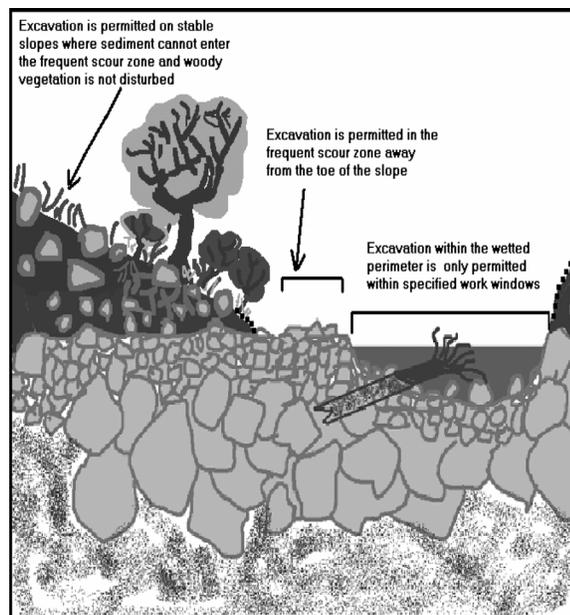


Figure 8: ((Cross section of a typical body of water showing unstable slopes, stable areas, and)) Permitted ((or)) and prohibited excavation sites in a typical body of water under rules for mineral prospecting with timing restrictions. Dashed lines indicates areas where excavation is not permitted.

(q) A person may partially divert a body of water into mineral prospecting equipment. However, at no time may the

diversion structure be greater than fifty percent of the width of the wetted perimeter, including the width of the equipment. A person may not divert the body of water outside of the wetted perimeter.

(r) A person may use materials only from within the wetted perimeter, or artificial materials from outside the wetted perimeter, to construct the diversion structure by hand. Before abandoning the site, a person must remove artificial materials used to construct a diversion structure and restore the site to its approximate original condition.

(s) A person may process aggregate collected from the frequent scour zone:

(i) At any location if a person uses pans; spiral wheels; mini rocker boxes; mini high-bankers; or sluices or other concentrators with riffle areas three square feet or less, including ganged equipment.

(ii) Only in the frequent scour zone or upland areas landward of the frequent scour zone if a person uses power sluice/suction dredge combinations, high-bankers, or power sluices with riffle areas totaling ten square feet or less, including ganged equipment; or sluices or rocker boxes that have riffle areas larger than three, but less than ten square feet, including ganged equipment. A person may not discharge tailings to the wetted perimeter when using this equipment. However, a person may discharge wastewater to the wetted perimeter if its entry point into the wetted perimeter is at least two hundred feet from any other wastewater discharge entry point.

(t) A person may process aggregate collected from upland areas landward of the frequent scour zone:

(i) At any location if a person uses pans; spiral wheels; or sluices, concentrators, mini rocker boxes, and mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment. A person must classify the aggregate at the excavation site before processing with this equipment within the wetted perimeter or frequent scour zone.

(ii) Only at an upland location landward of the frequent scour zone if a person uses power sluice/suction dredge combinations; high-bankers; power sluices; or rocker boxes. A person may not allow tailings or wastewater to enter the wetted perimeter or frequent scour zone.

(iii) Within the wetted perimeter or frequent scour zone if a person uses a sluice with a riffle area greater than three square feet. A person must classify the aggregate at the excavation site prior to processing with a sluice with a riffle area exceeding three square feet.

(u) A person may use pressurized water only for crevicing or for redistributing dredge tailings within the wetted perimeter. No other use of pressurized water is permitted.

(v) A person may conduct crevicing in the wetted perimeter, in the frequent scour zone, or landward of the frequent scour zone. The hose connecting fittings of pressurized water tools used for crevicing may not have an inside diameter larger than three-quarters of an inch. If a person crevices landward of the frequent scour zone, no sediment or wastewater may be discharged into the wetted perimeter or the frequent scour zone.

(w) A person must avoid areas containing live freshwater mussels. If a person encounters live mussels during excavation, a person must relocate the operation.

(x) A person may not disturb redds. If a person observes or encounters redds or actively spawning fish when collecting or processing aggregate, a person must relocate the operation.

(y) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately stop operations and notify the department and the Washington military department emergency management division of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

(6) Mineral prospecting on ocean beaches:

(a) A person may mineral prospect year-round on ocean beaches of the state. A person must follow the rules listed below, and must have the *Gold and Fish* pamphlet on the job site when working on ocean beaches of the state, except as noted in this subsection.

(b) A person may mineral prospect only between the line of ordinary high tide and the line of extreme low tide on beaches within the Seashore Conservation Area set under RCW 79A.05.605 and managed by Washington state parks and recreation commission.

(c) No written or pamphlet HPA is required to mineral prospect south of the Copalis River, if a person operates landward of the upper limit of ghost shrimp burrowing in the beach; waterward of the ordinary high tide line; and a person does not use fresh water from fish-bearing streams during operations. See Figure 9.

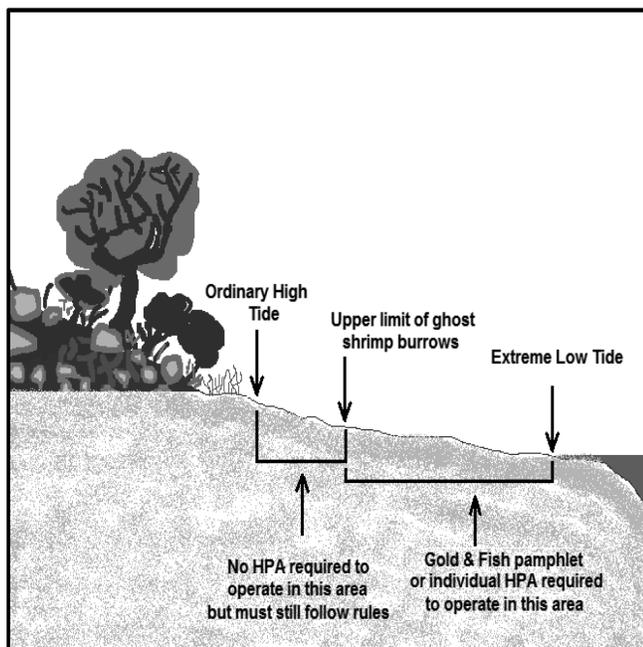


Figure 9. Beach area where no written or pamphlet HPA is required.

(d) A person may use only hand-held mineral prospecting tools and the following mineral prospecting equipment:

(i) Pans;

(ii) Spiral wheels;

(iii) Sluices, concentrators, rocker boxes, and high-bankers with riffle areas totaling ten square feet or less, including ganged equipment;

(iv) Suction dredges that have suction intake nozzles with inside diameters that should be five inches or less, but must be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size;

(v) Power sluice/suction dredge combinations that have riffle areas totaling ten square feet or less, including ganged equipment; suction intake nozzles with inside diameters that should be five inches or less, but must be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle; and pump intake hoses with inside diameters of four inches or less. The inside diameter of the dredge hose attached to the suction intake nozzle may be no greater than one inch larger than the nozzle size; and

(vi) High-bankers and power sluices that have riffle areas totaling ten square feet or less, including ganged equipment, and pump intake hoses with inside diameters of four inches or less.

(e) When operated in fish-bearing freshwater streams, the widest point of a sluice, including attachments, must not exceed twenty-five percent of the width of the wetted perimeter at the point of placement.

(f) A person may not use vehicle-mounted winches. A person may use one motorized winch and one hand-operated winch to move boulders and large woody material that is not embedded, and additional cables, chains, or ropes to stabilize them.

(g) Under RCW 77.57.010 and 77.57.070, any device a person uses for pumping water from fish-bearing waters must be equipped with a fish guard to prevent fish from entering the pump intake. A person must screen the pump intake with material that has openings no larger than five sixty-fourths inch for square openings, measured side to side, or three thirty-seconds inch diameter for round openings, and the screen must have at least one square inch of functional screen area for every gallon per minute (gpm) of water drawn through it. For example, a one hundred gpm-rated pump would require a screen with a surface area of at least one hundred square inches.

(h) All equipment fueling and servicing must be done so that petroleum products do not enter the wetted perimeter. If a petroleum sheen or spill is observed, a person must immediately stop work, remove the equipment from the body of water and beach, and contact the Washington military department emergency management division. A person may not return the equipment to the water or beach until the problem is corrected. A person must store fuel and lubricants away from the water inside a vehicle or landward of the beach, and in the shade when possible.

(i) A person may work only from one-half hour before official sunrise to one-half hour after official sunset. If a person uses mineral prospecting equipment in a fish-bearing

freshwater stream and the equipment exceeds one-half the width of the wetted perimeter of the stream, a person must remove the equipment from the wetted perimeter or move it so that at least fifty percent of the wetted perimeter is free of equipment from one-half hour after official sunset to one-half hour before official sunrise.

(j) A person may not undermine, cut, disturb, or move embedded large woody material or woody debris jams.

(k) A person may work in only one excavation site at a time. However, a person may use a second excavation site as a settling pond. Multiple persons may work within a single excavation site.

(l) A person must backfill all trenches, depressions, or holes created in the beach during project activities before moving to another excavation site (except during use as a settling pond) or leaving an excavation site.

(m) A person may partially divert a body of water into mineral prospecting equipment. However, at no time may the diversion structure be greater than fifty percent of the width of the wetted perimeter of a fish-bearing freshwater stream, including the width of the equipment. A person may not divert the body of water outside of the wetted perimeter.

(n) A person may use materials only from within the wetted perimeter, or artificial materials from outside the wetted perimeter, to construct the diversion structure by hand. Before abandoning the site, a person must remove artificial materials used to construct a diversion structure and restore the site to its approximate original condition.

(o) A person may use pressurized water only for redistributing dredge tailings within the wetted perimeter. No other use of pressurized water is permitted.

(p) A person may not disturb live razor clams or other shellfish within the bed. If a person observes or encounters live razor clams or other shellfish during excavation, the person must relocate the operation.

(q) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately stop operations and notify the department, and the Washington military department emergency management division of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

(7) Authorized work times and mineral prospecting equipment restrictions by specific state waters for mineral prospecting and placer mining projects:

(a) A person may conduct mineral prospecting and placer mining under subsections (5) and (6) of this section only in the state waters, with the equipment restrictions, and during the times specified in the following table of authorized work times.

(b) The general work time for a county applies to all state waters within that county, unless otherwise indicated in the table.

(c) The work time for state waters identified in the table of authorized work times applies to all its tributaries, unless otherwise indicated. Some state waters occur in multiple counties. Check the table for the county in which mineral prospecting or placer mining is to be conducted to determine the work time for that water body.

(d) Where a tributary is identified as a boundary, that boundary is the line perpendicular to the receiving stream that is projected from the most upstream point of the tributary mouth to the opposite bank of the receiving stream. See Figure 10.

(e) Mineral prospecting and placer mining within water bodies identified in the table of authorized work times as "submit application" are not authorized under the *Gold and Fish* pamphlet. A person must obtain a written individual HPA to work in these water bodies.

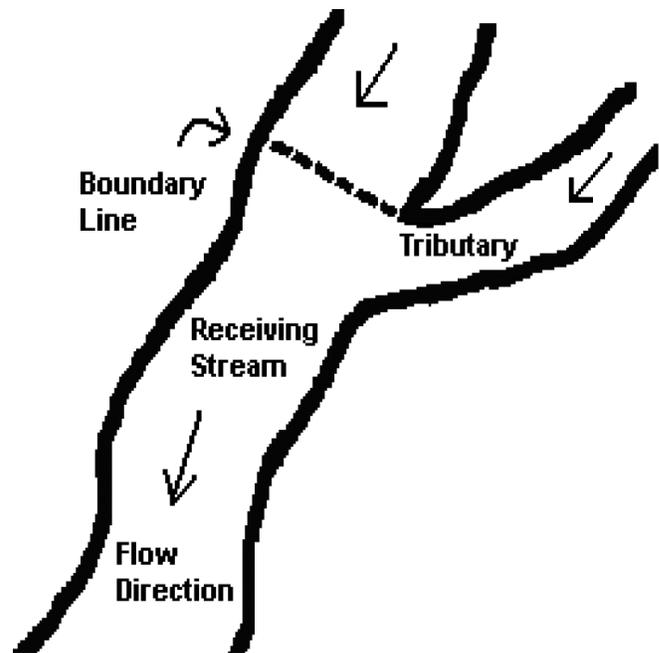


Figure 10: Where the boundary is located if a tributary listed as a boundary.

(f) Mineral prospecting using mineral prospecting equipment that has suction intake nozzles with inside diameters that should be four inches or less, but must be no greater than four and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle, is authorized only in the state waters identified in the table of authorized work times, and any tributaries to them, unless otherwise indicated in the table. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size.

(g) Mineral prospecting using mineral prospecting equipment that has suction intake nozzles with inside diameters that should be five inches or less, but must be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle is authorized only in the state waters specifically identified in the table of authorized work times. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size. A person may use only mineral prospecting equipment with suction intake nozzle inside diameters of four and one-quarter inches or less in tributaries of these state waters. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size.

Table 3

Authorized Work Times and Mineral Prospecting Equipment Restrictions by Specific State Waters for Mineral Prospecting and Placer Mining Projects

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Adams County	July 1 - October 31	X	-
Crab Creek (41.0002)	July 16 - February 28	X	X
Esquatzel Creek (36.MISC)	June 1 - February 28	X	X
Palouse River (34.0003)	July 16 - February 28	X	X
Asotin County	July 16 - September 15	X	-
Snake River (35.0002)	See Below	-	-
Alpowa Creek (35.1440)	July 16 - December 15	X	-
Asotin Creek (35.1716)	July 16 - August 15	X	-
Couse Creek (35.2147)	July 16 - December 15	X	-
Grande Ronde River (35.2192)	July 16 - September 15	X	X
Ten Mile Creek (35.2100)	July 16 - December 15	X	-
Benton County	June 1 - September 30	X	-
Columbia River	See Below	-	-
Glade Creek (31.0851)	August 1 - September 30	X	-
Yakima River (37.0002)	June 1 - September 15	X	X
Amon Wasteway (37.0009)	June 1 - September 30	X	-
Corral Creek (37.0002)	June 1 - September 30	X	-
Spring Creek (37.0205)	June 1 - September 30	X	-
Chelan County	July 16 - August 15	X	-
Columbia River	See Below	-	-
Antoine Creek (49.0294) - Mouth to falls at river mile 1.0	July 1 - February 28	X	-
Antoine Creek (49.0294) - Upstream of falls at river mile 1.0	July 1 - March 31	X	-
Chelan River (47.0052) - Mouth to Chelan Dam	July 16 - September 30	X	X
Colockum Creek (40.0760)	July 1 - October 31	X	-
Entiat River (46.0042) - Mouth to Entiat Falls	July 16 - July 31	X	X
Entiat River (46.0042) - Upstream of Entiat Falls	July 16 - March 31	X	-
Crum Canyon (46.0107)	July 16 - March 31	X	-
Mad River (46.0125)	July 16 - July 31	X	-
Indian Creek (46.0128)	July 16 - February 28	X	-

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Lake Chelan (47.0052)	Submit Application	-	-
Railroad Creek (47.0410)	July 16 - September 30	X	-
Stehekin River (47.0508)	Submit Application	-	-
Twenty-Five Mile Creek (47.0195)	July 16 - September 30	X	-
Other Lake Chelan tributaries outside of North Cascades National Park	July 1 - August 15	X	-
Other Lake Chelan tributaries within North Cascades National Park	Submit Application	-	-
Number 1 Canyon (45.0011)	July 1 - February 28	X	-
Number 2 Canyon (45.0012)	July 1 - February 28	X	-
Squilchuck Creek (40.0836) - Mouth to South Wenatchee Avenue	July 1 - September 30	X	-
Squilchuck Creek (40.0836) - Upstream of South Wenatchee Avenue	July 1 - February 28	X	-
Stemilt Creek (40.0808) - Mouth to falls	July 1 - September 30	X	-
Stemilt Creek (40.0808) - Upstream of falls	July 1 - February 28	X	-
Wenatchee River (45.0030) - Mouth to Hwy 2 Bridge in Leavenworth	July 15 - September 30	X	X
Wenatchee River (45.0030) - Hwy 2 Bridge in Leavenworth to Lake Wenatchee	July 15 - August 15	X	X
Beaver Creek (45.0751)	July 1 - September 30	X	-
Chiwaukum Creek (45.0700)	July 1 - July 31	X	-
Chiwawa River (45.0759) - Mouth to Phelps Creek	July 1 - July 31	X	X
Chiwawa River (45.0759) - Upstream of Phelps Creek	July 1 - July 31	X	-
Deep Creek (45.0764)	July 1 - February 28	X	-
Phelps Creek (45.0875)	July 16 - August 15	X	-
Icicle Creek (45.0474) - Mouth to Johnny Creek	July 1 - July 31	X	X
Icicle Creek (45.0474) - Upstream of Johnny Creek	July 1 - July 31	X	-

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Fourth of July Creek (45.0525)	July 1 - February 28	X	-
Lake Wenatchee (45.0030)	Submit Application	-	-
Little Wenatchee (45.0985) - Mouth to Wilderness Boundary	July 1 - July 31	X	X
Little Wenatchee (45.0985) - Upstream of Wilderness Boundary	Submit Application	-	-
White River (45.1116) - Mouth to White River Falls	July 1 - July 31	X	X
White River (45.1116) - Upstream of White River Falls	July 1 - February 28	X	-
Nason Creek (45.0888)	July 1 - July 31	X	-
Peshastin Creek (45.0232) - Mouth to ((Negro)) Etienne Creek	July 16 - August 15	X	-
Peshastin Creek (45.0232) - Upstream of ((Negro)) Etienne Creek	August 1 - February 28	X	-
Ingalls Creek (45.0273) - Mouth to Cascade Creek	Submit Application	-	-
Ingalls Creek (45.0273) - Upstream of Cascade Creek	July 16 - February 28	X	-
((Negro)) Etienne Creek (45.0323) - Mouth to falls at stream mile 2.9	Submit Application	-	-
((Negro)) Etienne Creek (45.0323) - Upstream of falls at stream mile 2.9	July 16 - February 28	X	-
Ruby Creek (45.0318)	July 16 - February 28	X	-
Tronson Creek (45.0346)	August 1 - February 28	X	-
Scotty Creek (45.0376)	August 1 - February 28	X	-
Shaser Creek (45.0365)	August 1 - February 28	X	-
Clallam County	July 16 - September 15	X	-
Clallam River (19.0129)	August 1 - August 15	X	-
Dungeness River (18.0018)	Submit Application	-	-
Independent Creek (18.MISC)	August 1 - August 31	X	-
Elwha River (18.0272)	August 1 - August 15	X	X

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Hoko River (19.0148)	August 1 - September 15	X	-
Jimmycomelately Creek (17.0285)	August 1 - August 31	X	-
Lake Ozette (20.0046)	Submit Application	-	-
Little Quilcene River (17.0076)	July 16 - August 31	X	-
Lake Ozette tributaries	July 16 - September 15	X	-
Lyre River (19.0031)	August 1 - September 15	X	-
McDonald Creek (18.0160)	August 1 - September 15	X	-
Morse Creek (18.0185)	August 1 - August 15	X	-
Ozette River (20.0046)	July 16 - September 15	X	-
Pysht River (19.0113)	August 1 - September 15	X	-
Quillayute River (20.0096, 20.0162, 20.0175)	August 1 - August 15	X	X
Bogachiel River (20.0162)	Submit Application	-	-
Calawah River (20.0175)	August 1 - August 15	X	X
Salmon Creek (17.0245)	July 16 - August 31	X	-
Sekiu River (19.0203)	August 1 - September 15	X	-
Snow Creek (17.0219)	July 16 - August 31	X	-
Sol Duc River (20.0096)	Submit Application	-	-
Lake Pleasant (20.0313)	Submit Application	-	-
Lake Pleasant tributaries	July 16 - September 15	X	-
Sooes River (20.0015)	July 16 - September 15	X	-
Clark County	July 16 - September 30	-	-
Columbia River	See Below	-	-
Lacamas Creek (28.0160) - Mouth to dam	August 1 - August 31	X	-
Lacamas Creek (28.0160) - Upstream of dam	August 1 - September 30	X	-
Lewis River (27.0168)	August 1 - August 15	X	X
East Fork Lewis River (27.0173) - Mouth to Lucia Falls	August 1 - August 15	X	X
East Fork Lewis River (27.0173) - Lucia Falls to Sunset Falls	August 1 - February 28	X	X
East Fork Lewis River (27.0173) - Upstream of Sunset Falls	August 1 - February 28	X	-
Lake River (28.0020)	January 1 - December 31	X	X

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Burnt Bridge Creek (28.0143)	August 1 - August 31	X	-
Salmon Creek (28.0059)	August 1 - August 31	X	-
Whipple Creek (28.0038)	August 1 - September 30	X	-
North Fork Lewis River (27.0334) - Confluence of East Fork to Merwin Dam	August 1 - August 15	X	X
Cedar Creek (27.0339)	August 1 - September 15	X	-
North Fork Lewis River (27.0334) - Merwin Dam to Lower Falls	July 16 - August 15	X	X
Canyon Creek (27.0442)	July 16 - February 28	X	-
North Fork Lewis River (27.0168) - Upstream of Lower Falls	July 16 - August 15	X	X
Washougal River (28.0159) - Mouth to headwaters	August 1 - August 31	X	X
Columbia County	July 16 - September 30	X	-
Touchet River (32.0097)	August 1 - August 15	X	X
Grande Ronde River tributaries (35.2192)	July 16 - August 15	X	-
North Fork Touchet/Wolf Fork (32.0761)	Submit Application	-	-
South Fork Touchet (32.0708)	Submit Application	-	-
Tucannon River (35.0009)	July 16 - August 15	X	X
Walla Walla River (32.0008) - Mouth to Oregon state line	July 16 - September 15	X	X
Mill Creek (32.1436) - Mouth to Oregon state line	August 1 - August 15	X	-
Cowlitz County	July 16 - September 30	X	-
Chehalis River (22.0190/23.0190) - South Fork Chehalis River - Mouth to Fisk Falls	August 1 - August 31	X	X
Chehalis River (22.0190/23.0190) - South Fork Chehalis River - Upstream of Fisk Falls	August 1 - August 31	X	-
Columbia River	See Below	-	-
Abernathy Creek (25.0297)	July 16 - September 15	X	-
Burke Creek (27.0148)	August 1 - August 31	X	-

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Burris Creek (27.0151)	August 1 - August 31	X	-
Bybee Creek (27.0142)	August 1 - August 31	X	-
Canyon Creek (27.0147)	August 1 - August 31	X	-
Coal Creek (25.0340)	July 16 - September 15	X	-
Clark Creek (25.0371)	August 1 - August 31	X	-
Cowlitz River (26.0002) - Mouth to barrier dam at river mile 49.5	July 16 - August 15	X	X
Coweeman River (26.0003) - Mouth to Baird Creek	August 1 - August 31	X	X
Coweeman River (26.0003) - Upstream of Baird Creek	August 1 - August 31	X	-
Cowlitz River (26.0002) - Tributaries below barrier dam to mouth	July 16 - September 30	X	-
Owl Creek (26.1441)	July 16 - September 15	X	-
Toutle River (26.0227)	July 16 - August 15	X	X
North Fork Toutle River (26.0314) - Mouth to Debris Dam	July 16 - August 15	X	X
North Fork Toutle River (26.0314) - Upstream of Debris Dam	July 16 - August 15	X	-
Green River (26.0323) - Mouth to Shultz Creek	July 16 - September 30	X	X
Green River (26.0323) - Upstream of Shultz Creek	July 16 - September 30	X	-
South Fork Toutle (26.0248) - Mouth to Bear Creek	July 16 - September 15	X	X
South Fork Toutle (26.0248) - Upstream of Bear Creek	July 16 - September 15	X	-
Tributaries to Silver Lake	July 16 - September 30	X	-
Germany Creek (25.0313)	July 16 - September 15	X	-
Kalama River (27.0002) - Mouth to Kalama Falls	August 1 - August 15	X	X
Kalama River (27.0002) - Upstream of Kalama Falls	August 1 - August 15	X	-
Lewis River (27.0168) - Mouth to East Fork Lewis River	August 1 - August 15	X	X

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North Fork Lewis River (27.0334) - Confluence of East Fork to Merwin Dam	August 1 - August 15	X	X
North Fork Lewis River (27.0334) - Merwin Dam to Lower Falls	July 16 - August 15	X	X
Mill Creek (25.0284)	July 16 - September 15	X	-
Schoolhouse Creek (27.0139)	August 1 - August 31	X	-
Douglas County	July 1 - September 30	X	-
Columbia River	See Below	-	-
Douglas Creek Canyon (44.0146)	May 16 - January 31	X	-
Foster Creek (50.0065)	August 1 - April 15	X	-
McCarteney Creek (44.0002)	July 1 - February 28	X	-
Pine/Corbaley Canyon Creek (44.0779)	September 16 - April 15	X	-
Rock Island Creek (44.0630)	July 1 - September 30	X	-
Ferry County	July 1 - August 31	X	-
Columbia River	See Below	-	-
Kettle River (60.0002)	June 16 - August 31	X	X
Boulder Creek (60.0130) - Mouth to Hodgson Road Bridge	Submit Application	-	-
Boulder Creek (60.0130) - Upstream of Hodgson Road Bridge	June 16 - February 28	X	-
Deadman Creek (60.0008) - Mouth to SR395 Crossing	Submit Application	-	-
Deadman Creek (60.0008) - Upstream of SR395	June 16 - February 28	X	-
Goosmus Creek (60.0254)	June 16 - February 28	X	-
Toroda Creek (60.0410)	July 1 - September 30	X	-
San Poil River (52.0004)	June 16 - September 30	X	X
Granite Creek (52.0099) - Mouth to Powerhouse Dam	June 16 - September 30	X	-
Granite Creek (52.0099) - Upstream of Powerhouse Dam	June 16 - February 28	X	-
West Fork San Poil River (52.0192) - Mouth to Deep Creek	June 16 - September 30	X	X

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West Fork San Poil River (52.0192) - Upstream of Deep Creek	June 16 - September 30	X	-
Gold Creek (52.0197)	June 16 - February 28	X	-
Franklin County	June 1 - September 30	X	-
Columbia River	See Below	-	-
Snake River	See Below	-	-
Palouse River (34.0003)	July 16 - February 28	X	X
North bank tributaries of the lower Snake River between Palouse River and the mouth of the Snake River	June 16 - October 31	X	-
Garfield County	July 16 - September 30	X	-
Snake River (35.0003)	See Below	-	-
Alpowa Creek (35.1440)	July 16 - December 15	X	-
Asotin Creek (35.1716)	July 16 - August 15	X	-
Deadman Creek (35.0688)	July 16 - December 15	X	-
Grande Ronde River tributaries (35.2192)	July 16 - August 15	X	-
Meadow Creek (35.0689)	July 16 - December 15	X	-
Tucannon River (35.0009) - Mouth to Panjab Creek	July 16 - August 15	X	X
Tucannon River (35.0009) - Upstream of Panjab Creek	July 16 - August 15	X	-
Pataha Creek (35.0123) - Mouth to Pataha Creek	January 1 - December 31	X	-
Pataha Creek (35.0123) - Upstream of Pataha Creek	July 16 - December 31	X	-
Grant County	July 1 - October 31	X	-
Columbia River	See Below	-	-
Crab Creek (41.0002)	July 16 - September 15	X	X
Grays Harbor County	July 16 - October 15	X	-
Chehalis River (22.0190/23.0190) - Mouth to Porter Creek	August 1 - August 31	X	X
Chehalis River (22.0190/23.0190) - Porter Creek to Fisk Falls	August 1 - August 15	X	X
Chehalis River (22.0190/23.0190) - Upstream of Fisk Falls	August 1 - August 15	X	-

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Cedar Creek (23.0570)	August 1 - September 30	X	-
Cloquallum Creek (22.0501)	August 1 - September 30	X	-
Porter Creek (23.0543)	August 1 - September 30	X	-
Satsop River (22.0360)	August 1 - August 31	X	X
Wishkah River (22.0191)	August 1 - October 15	X	X
Wynoochee River (22.0260)	August 1 - September 30	X	X
Copalis River (21.0767)	August 1 - October 15	X	X
Elk River (22.1333)	July 1 - October 31	X	X
Hoquiam River (22.0137)	August 1 - October 15	X	X
Humtulpis River (22.0004) - Mouth to Forks	August 1 - September 30	X	X
Humtulpis River (22.0004) - Upstream of Forks	August 1 - September 30	X	-
Johns River (22.1270)	August 1 - September 30	X	X
Moclipis River (21.0731)	August 1 - October 15	X	X
North River (24.0034)	August 1 - September 30	X	X
Queets River (21.0001)	August 1 - August 15	X	X
Quinalt River (21.0398)	August 1 - August 15	X	X
Raft River (21.0337)	August 1 - October 15	X	X
Island County	June 16 - October 15	X	-
Cavalero Creek (06.0065)	June 16 - December 15	X	-
Chapman Creek (06.0070)	June 16 - December 15	X	-
Crescent Creek (06.0002)	June 16 - December 15	X	-
Cultus Creek (06.0026)	June 16 - March 15	X	-
Deer Creek (06.0024)	June 16 - March 15	X	-
Dugualla Creek (06.0001)	June 16 - March 15	X	-
Glendale Creek (06.0025)	June 16 - December 15	X	-
Kristoferson Creek (06.0062-06.0063)	May 1 - December 15	X	-
Maxwelton Creek (06.0029)	June 16 - December 15	X	-
North Bluff Creek (06.0006)	June 16 - March 15	X	-
Old Clinton Creek (06.0023)	June 16 - March 15	X	-
Jefferson County	July 16 - October 31	X	-
Big Quilcene River (17.0012) - Mouth to falls	July 16 - August 31	X	X
Big Quilcene River (17.0012) - Falls to Forks	August 1 - February 28	X	X
Big Quilcene River (17.0012) - Upstream of Forks	August 1 - February 28	X	-

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Bogachiel River (20.0162)	Submit Application	-	-
Chimacum Creek (17.0203)	July 16 - September 15	X	-
Donovan Creek (17.0115)	July 1 - October 15	X	-
Dosewallips River (16.0442)	July 16 - August 15	X	-
Duckabush River (16.0351)	July 16 - August 15	X	-
Dungeness River (18.0018)	August 1 - August 15	X	-
Elwha River (18.0272)	August 1 - August 15	X	X
Goodman Creek (20.0406)	August 1 - September 15	X	-
Hoh River (20.0422)	August 1 - August 15	X	X
Little Quilcene River (17.0076)	July 16 - August 31	X	-
Queets River (21.0001)	August 1 - August 15	X	X
Matheny Creek (21.0165)	August 1 - August 15	X	-
Sams River (21.0205)	August 1 - August 15	X	X
Quinalt River (21.0398)	August 1 - August 15	X	X
Salmon Creek (17.0245)	July 16 - August 31	X	-
Skokomish River (16.0001)	August 1 - August 31	X	X
Snow Creek (17.0219)	July 16 - August 31	X	-
Tarboo Creek (17.0129)	August 1 - September 30	X	-
Thorndyke Creek (17.0170)	August 1 - October 15	X	-
King County	July 16 - September 30	X	-
Cedar River (08.0299) - Mouth to Forks	August 1 - August 31	X	X
Cedar River (08.0299) - Upstream of Forks	August 1 - August 31	X	-
Issaquah Creek (08.0178)	August 1 - August 31	X	-
Sammamish River (08.0057)	August 1 - August 31	X	-
Steele Creek (08.0379)	July 16 - February 28	X	-
Green River (Duwamish River) (09.0001) - Mouth to Sawmill Creek	August 1 - August 31	X	X
Green River (Duwamish River) (09.0001) - Upstream of Sawmill Creek	August 1 - August 31	X	-
Lake Washington tributaries (08.LKWA)	August 1 - August 31	X	-
Snoqualmie River (07.0219) - Mouth to Snoqualmie Falls	August 1 - August 15	X	X

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Snoqualmie River (07.0219) - Snoqualmie Falls to mouth of South Fork	July 16 - February 28	X	X
Patterson Creek (07.0376)	July 16 - September 30	X	-
Middle Fork Snoqualmie River (07.0219) - Mouth to Taylor Creek	July 16 - February 28	X	X
Middle Fork Snoqualmie River (07.0219) - Upstream of Taylor Creek	July 16 - February 28	X	-
Goat Creek (07.0754)	July 16 - February 28	X	-
North Fork Snoqualmie River (07.0527) - Mouth to Lennox Creek	July 16 - February 28	X	X
North Fork Snoqualmie River (07.0527) - Upstream of Lennox Creek	July 16 - February 28	X	-
Deep Creek (07.0562)	July 16 - February 28	X	-
Illinois Creek (07.0624)	July 16 - February 28	X	-
Lennox Creek (07.0596)	July 16 - February 28	X	-
Bear Creek (07.0606)	July 16 - February 28	X	-
Raging River (07.0384)	August 1 - September 15	X	X
South Fork Skykomish River (07.0012) - Mouth to Sunset Falls	August 1 - August 15	X	X
South Fork Skykomish River (07.0012) - Upstream of Sunset Falls	August 1 - August 15	X	-
Beckler River (07.1413) - Mouth to Boulder Creek	August 1 - August 15	X	X
Beckler River (07.1413) - Upstream of Boulder Creek	July 16 - February 28	X	-
Rapid River (07.1461) - Mouth to Meadow Creek	August 1 - August 31	X	X
Rapid River (07.1461) - Upstream of Meadow Creek	August 1 - February 28	X	-
Index Creek (07.1264) - Mouth to Mud Lake Creek	August 1 - August 31	X	-
Index Creek (07.1264) - Upstream of Mud Lake Creek including Salmon Creek	July 16 - February 28	X	-

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Miller River (07.1329) - Mouth to Forks	August 1 - August 15	X	X
Miller River (07.1329) - Upstream of Forks	August 1 - August 15	X	-
Coney Creek (07.1347)	July 16 - February 28	X	-
East Fork Miller River (07.1329) - Mouth to Great Falls Creek	July 16 - August 15	X	-
East Fork Miller River (07.1329) - Upstream of Great Falls Creek	July 16 - February 28	X	-
Foss River (07.1562) - Mouth to Forks	July 16 - August 31	X	X
East Fork Foss River (07.1562) - Mouth to Burn Creek	July 16 - August 15	X	X
East Fork Foss River (07.1562) - Upstream of Burn Creek	July 16 - February 28	X	-
West Fork Foss River (07.1573) - Mouth to falls at river mile 2.0	July 16 - August 31	X	-
West Fork Foss River (07.1573) - Upstream of falls at river mile 2.0	July 16 - February 28	X	-
West Fork Miller River (07.1335)	July 16 - February 28	X	X
Money Creek (07.1300) - Mouth to 0.5 mile upstream of Kimball Creek	August 1 - August 31	X	-
Money Creek (07.1300) - Upstream of 0.5 mile upstream of Kimball Creek	August 1 - February 28	X	-
Kimball Creek (07.1301)	August 1 - August 31	X	-
Tye River (07.0012) - Mouth to Alpine Falls	August 1 - August 31	X	X
Tye River (07.0012) - Upstream of Alpine Falls	July 16 - February 28	X	-
South Fork Snoqualmie River (07.0467)	July 16 - February 28	X	X
Denny Creek (07.0517)	July 16 - February 28	X	-

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Tolt River (07.0291) - Mouth to Forks	August 1 - August 31	X	X
North Fork Tolt River (07.0291) - Mouth to Yellow Creek	July 16 - September 15	X	X
North Fork Tolt River (07.0291) - Upstream of Yellow Creek	July 16 - February 28	X	-
South Fork Tolt River (07.0302) - Mouth to dam	July 16 - September 15	X	X
South Fork Tolt River (07.0302) - Upstream of Tolt Reservoir	July 16 - February 28	X	-
Yellow Creek (07.0337)	July 16 - February 28	X	-
White River (10.0031)	July 16 - August 15	X	X
Greenwater River (10.0122)	July 16 - August 15	X	X
Kittitas County	July 1 - September 30	X	-
Brushy Creek (40.0612)	July 1 - February 28	X	-
Colockum Creek (40.0760)	July 1 - October 31	X	-
Quilomene Creek (40.0613)	July 1 - October 31	X	-
Stemilt Creek (40.0808) - Upstream of falls	July 1 - February 28	X	-
Tarpiscan Creek (40.0723)	July 1 - February 28	X	-
Tekiason Creek (40.0686)	July 1 - February 28	X	-
(Whiskey) Whiskey Dick Creek (40.0591)	July 1 - February 28	X	-
Yakima River (39.0002) - Roza Dam to Teanaway River	August 1 - August 31	X	X
Naches River (38.0003) - Tieton River to Bumping River	July 1 - August 15	X	X
Little Naches River (38.0852) - Mouth to Matthew Creek	July 16 - August 15	X	X
Little Naches River (38.0852) - Upstream of Matthew Creek	July 16 - August 15	X	-
Pileup Creek (38.0932)	July 16 - August 31	X	-
Gold Creek (38.MISC)	July 16 - February 28	X	-
Swauk Creek (39.1157)	July 16 - September 30	X	-
Baker Creek (39.1157)	July 16 - September 30	X	-
First Creek (39.1157)	July 16 - September 30	X	-

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Iron Creek (39.1157)	July 16 - September 30	X	-
Williams Creek (39.1157)	July 16 - September 30	X	-
Boulder Creek (39.1157)	July 16 - February 28	X	-
Cougar Gulch (39.1157)	July 16 - February 28	X	-
Lion Gulch (39.1157)	July 16 - February 28	X	-
Yakima River (39.0002) - Teanaway River to Easton Dam	August 1 - August 31	X	X
Yakima River (39.0002) - Upstream of Easton Dam	August 1 - August 31	X	X
Cle Elum River (39.1434) - Mouth to dam	July 16 - August 31	X	X
Cle Elum River (39.1434) - Upstream of Cle Elum Dam	Submit Application	-	-
Big Boulder Creek (39.1434MISC)	August 1 - February 28	X	-
Camp Creek (39.1434MISC)	August 1 - February 28	X	-
Fortune Creek (39.1434MISC)	August 1 - August 15	X	-
South Fork Fortune Creek (39.1434MISC)	August 1 - February 28	X	-
Howson Creek (39.1434)	July 16 - February 28	X	-
Little Salmon Le Sac Creek (39.1482)	August 1 - August 15	X	-
Paris Creek (39.1434MISC)	August 1 - February 28	X	-
Salmon Le Sac Creek (39.1520)	August 1 - February 28	X	-
Kachess River (39.1739) - Upstream of Lake Kachess	Submit Application	-	-
Kachess River (39.1739) - Below dam	July 16 - August 15	X	X
Box Canyon Creek (39.1765)	Submit Application	-	-
Mineral Creek (39.1792)	August 1 - August 15	X	-
Lake Keechelus (39.1842) tributaries	July 16 - August 15	X	-
Gold Creek (Lake Keechelus) (39.1842)	Submit Application	-	-
Manastash Creek (39.0988)	July 16 - September 30	X	-
Naneum Creek (39.0821)	July 16 - September 30	X	-

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Taneum Creek (39.1081) - Mouth to I-90	July 16 - August 31	X	-
Taneum Creek (39.1157) - Upstream of I-90	July 16 - September 30	X	-
Teaway River (39.1236)	July 16 - August 31	X	X
NF Teaway River (39.1260)	Submit Application	-	-
Umtanum Creek (39.0553)	July 16 - September 30	X	-
Wenas Creek, Below dam (39.0032)	July 16 - October 15	X	-
Wenas Creek, Upstream of Wenas Lake (39.0032)	July 16 - February 28	X	-
Other Yakima River tributaries not listed	July 16 - August 31	X	-
Kitsap County	July 16 - October 15	X	-
Anderson Creek (15.0211)	August 1 - November 15	X	-
Barker Creek (15.0255)	August 1 - September 30	X	-
Big Beef Creek (15.0389)	August 1 - August 15	X	-
Big Scandia Creek (15.0280)	August 1 - September 30	X	-
Blackjack Creek (15.0203)	August 1 - September 30	X	-
Burley Creek (15.0056)	August 1 - September 30	X	-
Chico Creek (15.0229)	August 1 - October 15	X	-
Clear Creek (15.0249)	August 1 - September 30	X	-
Curley Creek (15.0185)	August 1 - September 30	X	-
Dewatto River (15.0420)	August 1 - August 15	X	-
Dogfish Creek (15.0285)	August 1 - August 15	X	-
Gorst Creek (15.0216)	August 1 - August 15	X	-
Grovers Creek (15.0299)	August 1 - August 31	X	-
Johnson Creek (15.0387)	August 1 - October 31	X	-
Ollala Creek (15.0107)	August 1 - September 30	X	-
Ross Creek (15.0209)	August 1 - November 15	X	-
Salmonberry Creek (15.0188)	August 1 - November 30	X	-
Seabeck Creek (15.0400)	August 1 - August 15	X	-
Steele Creek (15.0273)	August 1 - September 30	X	-
Tahuya River (15.0446)	August 1 - August 31	X	X
Union River (15.0503)	August 1 - August 31	X	X
Klickitat County	July 15 - September 30	X	-
Alder Creek (31.0459)	August 1 - September 30	X	-
Chapman Creek (31.0192)	August 1 - September 30	X	-

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Glade Creek (31.0851)	August 1 - September 30	X	-
Juniper Canyon Creek (31.0378)	August 1 - September 30	X	-
Klickitat River (30.0002) - Mouth to Klickitat hatchery	Submit Application	-	-
Klickitat River (30.0002) - Upstream of Klickitat hatchery	Submit Application	-	-
Little White Salmon River (29.0131) - Mouth to Cabbage Creek	July 16 - January 31	X	X
Little White Salmon River (29.0131) - Upstream of Cabbage Creek	July 16 - January 31	X	-
Pine Creek (31.0354)	August 1 - September 30	X	-
Rock Creek (31.0014)	August 1 - September 30	X	-
Six Prong Creek (31.0465)	August 1 - September 30	X	-
White Salmon River (29.0160) - Mouth to Cascade Creek	July 16 - August 15	X	X
White Salmon River (29.0160) - Upstream of Cascade Creek	July 16 - August 15	X	-
Wood Gulch Creek (31.0263)	August 1 - September 30	X	-
Lewis County	August 1 - September 30	X	-
Chehalis River (22.0190/23.0190) - Mouth to South Fork Chehalis River	August 1 - August 15	X	X
Chehalis River (22.0190/23.0190) - Upstream of South Fork Chehalis River	August 1 - August 31	X	X
Newaukum River (23.0882) - Mouth to South Fork	August 1 - August 31	X	X
Newaukum River (23.0882) - Upstream of South Fork	August 1 - August 31	X	-
Skookumchuck River (23.0761)	August 1 - August 31	X	X
Cowlitz River (26.0002)	August 1 - August 15	X	X
Cispus River (26.0668) - Mouth to Squaw Creek (26.1010)	August 1 - August 15	X	X

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Cispus River (26.0668) - Squaw Creek to Chambers Creek	July 16 - February 28	X	X
Cispus River (26.0668) - Upstream of Chambers Creek	July 16 - February 28	X	-
Yellowjacket Creek (26.0757)	August 1 - August 15	X	-
McCoy Creek (26.0766) - Mouth to lower falls	August 1 - August 15	X	-
McCoy Creek (26.0766) - Upstream of lower falls	July 16 - February 28	X	-
Walupt Creek (26.1010)	Submit Application	-	-
Packwood Lake tributaries	August 16 - September 15	X	-
Tilton River (26.0560) - Mouth to North Fork	August 1 - September 30	X	X
Tilton River (26.0560) - Upstream of North Fork	August 1 - September 30	X	-
Toutle River (26.0227)	August 1 - August 31	X	X
North Fork Toutle River (26.0314)	July 16 - August 15	X	X
Green River (26.0323)	July 16 - September 30	X	X
Deschutes River (13.0028)	July 16 - August 31	X	X
Little Deschutes River (13.0110)	July 16 - February 28	X	-
Nisqually River (11.0008) - Upstream of Alder Lake	July 16 - September 30	X	X
Lincoln County	June 16 - February 28	X	-
Columbia River	See Below	-	-
Hawk Creek (53.0101) - Mouth to falls	June 16 - August 31	X	-
Hawk Creek (53.0101) - Upstream of falls	June 16 - February 28	X	-
Upper Crab Creek (42.0001)	June 16 - February 28	X	-
Wilson Creek (43.0020)	June 16 - February 28	X	-
Mason County	August 1 - October 15	X	-
Cloquallum Creek (22.0501)	August 1 - September 30	X	-
Coulter Creek (15.0002)	August 1 - August 31	X	-
Dewatto River (15.0420)	August 1 - August 31	X	-
Goldsborough Creek (14.0035)	August 1 - October 15	X	-
John Creek (16.0253)	August 1 - August 31	X	-

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Hamma Hamma River (16.0251) - Mouth to falls	August 1 - August 31	X	-
Johns Creek (14.0049)	August 1 - August 15	X	-
Lilliwaup River (16.0230) - Mouth to falls	August 1 - August 31	X	X
Lilliwaup River (16.0230) - Upstream of falls	August 1 - February 28	X	-
Mill Creek (14.0029)	August 1 - August 15	X	-
Satsop River (22.0360)	August 1 - August 31	X	-
Schaerer Creek (16.0326)	August 1 - August 31	X	-
Sherwood Creek (14.0094)	August 1 - August 15	X	-
Skokomish River (16.0001) - Mouth to Forks	August 1 - August 31	X	X
Skokomish River (16.0001) - Upstream of Forks	August 1 - August 31	X	-
Tahuya River (15.0446)	August 1 - August 31	X	-
Twanoh Creek (14.0134)	August 1 - October 31	X	-
Union River (15.0503)	August 1 - August 31	X	X
Okanogan County	July 1 - August 15	X	-
Aneas Creek (49.0243) - Mouth to falls	July 16 - August 31	X	-
Aneas Creek (49.0243) - Upstream of falls	July 1 - March 31	X	-
Chewiliken Creek (49.0232) - Mouth to falls	July 16 - August 31	X	-
Chewiliken Creek (49.0232) - Upstream of falls	July 1 - March 31	X	-
Chiliwist Creek (49.0034) - Mouth to falls	July 16 - August 31	X	-
Chiliwist Creek (49.0034) - Upstream of falls	July 1 - March 31	X	-
Foster Creek (50.0065)	July 1 - February 28	X	-
Methow River (48.0007) - Columbia confluence to Twisp River	July 1 - July 31	X	X
Methow River tributaries between Black Canyon Creek and Gold Creek	July 1 - February 28	X	-
Black Canyon Creek (48.0015) - Mouth to Left Fork	Submit Application	-	-

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Black Canyon Creek (48.0015) - Upstream of Left Fork	July 1 - February 28	X	-
Gold Creek (48.0104) - Mouth to Foggy Dew Creek	Submit Application	-	-
Foggy Dew Creek (48.0153) - Mouth to Foggy Dew Falls	Submit Application	-	-
Foggy Dew Creek (48.0153) - Upstream of Foggy Dew Falls	July 1 - February 28	X	-
Middle Fork Gold Creek (48.0139)	July 1 - February 28	X	-
North Fork Gold Creek (48.0104)	Submit Application	-	-
Crater Creek (48.0177) - Mouth to Martin Creek	Submit Application	-	-
Crater Creek (48.0177) - Upstream of Martin Creek	July 1 - February 28	X	-
Martin Creek (48.0177)	July 1 - February 28	X	-
South Fork Gold Creek (48.0105) - Mouth to Rainy Creek	Submit Application	-	-
South Fork Gold Creek (48.0105) - Upstream of Rainy Creek	July 1 - February 28	X	-
Rainy Creek (48.0105)	July 1 - February 28	X	-
McFarland Creek (48.0090) - Mouth to Vinegar Gulch	Submit Application	-	-
McFarland Creek (48.0090) - Upstream of Vinegar Gulch	July 1 - February 28	X	-
Methow River tributaries between Libby Creek and Beaver Creek	July 1 - February 28	X	-
Beaver Creek (48.0307)	Submit Application	-	-
Frazer Creek (48.0309)	July 1 - February 28	X	-
Lightning Creek (48.0361)	July 1 - February 28	X	-
Middle Fork Beaver Creek (48.0307)	July 1 - February 28	X	-
South Fork Beaver Creek (48.0342)	July 1 - February 28	X	-
Libby Creek (48.0203) - Mouth to Hornet Draw Creek	Submit Application	-	-

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Libby Creek (48.0203) - Upstream of Hornet Draw	July 1 - February 28	X	-
Methow River (48.0007) - Twisp River to Goat Creek	July 1 - July 31	X	X
Methow River (48.0007) - Upstream of Goat Creek	July 1 - July 31	X	-
Chewuch River (48.0728) - Mouth to Meadow Creek	July 1 - July 31	X	X
Chewuch River (48.0728) - Upstream of Meadow Creek	July 1 - February 28	X	-
Early Winters Creek (48.1408) - Mouth to Silver Star Creek	Submit Application	-	-
Early Winters Creek (48.1408) - Upstream of Silver Star Creek	July 1 - February 28	X	-
Goat Creek (48.1364) - Mouth to 500 feet upstream of Montana Creek	Submit Application	-	-
Goat Creek (48.1364) - 500 feet Upstream of Montana Creek to Roundup Creek	July 1 - February 28	X	-
Goat Creek (48.1364) - Upstream of Roundup Creek	Submit Application	-	-
Lost River (48.0592)	July 16 - August 15	X	X
Twisp River (48.0374)	July 1 - July 31	X	X
Buttermilk Creek (48.0466)	Submit Application	-	-
North Creek (48.0674)	Submit Application	-	-
North Fork Twisp River (48.0691)	July 1 - February 28	X	-
South Creek (48.0641) - Upstream of Louis Creek	July 1 - February 28	X	-
South Creek (48.0641) - Mouth to Louis Creek	Submit Application	-	-
South Fork Twisp River (48.0698)	July 1 - February 28	X	-
Wolf Creek (48.1300)	Submit Application	-	-
Myers Creek (60.0517)	July 1 - February 28	X	-
Bolster Creek (60.0517)	July 1 - February 28	X	-
Ethel Creek (60.0517)	July 1 - February 28	X	-
Gold Creek (60.0517)	July 1 - February 28	X	-

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Mary Ann Creek (60.0517)	July 1 - February 28	X	-
North Fork Mary Ann Creek (60.0517)	July 1 - February 28	X	-
Okanogan River (49.0019) - Mouth to Zosel Dam	July 1 - August 31	X	X
Antoine Creek (49.0294) - Mouth to velocity gradient at river mile 1.0	July 1 - February 28	X	-
Antoine Creek (49.0294) - Upstream of falls	July 1 - March 31	X	-
Bonaparte Creek (49.0246) - Upstream of falls	July 1 - March 31	X	-
Bonaparte Creek (49.0246) - Mouth to Bonaparte Falls at river mile 1.0	July 1 - February 28	X	-
Loup Loup Creek (49.0048) - Mouth to Loup Loup Falls at river mile 2.4	July 1 - February 28	X	-
Loup Loup Creek (49.0048) - Upstream of Loup Loup Falls at river mile 2.4	July 1 - March 31	X	-
Mosquito Creek (49.0321) - Mouth to falls	July 1 - August 31	X	-
Mosquito Creek (49.0321) - Upstream of falls	July 1 - March 31	X	-
Nine Mile Creek (49.0516)	July 1 - February 28	X	-
Omak Creek (49.0138) - Mouth to Mission Falls at river mile 5.4	July 1 - February 28	X	-
Omak Creek (49.0138) - Upstream of falls	July 1 - March 31	X	-
Salmon Creek (49.0079) - Mouth to diversion	July 1 - August 31	X	-
Salmon Creek (49.0079) - Upstream of diversion	July 1 - February 28	X	-
Similkameen River (49.0325) - Mouth to Enloe Dam	July 1 - August 31	X	X
Similkameen River (49.0325) - ((Upstream of)) Enloe Dam to Palmer Creek	((July)) June 1 - October 31	X	X
<u>Similkameen River (49.0325) - Upstream of Palmer Creek</u>	<u>July 1 - October 31</u>	<u>X</u>	<u>X</u>

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Sinlahekin Creek (49.0349) - Mouth to barrier dam at Connors Lake	July 1 - August 31	X	-
Cecile Creek (49.0447)	July 1 - February 28	X	-
Chopaka Creek (49.0357)	July 1 - February 28	X	-
Toats Coulee Creek (49.0368)	July 1 - February 28	X	-
Cougar Creek (49.0368)	July 1 - February 28	X	-
Siwash Creek (49.0284) - Falls to headwaters	July 1 - March 31	X	-
Siwash Creek (49.0284) - Mouth to falls at river mile 1.4	July 1 - February 28	X	-
Tonasket Creek (49.0501) - Mouth to Tonasket Falls at river mile 1.8	July 1 - February 28	X	-
Tonasket Creek (49.0501) - Upstream of Tonasket Falls at river mile 1.8	July 1 - March 31	X	-
Tunk Creek (49.0211) - Mouth to falls	July 1 - February 28	X	-
Tunk Creek (49.0211) - Upstream of falls	July 1 - March 31	X	-
San Poil River (52.0004)	June 16 - September 30	X	X
West Fork San Poil (52.0192)	June 16 - September 30	X	X
Gold Creek (52.0197)	June 16 - February 28	X	-
Toroda Creek (60.0410)	July 1 - September 30	X	-
Pacific County	August 1 - September 30	X	-
Bear River (24.0689)	August 1 - September 30	X	X
Bone River (24.0405)	August 1 - September 30	X	-
Chehalis River (22.0190/23.0190)	August 1 - August 15	X	X
Columbia River	See Below	-	-
Chinook River (24.MISC)	August 1 - September 30	X	X
Grays River (25.0093)	July 16 - September 15	X	X
Naselle River (24.0543)	August 1 - September 15	X	X
Nemah River (24.0460)	August 1 - September 30	X	X
Niawiakum River (24.0417)	August 1 - September 30	X	-
North River (24.0034)	August 1 - September 30	X	X
Palix River (24.0426)	August 1 - September 30	X	-
Willapa River (24.0251)	August 1 - September 30	X	X

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Pend Oreille County	July 1 - August 31	X	-
Little Spokane River (55.0003)	August 1 - March 15	X	-
West Branch Little Spokane River (55.0439)	August 1 - March 15	X	-
Harvey Creek (62.0310) - Mouth to Rocky Fork of Harvey Creek	August 1 - August 31	X	-
Harvey Creek (62.0310) - Upstream of Rocky Fork of Harvey Creek	July 16 - February 28	X	-
Pend Oreille River (62.0002)	Submit Application	-	-
Big Muddy Creek (62.0279)	August 1 - March 15	X	-
Bracket Creek (62.0815)	August 1 - March 15	X	-
Calispel Creek (62.0628)	August 1 - August 31	X	-
Exposure Creek (62.0261)	August 1 - August 31	X	-
Kent Creek (62.0819)	August 1 - March 15	X	-
Le Clerc Creek (62.0415)	August 1 - August 31	X	-
Lime Creek (62.0014)	August 1 - March 15	X	-
Lodge Creek (62.0859)	August 1 - August 31	X	-
Lost Creek (62.0322)	August 1 - March 15	X	-
Marmust Creek (62.0842)	August 1 - March 15	X	-
Pee Wee Creek (62.0007) - Mouth to falls	August 1 - August 31	X	-
Pee Wee Creek (62.0007) - Upstream of falls	August 1 - March 15	X	-
Renshaw Creek (62.0310)	August 1 - March 15	X	-
Sullivan (O'Sullivan) Creek (62.0074)	August 1 - August 31	X	-
North Fork Sullivan Creek (62.0075)	August 1 - August 31	X	-
Tributaries of Deep Creek in Pend Oreille County (61.0195)	July 16 - August 15	X	-
Currant Creek (61.0249)	July 16 - August 15	X	-
Meadow Creek (61.0351)	July 16 - August 15	X	-
Rocky Creek (61.0364)	July 16 - August 15	X	-
Silver Creek (61.0195)	July 16 - August 15	X	-
Smackout Creek (61.0226)	July 16 - August 15	X	-

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Pierce County	July 16 - August 31	X	-
Chambers/Clover Creek Watershed (12.MISC)	July 16 - September 30	X	-
Flett Creek (12.0009)	July 16 - October 31	X	-
Leach Creek (12.0008)	July 16 - September 30	X	-
Nisqually River (11.0008) - Mouth to Alder Lake	July 16 - August 31	X	X
Nisqually River (11.0008) - Upstream of Alder Lake	July 16 - September 30	X	X
Mashel River (11.0101) - Mouth to Busy Wild Creek	July 16 - September 30	X	X
Mashel River (11.0101) - Upstream of Busy Wild Creek	July 16 - September 30	X	-
Puyallup River (10.0021) - Mouth to PSE Electron Powerhouse Outfall	July 16 - August 31	X	X
Puyallup River (10.0021) - Upstream of PSE Electron Powerhouse Outfall	July 16 - August 15	X	X
Carbon River (10.0413)	July 16 - August 15	X	X
Cayada Creek (10.0525) - Mouth to falls about 800 feet upstream	July 16 - August 31	X	-
Cayada Creek (10.0525) - Upstream of the falls	January 1 - December 31	X	-
South Prairie Creek (10.0429)	July 16 - August 15	X	-
Voight Creek (10.0414) - Mouth to falls at river mile 4.0	July 16 - August 31	X	-
Voight Creek (10.0414) - Upstream of falls river mile 4.0	July 16 - February 28	X	-
White River (10.0031)	July 16 - August 15	X	X
Clearwater River (10.0080)	July 16 - August 15	X	X
Greenwater River (10.0122)	July 16 - August 15	X	X
Huckleberry Creek (10.0253)	July 16 - August 15	X	-
West Fork White River (10.0186)	July 16 - August 15	X	X
Sequalitchew Creek (12.0019)	July 16 - September 30	X	-

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San Juan County	July 1 - August 31	X	-
Cascade Creek (02.0057), Orcas Island - Upstream of Lower Falls	July 1 - February 28	X	-
Cascade Creek (02.0057), Orcas Island, Buck Bay to falls located approximately 300 feet above mouth	July 1 - October 31	X	-
Doe Creek (02.MISC), San Juan Island, Westcott Bay to falls (approximately 250 feet from mouth)	June 16 - October 15	X	-
False Bay Creek (02.MISC) - San Juan Island; mouth to lake	July 1 - October 31	X	-
Glenwood Springs, Orcas Island; direct tributary to Eastsound Bay	July 1 - October 15	X	-
Moran Creek (02.MISC) - Orcas Island; from Cascade Lake delta upstream 1/4 mile	July 1 - October 15	X	-
Unnamed Creek (02.0041) - San Juan Island; mouth to lake	July 1 - October 15	X	-
Skagit County	August 1 - September 15	X	-
Granite Creek (04.2313) - Upstream of East Creek	July 16 - February 28	X	-
North Fork Stillaguamish River (05.0135) - Mouth to Squire Creek	August 1 - August 15	X	X
North Fork Stillaguamish River (05.0135) - Squire Creek to Cascade Creek	August 1 - August 15	X	-
North Fork Stillaguamish River (05.0135) - Upstream of Cascade Creek	July 16 - February 28	X	-
Samish River (03.0005)	August 1 - September 15	X	-
Skagit River (03.0176/04.0176)	Submit Application	-	-
Baker River (04.0435) - Mouth to Baker Dam	Submit Application	-	-
Cascade River (04.1411)	Submit Application	-	-

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Day Creek (03.1435)	July 16 - February 28	X	-
Lookout Creek (04.1447)	July 16 - February 28	X	-
Sibley Creek (04.1481)	July 16 - February 28	X	-
Day Creek (03.0299) - Mouth to Rocky Creek	Submit Application	-	-
Day Creek (03.0299) - Upstream of Rocky Creek	August 1 - February 28	X	-
Finney Creek (04.0392) - Mouth to Big Fir Creek	Submit Application	-	-
Finney Creek (04.0392) - Upstream of Big Fir Creek	July 16 - February 28	X	-
Illabot Creek (04.1346)	Submit Application	-	-
Sauk River (04.0673) - Mouth to Forks	Submit Application	-	-
Sauk River (04.0673) - Upstream of Forks	August 1 - August 15	X	-
Suiattle River (04.0710)	Submit Application	X	X
Wiseman Creek (03.0280) - Mouth to SR20	Submit Application	-	-
Wiseman Creek (03.0280) - Upstream of SR20	July 16 - February 28	X	-
South Fork Nooksack River (01.0246) - Mouth to falls at river mile 30	Submit Application	-	-
South Fork Nooksack River (01.0246) - Falls at river mile 30 to Wanlick Creek	Submit Application	-	-
South Fork Nooksack River (01.0246) - Upstream of Wanlick Creek	Submit Application	-	-
Skamania County	July 15 - September 15	X	-
Columbia River	See Below	-	-
Cispus River (26.0668)	August 1 - August 15	X	X
Cispus River (26.0668) tributaries located in Skamania County	August 1 - October 31	X	-
East Fork Lewis River (27.0173) - Lucia Falls to Sunset Falls	August 1 - February 28	X	X

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East Fork Lewis River (27.0173) - Upstream of Sunset Falls	August 1 - February 28	X	-
Green River (26.0323) (Tributary of North Fork Toutle River)	July 16 - September 30	X	X
Hamilton Creek (28.0303)	August 1 - August 31	X	-
Hardy Creek (28.0303)	August 1 - August 31	X	-
Little White Salmon River (29.0131) - Mouth to Hatchery	July 16 - August 15	X	X
Little White Salmon River (29.0131) - Hatchery to Cabbage Creek	July 16 - January 31	X	X
Little White Salmon River (29.0131) - Upstream of Cabbage Creek	July 16 - January 31	X	-
North Fork Lewis River (27.0168) - Merwin Dam to Lower Falls	July 16 - August 15	X	X
Canyon Creek (27.0442)	July 16 - February 28	X	-
North Fork Lewis River (27.0168) - Upstream of Lower Falls	July 16 - February 28	X	X
Washougal River (28.0159) - Mouth to Stebbins Creek	August 1 - August 31	X	X
Washougal River (28.0159) - Upstream of Stebbins Creek	August 1 - August 31	X	-
White Salmon River (29.0160) - Mouth to Cascade Creek	July 16 - August 15	X	X
White Salmon River (29.0160) - Upstream of Cascade Creek	July 16 - August 15	X	-
Wind River (29.0023)	August 1 - August 15	X	X
Woodward Creek (28.0298)	August 1 - August 31	X	-
Snohomish County	July 16 - September 15	X	-
Lake Washington tributaries	August 1 - August 15	X	-
Sauk River (04.0673) - Mouth to Forks	August 1 - August 15	X	X
Sauk River (04.0673) - Upstream of Forks	August 1 - August 15	X	-

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Suiattle River (04.0710)	August 1 - August 15	X	X
Snohomish River (07.0012) - Mouth to Highway 9	August 1 - October 31	X	X
Snohomish River (07.0012) - Upstream of Highway 9	August 1 - August 15	X	X
Pilchuck River (07.0125) - Mouth to city of Snohomish Diversion Dam	August 1 - August 31	X	X
Pilchuck River (07.0125) - City of Snohomish Diversion Dam to Boulder Creek	August 1 - September 15	X	X
Pilchuck River (07.0125) - Upstream of Boulder Creek	August 1 - September 15	X	-
Skykomish River (07.0012) - Mouth to Forks	August 1 - August 15	X	X
Deer Creek (05.0173) - Mouth to stream mile 0.5	August 1 - August 31	X	-
Deer Creek (05.0173) - Upstream of stream mile 0.5	August 1 - February 28	X	-
North Fork Skykomish River (07.0982) - Mouth to Bear Creek Falls	August 1 - August 31	X	X
North Fork Skykomish River (07.0982) - Bear Creek Falls to Deer Falls	August 1 - August 31	X	X
North Fork Skykomish River (07.0982) - Deer Falls to West Cady Creek	August 1 - February 28	X	X
North Fork Skykomish River (07.0982) - Upstream of West Cady Creek	August 1 - February 28	X	-
Howard Creek (07.1042)	July 16 - February 28	X	-
Silver Creek (07.1053) - Mouth to Lake Gulch	August 1 - August 31	X	-
Silver Creek (07.1053) - Upstream of Lake Gulch	August 1 - February 28	X	-
Troublesome Creek (07.1085)	August 1 - February 28	X	-
West Fork Troublesome Creek (07.1092)	August 1 - August 31	X	-

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South Fork Skykomish River (07.0012) - Mouth to Sunset Falls	August 1 - August 15	X	X
Beckler River (07.1413) - Mouth to Boulder Creek	August 1 - August 15	X	X
Beckler River (07.1413) - Upstream of Boulder Creek	July 16 - February 28	X	-
Rapid River (07.1461) - Mouth to Meadow Creek	August 1 - August 31	X	X
Rapid River (07.1461) - Upstream of Meadow Creek	August 1 - February 28	X	X
Sultan River (07.0881) - Mouth to Diversion Dam at river mile 9.4	August 1 - August (15) 31	X	X
Sultan River (07.0881) - Diversion Dam to (Elk Creek) <u>anadromous fish blockage at river mile 15.7 (0.7 river miles downstream from Culmback Dam)</u>	(July 16 - February 28) <u>August 1 - August 31</u>	X	X
Sultan River (07.0881) <u>anadromous fish blockage at river mile 15.7 (0.7 river miles downstream from Culmback Dam) to Elk Creek</u>	<u>July 16 - February 28</u>	<u>X</u>	<u>X</u>
Sultan River (07.0881) - Upstream of Elk Creek	July 16 - February 28	X	-
Wallace River (07.0940) - Mouth to Wallace Falls	August 1 - August 31	X	X
Wallace River (07.0940) - Upstream of Wallace Falls	August 1 - February 28	X	-
Olney Creek (07.0946) - Mouth to Olney Falls	August 1 - August 31	X	-
Olney Creek (07.0946) - Upstream of Olney Falls	August 1 - February 28	X	-
Snoqualmie River Mouth to falls (07.0219)	August 1 - August 15	X	X
All other Snohomish River tributaries	August 1 - August 31	X	-
Stillaguamish River (05.0001) - Mouth to Forks	August 1 - August 31	X	X

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
North Fork Stillaguamish River (05.0135) - Mouth to Squire Creek	August 1 - August 15	X	X
North Fork Stillaguamish River (05.0135) - Squire Creek to Cascade Creek	August 1 - August 15	X	-
North Fork Stillaguamish River (05.0135) - Upstream of Cascade Creek	July 16 - February 28	X	-
South Fork Stillaguamish River (05.0001) - Mouth to Deer Creek	August 1 - August 15	X	X
South Fork Stillaguamish River (05.0001) - Upstream of Deer Creek	August 1 - August 15	X	-
Spokane County	June 16 - August 31	X	-
Latah Creek (56.0003)	June 16 - August 31	X	-
Little Spokane River (55.0600) - Mouth to Deer Creek	June 16 - August 31	X	X
Little Spokane River (55.0600) - Upstream of Deer Creek	June 16 - August 31	X	-
Spokane River (57.0001)	June 16 - August 31	X	X
Stevens County	July 16 - August 31	X	-
Columbia River	See Below	-	-
Big Sheep Creek (61.0150)	July 16 - August 15	X	-
Colville River (59.0002) - Mouth to the falls	July 16 - September 30	X	X
Colville River (59.0002) - Upstream of the falls	July 16 - September 30	X	X
Deep Creek (61.0195)	July 16 - August 15	X	-
Onion Creek (61.0098)	July 16 - August 15	X	-
Sheep Creek (59.0861)	July 16 - September 30	X	-
Lake Roosevelt tributaries from the mouth of the Spokane River to mouth of the Colville River	July 16 - February 28	X	-
Lake Roosevelt tributaries from the mouth of the Colville River north to the B.C. border	July 16 - February 28	X	-

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Tributaries of Little Spokane River (55.0600)	June 16 - August 31	X	-
Calispel Creek (62.0628)	August 1 - August 31	X	-
Other tributaries to the Pend Oreille River in Stevens County	July 1 - August 31	X	-
Thurston County	July 16 - September 15	X	-
Cedar Creek (23.0570)	August 1 - September 30	X	-
Chehalis River (22.0190/23.0190) - Upstream of Porter Creek	August 1 - August 15	X	X
Skookumchuck River (23.0761) - Mouth to Skookumchuck Reservoir	August 1 - August 31	X	X
Skookumchuck River (23.0761) - Upstream of Skookumchuck Reservoir	August 1 - August 31	X	-
Deschutes River (13.0028) - Mouth to Deschutes Falls	July 16 - August 31	X	X
Deschutes River (13.0028) - Upstream of Deschutes Falls	July 16 - August 31	X	-
Ellis Creek (13.0022)	May 16 - September 30	X	-
Little Deschutes River (13.0110)	July 16 - February 28	X	-
McLane Creek (13.0138)	August 1 - October 31	X	-
Percival Creek (13.0029)	July 16 - August 31	X	-
Nisqually River (11.0008)	July 16 - August 31	X	X
Tributaries of Nisqually River (11.0008)	July 16 - August 31	X	-
Porter Creek (23.0543)	August 1 - September 30	X	-
Schneider Creek (14.0009)	August 1 - October 31	X	-
Waddell Creek (23.0677)	August 1 - September 30	X	-
Woodard Creek (13.0012)	July 16 - August 31	X	-
Woodland Creek (13.0006)	July 16 - September 30	X	-
Wahkiakum County	July 16 - September 15	X	-
Columbia River	See Below	-	-
Abernathy Creek (25.0297)	July 16 - September 15	X	-
Deep River (25.0011)	July 16 - September 15	X	X
Elochoman River (25.0236)	July 16 - September 15	X	X
Grays River (25.0093)	July 16 - September 15	X	X

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Mill Creek (25.0284)	July 16 - September 15	X	-
Naselle River (24.0543)	July 16 - September 15	X	X
Skamokowa Creek (25.0194)	July 16 - September 15	X	-
Walla Walla County	July 16 - September 30	X	-
Walla Walla River (32.0008) - Mouth to Oregon state line	July 16 - September 15	X	X
Mill Creek (32.1436) - Mouth to Oregon state line	August 1 - August 15	X	-
Touchet River (32.0097) - Mouth to Forks	August 1 - August 15	X	X
North Fork Touchet/Wolf Fork (32.0761)	Submit Application	-	-
South Fork Touchet (32.0708)	Submit Application	-	-
Whatcom County	July 16 - August 15	X	-
Damfino Creek (00.0032)	July 16 - August 31	X	-
Nooksack River (01.0120)	Submit Application	-	-
Cascade Creek (02.0057) - Mouth to FR 37	Submit Application	-	-
Cascade Creek (02.0057) - Upstream of FR 37	July 16 - February 28	X	-
Middle Fork Nooksack River (01.0339) - Mouth to city of Bellingham Diversion Dam	Submit Application	-	-
Middle Fork Nooksack River (01.0339) - Upstream of city of Bellingham Diversion Dam	Submit Application	-	-
North Fork Nooksack River (01.0120) - Mouth to Nooksack Falls	Submit Application	-	-
North Fork Nooksack River (01.0120) - Upstream of Nooksack Falls	Submit Application	-	-
Barometer Creek (01.0513)	July 16 - February 28	X	-
Ruth Creek (01.0531)	July 16 - February 28	X	-
Swamp Creek (01.0518)	July 16 - February 28	X	-
Wells Creek (02.0057)	Submit Application	-	-
Bar Creek (01.0500)	July 16 - February 28	X	-

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
South Fork Nooksack (01.0246) - Mouth to Wanlick Creek	Submit Application	-	-
South Fork Nooksack (01.0246) - Upstream of Wanlick Creek	Submit Application	-	-
Samish River (03.0005)	July 16 - August 15	X	-
Skagit River (03.0176/04.0176)	Submit Application	-	-
Baker River (04.0435) - Mouth to Baker Lake Dam (04.0435)	Submit Application	-	-
Baker River (04.0435) - Baker Lake to National Park boundary	Submit Application	-	-
Boulder Creek (04.0499)	July 16 - February 28	X	-
Park Creek (04.0506) - Mouth to fish passage barrier at river mile 1.6	Submit Application	-	-
Park Creek (04.0506) - Upstream of river mile 1.6	July 16 - February 28	X	-
Swift Creek (04.0509) - Mouth to Rainbow Creek	Submit Application	-	-
Swift Creek (04.0509) - Upstream of Rainbow Creek	July 16 - February 28	X	-
Ross Lake tributaries (03.0176/04.0176)	Submit Application	-	-
Ruby Creek (04.2199)	Submit Application	-	-
Canyon Creek (04.2458) - Mouth to Barron Creek	Submit Application	-	-
Canyon Creek (04.2458) - Upstream of Barron Creek and tributaries	October 1 - February 28	X	-
Barron Creek (04.2591)	October 1 - February 28	X	-
Boulder Creek (04.2478) - Mouth to 300 feet upstream	Submit Application	-	-
Boulder Creek (04.2478) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
Friday Creek (04.2549) - Mouth to 300 feet upstream	Submit Application	-	-

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Friday Creek (04.2549) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
Holmes Creek (04.2473) - Mouth to 300 feet upstream	Submit Application	-	-
Holmes Creek (04.2473) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
Mill Creek (04.2504) - Mouth to 300 feet upstream	Submit Application	-	-
Mill Creek (04.2504) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
Nickol Creek (04.2476) - Mouth to 300 feet upstream	Submit Application	-	-
Nickol Creek (04.2476) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
North Fork Canyon Creek (04.2583) - Mouth to Elk Creek	Submit Application	-	-
Cascade Creek (05.2584)	October 1 - February 28	X	-
North Fork Canyon Creek (04.2583) - Upstream of Elk Creek	October 1 - February 28	X	-
Slate Creek (04.2557) - Mouth to falls at river mile 0.6	Submit Application	-	-
Slate Creek (04.2557) - Upstream of falls at river mile 0.6	October 1 - February 28	X	-
Granite Creek (04.2313) - Mouth to East Creek	Submit Application	-	-
Granite Creek (04.2313) - Upstream of East Creek and tributaries	October 1 - February 28	X	-
Saar Creek (00.0003)	August 1 - September 30	X	-
Silesia Creek (00.0042) - Canadian border to Middle Fork	July 16 - August 15	X	-
Silesia Creek (00.0042) - Middle Fork to National Park boundary	July 16 - February 28	X	-

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Rapid Creek (00.0048)	July 16 - February 28	X	-
West Fork Silesia Creek (00.0044)	July 16 - February 28	X	-
Winchester Creek (00.0045)	July 16 - February 28	X	-
Whitman County	July 16 - December 15	X	-
Snake River (35.0002)	See Below	-	-
Alkali Flats Creek (35.0570)	July 16 - December 15	X	-
Almota Creek (35.1017)	July 16 - December 15	X	-
Little Almota Creek (35.1018)	July 16 - December 15	X	-
Palouse River (34.0003) - Mouth to Palouse Falls	July 16 - September 30	X	X
Palouse River (34.0003) - Upstream of Palouse Falls	July 16 - February 28	X	X
Penewawa Creek (35.0916)	July 16 - December 15	X	-
Wawawi Canyon Creek (35.1165)	July 16 - December 15	X	-
Yakima County	June 1 - September 15	X	-
Glade Creek (31.0851)	August 1 - September 30	X	-
Klickitat River (30.0002)	Submit Application	-	-
Yakima River (37.0002/38.0002/39.0002) - Mouth to Roza Dam	June 1 - September 15	X	X
Ahtanum Creek (37.1382)	June 16 - September 30	X	-
North Fork Ahtanum Creek (37.1382)	Submit Application	-	-
South Fork Ahtanum Creek (37.1382)	Submit Application	-	-
Naches River (38.0003) - Mouth to Tieton River	July 1 - October 15	X	X
Naches River (38.0003) - Upstream of mouth of Tieton River to Bumping River	July 1 - August 15	X	X
Bumping River (38.0998)	July 16 - August 15	X	X
American River (38.1000)	Submit Application	-	-
Gold Creek (38.MISC)	July 16 - February 28	X	-
Kettle Creek (38.1033)	Submit Application	-	-
Miner Creek (38.1027)	July 16 - February 28	X	-
Morse Creek (38.1072) - Mouth to SR410 crossing	August 1 - August 15	X	-

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Morse Creek (38.1072) - Upstream of SR410 crossing	August 1 - February 28	X	-
Rock Creek (38.MISC)	July 16 - February 28	X	-
Timber Creek (38.1062)	August 1 - August 15	X	-
Union Creek (38.1045) - Upstream of 500 feet above falls	August 1 - February 28	X	-
Union Creek (38.1045) - Mouth to 500 feet above falls	Submit Application	-	-
Other American River tributaries not listed	August 1 - February 28	X	-
Deep Creek (38.MISC)	Submit Application	-	-
Copper Creek (38.MISC)	August 1 - August 15	X	-
Cowiche Creek (38.0005) - Mouth to South Fork Cowiche Creek	July 1 - September 30	X	-
North Fork Cowiche Creek (38.0008)	July 1 - February 28	X	-
South Fork Cowiche Creek (38.0031) - Mouth to Reynolds Creek	July 1 - September 30	X	-
South Fork Cowiche Creek (38.0031) - Upstream of Reynolds Creek	July 16 - October 31	X	-
Granite Creek (38.MISC)	August 1 - August 15	X	-
Little Naches River (38.0852) - Mouth to Matthews Creek	July 16 - August 15	X	X
Little Naches River (38.0852) - Upstream of Matthews Creek	July 16 - August 15	X	-
Crow Creek (38.0858)	July 16 - August 15	X	-
Nile Creek (38.0692)	July 16 - October 15	X	-
Rattlesnake Creek (38.0518)	July 16 - August 15	X	-
Tieton River (38.0166) - Mouth to Rimrock Dam	July 1 - August 31	X	X
North Fork Tieton River (38.0291) - Below Clear Lake Dam	Submit Application	-	-
North Fork Tieton River (38.0291) - Upstream of Clear Lake	July 1 - August 15	X	-

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Clear Creek (38.0317)	July 16 - February 28	X	-
South Fork Tieton River (38.0374) - Below South Fork Falls	Submit Application	-	-
South Fork Tieton River (38.0374) - Upstream of South Fork Falls	July 16 - February 28	X	-
Indian Creek (38.0302)	Submit Application	-	-
Tributaries of Tieton River below Rimrock Dam	July 16 - February 28	X	-
Umtanum Creek (39.0553)	July 16 - September 30	X	-
Wenas Creek (39.0032)	July 16 - October 15	X	-
Other Yakima River tributaries	July 16 - August 31	X	-
Columbia River	-	-	-
Mouth to the I-205 Bridge	August 1 - March 31	X	X
I-205 Bridge to Bonneville Dam	July 16 - September 15	X	X
Bonneville Dam to Snake River	July 16 - February 28	X	X
Snake River to Priest Rapids Dam	July 16 - September 30	X	X
Priest Rapids Dam to Mouth of Crab Creek	July 16 - February 28	X	X
Mouth of Crab Creek to Wanapum Dam	July 16 - September 30	X	X
Wanapum Dam to the SR 285 bridge in South Wenatchee	July 16 - February 28	X	X
SR 285 bridge in South Wenatchee to the SR 2 bridge	July 16 - September 30	X	X
SR 2 bridge to one mile downstream of the Chelan River	July 16 - February 28	X	X
From one mile downstream of the Chelan River to the SR 97 bridge	July 16 - September 30	X	X
From SR 97 bridge to Chief Joseph Dam	July 16 - February 28	X	X
Chief Joseph Dam to Grand Coulee Dam	June 16 - March 31	X	X

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Grand Coulee Dam to Canadian border	Submit Application	-	-
All Columbia River tributaries	See County Listings	-	-
Snake River	-	X	-
Mouth to Ice Harbor Dam	July 16 - September 30	X	X
Ice Harbor Dam to Mouth of Clearwater River	July 16 - March 31	X	X
Mouth of Clearwater River to state line	August 1 - August 31	X	X
All Snake River tributaries	See County Listings	-	-
Lakes	Submit Application	-	-
Strait of Juan de Fuca, Puget Sound, Hood Canal	Submit Application	-	-
Ocean beaches within the Seashore Conservation Area established under RCW 79A.05.605	January 1 - December 31	X	X
All waters within Indian tribal reservation, National Park, state park, or wilderness boundaries, except those within the Seashore Conservation Area established under RCW 79A.05.605	Submit Application	-	-

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

WAC 220-660-460 Informal appeal of administrative actions. An informal appeal is an appeal to the department pursuant to chapter 34.05 RCW (Administrative Procedure Act).

(1) The department recommends that a person aggrieved by the issuance, denial, provisioning, or modification of an HPA contact the department employee responsible for making the decision on the HPA before initiating an informal appeal. Discussion of concerns with the department employee often results in a resolution of the problem without the need for an informal appeal.

(2) The department encourages aggrieved persons to take advantage of the informal appeal process before initiating a formal appeal. However, the informal appeal process is not mandatory, and a person may proceed directly to a formal appeal under WAC 220-660-470.

This rule does not apply to any provisions in pamphlet HPAs. A person who disagrees with a provision in a pamphlet HPA may apply for an individual, written HPA.

(3) Any person with legal standing may request an informal appeal of the following department actions:

(a) The issuance, denial, provisioning, or modification of an HPA; or

(b) An order imposing civil penalties.

(4) A request for an informal appeal must be in writing and must be received by the department within thirty days from the date of receipt of the decision or order. "Date of receipt" means:

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

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

(5) A request for informal appeal must be submitted in one of the following ways:

(a) Mailed to the:

HPA Appeals Coordinator
Department of Fish and Wildlife
Habitat Program
(~~600 Capitol Way N.~~) P.O. Box 43234
Olympia, (~~Washington 98501-1091~~) WA 98504-3234;

(b) Email: HPAapplications@dfw.wa.gov;

(c) Fax: 360-902-2946; or

(d) (~~Hand-delivered~~) Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(6) The request must be plainly labeled as "Request for Informal Appeal" and must include the following:

(a) The appellant's name, address, email address (if available), and phone number;

(b) The specific department action that the appellant contests;

(c) The date the department issued, denied, provisioned, or modified an HPA, or the date the department issued the order imposing civil penalties;

(d) The log number or a copy of the HPA, or a copy of the order imposing civil penalties;

(e) A short and plain statement explaining why the appellant considers the department action or order to provide inadequate protection of fish life or to be otherwise unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question;

(h) The specific relief requested;

(i) The attorney's name, address, email address (if available), and phone number, if the appellant is represented by legal counsel; and

(j) The signature of the appellant or his or her attorney.

(7) Upon receipt of a valid request for an informal appeal, the department may initiate a review of the department action.

(8) Informal conference. If the appellant agrees, and the appellant applied for the HPA, resolution of the appeal may be facilitated through an informal conference. The informal conference is an optional part of the informal appeal and is normally a discussion between the appellant, the department employee responsible for the decision, and a supervisor. The time period for the department to issue a decision on an informal appeal is suspended during the informal conference process.

(9) Informal appeal hearing. If the appeal is received from a person who is not the permittee, or if the appeal involves an order imposing civil penalties, or if a resolution is not reached through the informal conference process, then the HPA appeals coordinator or designee may conduct an informal appeal hearing or review. Upon completion of the informal appeal hearing or review, the HPA appeals coordinator or designee must recommend a decision to the director or designee. The director or designee must approve or decline to approve the recommended decision within sixty days of the

date the department received the request for informal appeal, unless the appellant agrees to an extension of time. The department must notify the appellant in writing of the decision of the director or designee.

(10) If the department declines to initiate an informal review of its action after receipt of a valid request, or the appellant still wishes to contest the department action following completion of the informal appeal process, the appellant may initiate a formal appeal under WAC 220-660-470. Formal review must be requested within the time periods specified in WAC 220-660-470.

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

WAC 220-660-470 Formal appeal of administrative actions. A formal appeal is an appeal to the pollution control hearings board pursuant to chapters 34.05 RCW and 371-08 WAC.

(1) The department recommends that a person aggrieved by the issuance, denial, provisioning, or modification of an HPA contact the department employee responsible for making the decision on the HPA before initiating a formal appeal. Discussion of concerns with the department employee often results in a resolution of the problem without the need for a formal appeal.

(2) The department encourages aggrieved persons to take advantage of the informal appeal process under WAC 220-660-460 before initiating a formal appeal. However, the informal appeal process is not mandatory, and a person may proceed directly to a formal appeal.

This rule does not apply to any provisions in pamphlet HPAs. A person who disagrees with a provision in a pamphlet HPA may apply for an individual, written HPA.

(3) Any person with standing may request a formal appeal of the following department actions:

(a) The issuance, denial, provisioning, or modification of an HPA; or

(b) An order imposing civil penalties.

(4) As required by the Administrative Procedure Act, chapter 34.05 RCW, the department must inform the HPA permittee or applicant, or person subject to civil penalty order of the department, of the opportunity for appeal, the time within which to file a written request for an appeal, and the place to file it.

(5) A request for formal appeal must be in writing and must be filed with the clerk of the pollution control hearings board (PCHB) and served on the department within thirty days from the date of receipt of the decision or order. "Date of receipt" means:

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

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

(6) The request must be plainly labeled as "Request for Formal Appeal" and, pursuant to WAC 371-08-340, must include the following:

(a) The appellant's name, mailing address, email address (if available), and phone number; and if represented by another, the representative's name, mailing address, email address, and phone number;

(b) The specific department action that the appellant contests;

(c) The date the department issued, denied, provisioned, or modified an HPA, or the date the department issued the order imposing civil penalties;

(d) A copy of the order or permit you are appealing, and if appealing a permit decision, a copy of the permit application;

(e) A short and plain statement explaining why the appellant considers the department action or order to provide inadequate protection of fish life or to be otherwise unjust or unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question;

(h) The specific relief requested;

(i) The signature of the appellant or his or her representative.

(7) Service on the department must be submitted in one of the following ways:

(a) Mailed to:

HPA Appeals Coordinator
Department of Fish and Wildlife
Habitat Program
(~~600 Capitol Way N.~~) P.O. Box 43234
Olympia, (~~Washington 98501-1091~~) WA 98504-3234;

(b) Email: HPAapplications@dfw.wa.gov;

(c) Fax: 360-902-2946; or

(d) (~~Hand-delivered~~) Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(8) The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal must be within thirty days from the date of receipt of the department's written decision in response to the informal appeal.

(9) The department at its discretion may stay the effectiveness of any decision or order that has been appealed to the PCHB. The department will use the standards in WAC 371-08-415(4) to make a decision on any stay request. At any time during the appeal to the PCHB, the appellant may apply to the PCHB for a stay of the decision or order, or removal of a stay imposed by the department.

(10) If there is no timely request for an appeal, the department action will be final and nonappealable.

WSR 18-10-055

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed April 27, 2018, 8:00 a.m., effective May 28, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-302 WAC, General standards for seed certification, and WAC 16-303-340 Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains, as follows:

- Modify the field inspection application deadline for fall planted small grains, peas and lentils from June 1 to April 1;
- Modify the field inspection application deadline for chickpeas from June 1 to within twenty-eight days of planting;
- Modify the field inspection application deadline for hybrid small grains from June 1 to February 1 for fall plantings and to twenty-one days after planting for spring plantings;
- Clarify at what stage of growth chickpeas are to be inspected;
- Reduce land history requirements and isolation standards for field peas, lentils, and chickpeas;
- Update field pea standards to more accurately address winter food grade;
- To allow for organic seed production, change the requirement that all chickpea seed stocks be treated with thiabendazole to treatment with any fungicide registered for control of ascochyta only if ascochyta blight is found in the crop; and
- Move chickpea inspection requirements from WAC 16-302-690 to 16-302-560 to prevent confusion with other requirements.

Add language to WAC 16-303-340 to explain the Washington State Crop Improvement Association audit process and to clarify the appropriate application and assessment of final certification and production fees.

Citation of Rules Affected by this Order: Amending WAC 16-302-050, 16-302-560, 16-302-660, 16-302-665, 16-302-690, and 16-303-340.

Statutory Authority for Adoption: RCW 15.49.005, [15.49].021, [15.49].310, and [15.49].370.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 18-06-110 on March 7, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 6, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 27, 2018.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 17-08-090, filed 4/5/17, effective 5/6/17)

WAC 16-302-050 Submitting an application for seed certification. (1) Seed certification application due dates are:

(a) For seed certified by the department: Alfalfa, clover, grasses and rapeseed (seedling applications) - Within sixty days of planting. Seedling applications will not be accepted if received more than one hundred five days after planting.

(b) Hybrid canola or hybrid rapeseed - Fall plantings February 1st; Spring plantings - Twenty-one days after planting.

(c) Sunflower twenty-one days after planting.

(d) Notification of a seedling field to be harvested for certification the same year of planting is due July 31st with the required fees.

(i) Bean - July 1st.

(ii) Corn - June 1st.

(iii) Industrial hemp - Twenty-one days after planting.

(2) For seed certified by the Washington state crop improvement association (WSCIA) seed certification application due dates are:

(a) ~~((Field pea, chickpea, lentil, millet, and))~~ Fall planted small grains ((both winter and spring varieties) - June)), peas and lentils - April 1st.

(b) Spring planted small grains, peas, lentils, and millet - June 1st.

(c) Chickpeas - Within twenty-eight days of planting.

(d) Hybrid small grains - Fall plantings February 1st; spring plantings - Twenty-one days after planting.

(e) Buckwheat and soybean - July 1st.

~~((e))~~ (f) Sorghum - July 15th.

~~((d))~~ (g) Forest tree seed certification - Refer to specific crop requirements in chapter 16-319 WAC.

(3) An application for seed certification must be submitted to the certifying agency each year a grower plans to produce seed for certification of annual crops (beans, peas, grain).

(4) A renewal application for seed certification must be submitted to the certifying agency after a stand is established each year that a grower plans to produce seed for certification of perennial crops (alfalfa, clover, grass). Due dates for renewal applications are as follows:

(a) Alfalfa and clover - June 15th.

(b) Grass - May 1st.

(5) Applications received after the due date are assessed a late application fee.

(6) No renewal application for seed certification may be accepted after the due date if a field inspection cannot be conducted prior to harvest except at the discretion of the certifying agency.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-560 Miscellaneous field and seed inspection standards for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed certification. (1) Field inspection timing for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed entered in the certification program are:

(a) For field pea and lentil - When seed crop is in full bloom;

(b) For chickpea (garbanzo bean) - When seed crop is mature enough to differentiate leaf type (compound or simple leaf type) ~~((and in))~~, with a second inspection occurring between full bloom and late pod stage for registered and foundation class. Certified class requires a second inspection at late pod stage if ascochyta blight is observed during the first inspection;

(c) For soybean - When seed crop is in full bloom ~~((and/or))~~ and of mature color;

(d) For open pollinated sorghum - When seed crop is in full bloom, and optionally again when seed crop begins to show mature color;

(e) For hybrid sorghum - Two inspections during bloom and one inspection after seed begins to show mature color;

(f) For small grains - When seed crop is fully headed and of mature color;

(g) For millet - One inspection during bloom and one inspection after seed begins to show mature color; and

(h) For buckwheat - One inspection when seed crop is in full bloom.

(2) Any condition or practice which permits or causes contamination of the seed crop, such as failure to prevent seed formation of prohibited noxious weeds, or excess weeds including excessive objectionable or restricted noxious weeds, or mechanical field mixing, is cause for rejection upon inspection. Fields rejected for jointed goatgrass or jointed goatgrass hybrids are not eligible for reinspection and must remain ineligible for any production of certified classes of small grain seed until a reclamation procedure, as specified in subsection (3) of this section has been completed. Fields rejected for other causes will remain eligible for reinspection.

(3) The jointed goatgrass reclamation procedure includes the following:

(a) Each grower must develop a reclamation plan for his/her affected fields. The plan must be based on the most current recommendations of Pacific Northwest scientists and Washington State University cooperative extension as well as good management practices. The plan may include use of certified seed, spring cropping practices, and late tilling and planting. No particular program is specified or endorsed and compliance with a program does not assure eligibility for the production of certified classes of small grain seed. Eligibility is based solely upon results of field inspections as provided in (b) through (e) of this subsection.

(b) The rehabilitation and inspection program duration is three years for irrigated land and five years for dryland without production of certified small grain seed and the first year of certified seed production thereafter.

(c) Annual inspections of the affected fields are conducted by the certifying agency during the prescribed rehabil-

itation period at such time that the jointed goatgrass or jointed goatgrass hybrids would be most visible.

(d) Following the prescribed period of rehabilitation and during the first certified seed production year, a minimum of three field inspections are conducted by the certifying agency.

(e) If jointed goatgrass or jointed goatgrass hybrids are found during any inspection as provided in (c) and (d) of this subsection, the rehabilitation program is determined unsuccessful or the field is declared ineligible and the rehabilitation and inspection program for that field must begin again at year one of the procedure.

(4) Field run lots of seed of the same variety may be commingled to facilitate storage and conditioning.

(5) No prohibited noxious weed seeds are permitted upon inspection for seed standards.

(6) Germination minimum refers to germination when sampled.

(7) If chemically controllable seed-borne diseases are noted upon inspection for field standards and seed standards for small grains, treatment of seed is required.

(8) Wild oat, isolated patches and borders must be removed or clearly marked so as to avoid harvesting with the rest of the field. If rejected, a reinspection is necessary to assure clean-up efforts are satisfactory. Spot checks are conducted on fields where heavy patches or contaminated borders were noted. Harvesting these areas with the rest of the field is cause for rejection of the entire field.

(9) The official laboratory providing seed analysis for the purpose of certification is the department.

(2) Seed certification standards for field pea are:

Class	Off-type Maximum %	Pure Seed Minimum %	Inert Maximum %	Other Crop Maximum %	Weed Maximum %	Germination Minimum %
Foundation	None found	99.00	1.00	None found	None found	85
Registered	None found	99.00	1.00	None found	0.25 (b)	85
Certified	0.03	99.00	1.00	0.10 (a)	0.25 (b)	85

(a) ~~((For spring peas,))~~ No Austrian winter pea or rye is permitted. For Austrian winter peas, no rye is permitted.

(b) ~~((Other tolerance for))~~ Objectionable weed seed ~~((:))~~ maximum: 1 seed per lb. registered class, 2 seeds per lb. certified class.

	((OBJECTIONABLE WEED SEED MAXIMUM
Registered	1/1b
Certified	2/1b))

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-665 Lentil standards for seed certification. (1) Land, isolation, and field standards for lentil seed certification are:

Class	Land Minimum Years	Isolation Minimum Feet	Off-type Maximum Plants/acre	Field Other Crop Maximum Plants/acre
Foundation	5	((50)) 25 (a)	None found	None found
Registered	4	((50)) 10 (a)	10	10 (b)
Certified	3	((25)) 10 (a)	20	20 (b)

(10) For all fields planted with varieties that contain the CLEARFIELD trait as defined in the variety description, documentation will be required to be submitted with the certification application verifying that the production field meets all production guidelines and was sprayed with the appropriate herbicide. CLEARFIELD is a trait that makes a plant resistant to the Imazamox herbicide.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-660 Field pea standards for seed certification. (1) The land, isolation, and field standards for field pea seed certification are:

Class	Land Minimum Years	Isolation Minimum Feet	Off-type Maximum Plants/acre	Field Other Crop Maximum Plants/acre
Foundation	((5)) 3 (a)	((50)) 25 (b)	None found	None found (c)
Registered	((3)) 2 (a)	((50)) 10 (b)	10	None found (c)
Certified	2 (a)	((25)) 10 (b)	20	None found (c)

(a) ~~((Spring))~~ Peas also require 10 years land history with no production of Austrian winter pea for all classes.

(b) Reduce to three feet from fields producing a certified class of the same variety. In addition, each field pea field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed field pea seed crop, the planting of small grain between field pea fields, except for the three feet of isolation, is recommended.

(c) ~~((For spring peas,))~~ No Austrian winter pea or rye is permitted. For Austrian winter peas, no rye is permitted.

(a) Reduce to three feet from fields producing a certified class of the same variety. In addition, each lentil field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed lentil seed crop, the planting of small grain between lentil fields, except for three feet of isolation, is recommended.

(b) Refers to barley and vetch, each.

(2) Seed certification standards for lentil are:

Class	Off Type Maximum Seeds/lb	Pure Seed Minimum %	Inert Maximum %	Other Crop Maximum %	Weed Maximum %	Germination Minimum %
Foundation	None found	99.00 (a)	1.00 (a)	None found	None found	85.00
Registered	1	99.00 (a)	1.00 (a)	0.05 (b)	0.05 (b), (c)	85.00
Certified	4	99.00 (a)	1.00 (a)	0.10 (b)	0.05 (c)	85.00

- (a) A total of three percent inert matter is allowed in samples containing decorticated seed provided total of all other inert matter does not exceed one percent.
- (b) No vetch is permitted.
- (c) ~~((Other tolerance for))~~ Objectionable weed seed ~~((:))~~ maximum: 1 seed per lb. registered class, 2 seeds per lb. certified class.

	((OBJECTIONABLE WEED SEED MAXIMUM
Registered	1/lb
Certified	2/lb))

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-690 Chickpea standards for seed certification. (1) Land, isolation, and field standards for chickpea seed certification are:

FIELD STANDARDS

Land Requirements (a) (minimum years)	Isolation (minimum feet) (e)	Off-type (plants/acre)	Other Crop (b) (plants/acre)	Noxious (c) Weeds (plants/acre)	Ascochyta Blight (d)
Class					
Foundation	((3)) <u>2</u>	((50)) <u>25</u>	none found	((none found)) <u>(c)</u>	none found
Registered	((2)) <u>1</u>	((50)) <u>10</u>	5	((none found)) <u>(c)</u>	none found
Certified	((2)) <u>1</u>	((25)) <u>10</u>	10	((none found)) <u>(c)</u>	10 plants/acre

- (a) ~~((Shall not have been planted to chickpeas for three years for foundation class, and two years for registered and certified class, unless))~~ Waived if the previous crop is ~~((of the same variety))~~ grown and passes certification field standards of ~~((the same))~~ equal or higher ~~((generation))~~ certified class of seed of the same variety.
- (b) Inseparable other crops.
- (c) Prohibited, restricted, and other weeds difficult to separate must be controlled.
- (d) None found in all classes of ~~((nontolerant))~~ varieties not tolerant to ascochyta. ~~((Planting seedstock must be treated with Thiabendazole (2-(4-thiazolyl) benzimidazole.))~~
- (e) Reduce to three feet from fields producing a certified class of the same variety. In addition, each chickpea field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed chickpea seed crop, the planting of small grain between fields, except for three feet of isolation, is recommended.

~~((FIELD INSPECTION~~

~~Foundation and registered class fields must have two field inspections: One at bloom stage and one at late pod stage. Certified class fields must be inspected at bloom stage plus another at pod stage if ascochyta blight is observed during the bloom stage inspection.))~~

(2) Seed standards for chickpea seed certification are:

SEED STANDARDS

	Pure seed %	Inert %	Other crop	Weed seed	Germination %
Class (c)					
Foundation	99	1	none found	none found	85
Registered	99	1	none found	none found	85

	Pure seed %	Inert %	Other crop	Weed seed	Germination %
Certified (d)	99	1	2 seeds/lb (a)	2 seeds/lb (b)	85

- (a) None found for Austrian pea, rye, or vetch.
- (b) None found for nightshade berries or prohibited noxious weed seeds.
- (c) All classes of varieties not tolerant to ascochyta must be treated with ((Thiabendazole (2-(4-thiazolyl)benzimidazole)) a fungicide registered to control ascochyta at the labeled rate((+)).
- (d) Seed from a field where ascochyta was found at inspection must be treated with a fungicide registered to control ascochyta at the labeled rate.

AMENDATORY SECTION (Amending WSR 12-19-065, filed 9/17/12, effective 10/18/12)

WAC 16-303-340 Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains. (1) Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains are as follows:

(a)	Application fee per variety per grower	\$25.00
(b)	Field inspection fee per acre except millet and hybrid sorghum	\$3.15
(c)	Millet - First acre	\$32.55
	- Each additional acre	\$6.50
(d)	Hybrid sorghum - First acre	\$32.55
	- Each additional acre	\$13.00
(e)	Special field inspection fee per acre	\$2.60
(f)	Late application fee	\$50.00
(g)	((Reinspection fee)) Minimum reinspection fee for each field which did not pass field inspection plus \$0.46 for each acre over twenty-five	\$45.00
	((minimum for each field which did not pass field inspection plus \$0.46 for each acre over twenty-five.))	
(h)	Final certification fee per cwt. of clean seed sampled	\$0.25
	((per cwt. of clean seed sampled, which is charged to conditioning plant, or production fee	\$(0.105))
(i)	Production fee per cwt. of production from fields inspected which is utilized for seed ((, which is charged to the grower or the final seller prior to brokerage, retail sale, sale to plant not approved for conditioning certified seed, or transshipment out of state.))	\$0.105
((+)) (j)	Sampling fee per cwt. of clean seed sampled, with minimum charge of \$10.30 per sample, which is charged to conditioning plant in lieu of mechanical sampling	\$0.105

((per cwt. of clean seed sampled, with minimum charge of \$10.30 per sample, which is charged to conditioning plant in lieu of mechanical sampling.))
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(2) A field may be withdrawn upon notification by the applicant to the certifying agency's office before field inspection. In such case, the field inspection fee is refunded upon request until June 30 of the year following harvest.

(3) Harvest before field inspection causes forfeitures of both the application and field inspection fees, and completion of certification.

(4) Final certification or production fees shall be determined by the audit process described in subsection (5) of this section.

(5) The WSCIA audit process is as follows:

(a) Audits are conducted semiannually.

(b) Certified seed growers, distributors, and conditioning plants shall report all previously unreported retail and wholesale transactions of certified or certified-eligible seed by completing and returning the WSCIA audit form to WSCIA.

(c) WSCIA invoices each grower, distributor, conditioning plant, or final seller as follows:

(i) For seed certified by WSCIA and utilized as seed, the conditioning plant is charged the final certification fee in subsection (1)(h) of this section;

(ii) For certified-eligible seed not certified by WSCIA but utilized as seed, the grower or final seller is charged the production fee in subsection (1)(i) of this section. "Final seller" means a seller who sells seed prior to brokerage or retail sale, sells seed to a plant not approved for conditioning certified seed, or transships seed out-of-state.

WSR 18-10-058

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed April 27, 2018, 11:15 a.m., effective May 28, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is revising this rule to correct a typo in the definition of "Rural area." The Bureau of the Consensus referenced in the definition should read U.S. Census Bureau.

Citation of Rules Affected by this Order: Amending WAC 182-549-1100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 18-05-083 on February 20, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 27, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-22-070, filed 10/27/17, effective 1/1/18)

WAC 182-549-1100 Rural health clinics—Definitions. This section contains definitions of words and phrases that apply to this chapter. Unless defined in this chapter or chapter 182-500 WAC, the definitions found in the Webster's New World Dictionary apply.

"APM index" - The alternative payment methodology (APM) is used to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally qualified health center (FQHC) and rural health clinic (RHC) providers.

"Base year" - The year that is used as the benchmark in measuring a clinic's total reasonable costs for establishing base encounter rates.

"Encounter" - A face-to-face visit between a client and a qualified rural health clinic (RHC) provider (e.g., a physician, physician's assistant, or advanced registered nurse practitioner) who exercises independent judgment when providing services that qualify for an encounter rate.

"Encounter rate" - A cost-based, facility-specific rate for covered RHC services, paid to a rural health clinic for each valid encounter it bills.

"Enhancements (also called managed care enhancements or supplemental payments)" - A monthly amount paid for each client enrolled with a managed care organization (MCO). MCOs may contract with RHCs to provide services under managed care programs. RHCs receive enhancements from the medicaid agency in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.

"Fee-for-service" - A payment method the agency uses to pay providers for covered medical services provided to clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program, except those services provided under the agency's prepaid managed care organizations or those services that qualify for an encounter payment.

"Interim rate" - The rate established by the agency to pay a rural health clinic for covered RHC services prior to the establishment of a permanent rate for that facility.

"Medicare cost report" - The cost report is a statement of costs and provider utilization that occurred during the time period covered by the cost report. RHCs must complete and submit a report annually to medicare.

"Mobile unit" - The objects, equipment, and supplies necessary for provision of the services furnished directly by the RHC are housed in a mobile structure.

"Permanent unit" - The objects, equipment, and supplies necessary for the provision of the services furnished directly by the RHC are housed in a permanent structure.

"Rebasing" - The process of recalculating encounter rates using actual cost report data.

"Rural area" - An area that is not delineated as an urbanized area by the (~~Bureau of the Census~~) U.S. Census Bureau.

"Rural health clinic (RHC)" - A clinic, as defined in 42 C.F.R. 405.2401(b), that is primarily engaged in providing RHC services and is:

- Located in a rural area designated as a shortage area as defined under 42 C.F.R. 491.2;
- Certified by medicare as an RHC in accordance with applicable federal requirements; and
- Not a rehabilitation agency or a facility primarily for the care and treatment of mental diseases.

"Rural health clinic (RHC) services" - Outpatient or ambulatory care of the nature typically provided in a physician's office or outpatient clinic or similar setting, including specified types of diagnostic examination, laboratory services, and emergency treatments. The specific list of services which must be made available by the clinic can be found under 42 C.F.R. Part 491.9.

WSR 18-10-062
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed April 30, 2018, 9:42 a.m., effective May 31, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends WAC 181-79A-2511 in response to 2017 session law, HB [E2SHB] 1341.

Citation of Rules Affected by this Order: Amending WAC 181-79A-250 [181-79A-2511].

Statutory Authority for Adoption: RCW 28A.410.220.

Other Authority: Laws of 2017, HB [E2SHB] 1341.

Adopted under notice filed as WSR 18-05-058 on February 15, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

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Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 30, 2018.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 17-23-176, filed 11/21/17, effective 12/22/17)

WAC 181-79A-2511 School counselor residency and professional certification—Renewal and reinstatement.

(1) School counselors may renew their residency certificate in one of the following ways:

~~(a) ((Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the residency certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.~~

~~(b))~~ An individual school counselor who completes or intends to complete a National Board of Professional Teaching Standards (NBPTS) school counselor assessment but does not earn National Board Certification may use that completed assessment, or an affidavit of intention to complete, in order to renew the residency certificate one time for two years.

~~((e))~~ (b) Individuals who hold a residency certificate may have their residency certificates renewed for an additional five-year period by the completion of one hundred continuing education hours as defined in chapter 181-85 WAC, directly related to the current performance-based standards as defined in WAC 181-78A-270(4) since the issuance of the residency certificate, or four annual professional growth plans as defined in WAC 181-79A-030, completed within the previous five years from the date of the five-year renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours directly related to the current performance-based standards as defined in WAC 181-78A-270(4) since the issue date of the latest five-year residency renewal certificate, or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal.

Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours. ~~((The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers, and as published by the professional educator standards board for administrators and educational staff associates.~~

~~Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.))~~

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired five-year residency renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410-.2212.

~~((d))~~ (c) A three-year renewal is available until June 30, 2020, for individuals who have held or hold a school counselor residency certificate that expires prior to July 1, 2019.

~~((e) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.))~~

(2) Professional.

Individuals who hold a professional certificate may have that professional certificate renewed for additional five-year periods by:

(a) Completion of one hundred continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270(4); or

(b) Completion of four professional growth plans, as defined in WAC 181-79A-030, that are developed annually since the certificate was issued. Individuals completing fewer

than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

~~(c) ((Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.~~

~~(d) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks as published by the professional educator standards board for administrators and educational staff associates.~~

~~(e))~~ Provided, That a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Such renewal is only available one time during the validity period of the National Board Certificate and cannot be the same National Board Certificate used to obtain the professional certificate.

~~((f))~~ (d) Provided, application for certificate renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

~~((g) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.~~

~~(h))~~ (e) Beginning July 1, 2015, professional certificates for school counselors, in addition to the requirements in this chapter, must attend professional educator standards board approved training in suicide prevention as per RCW 28A.410.226 for renewal of their certificate.

WSR 18-10-063
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed April 30, 2018, 9:43 a.m., effective May 31, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends WAC 181-79A-250 to delete redundant language.

Citation of Rules Affected by this Order: Amending WAC 181-79A-250.

Statutory Authority for Adoption: RCW 28A.410.220.

Adopted under notice filed as WSR 18-05-057 on February 15, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 30, 2018.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 17-11-104, filed 5/22/17, effective 6/22/17)

WAC 181-79A-250 Initial and continuing certificates—Renewal, reinstatement, and continuing education requirements. The following shall apply to initial and continuing certificates issued pursuant to this chapter:

(1) Initial certificate.

(a) Teachers.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all course work requirements from a regionally accredited institution of higher education as defined in WAC 181-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 181-79A-123 will apply.

(b) Administrators.

After June 30, 2004, provisions of WAC 181-79A-123(8) will apply.

(c) Educational staff associates.

After June 30, 2005, provisions of WAC 181-79A-123(9) will apply to school psychologists and school counselors.

(2) Continuing certificate.

(a) The continuing certificates of holders who were eligible for such certificates prior to August 31, 1987, and who applied for such certificates prior to July 1, 1988, or who would have been eligible for such certificates prior to August 31, 1987, but for one of the three-year experience requirement and who complete such requirement and apply for such certificate prior to August 31, 1988, will be valid for life. Holders of valid continuing certificates affected by this subsection shall be entitled to have such certificate reissued and subject to the terms and conditions applicable to certification at the time of reissuance including the continuing education requirements of chapter 181-85 WAC.

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall expire if the holder does not complete the continuing education requirement to include the filing requirement specified in chapter 181-85 WAC(~~(, or has kept the national American Speech-Language Hearing Association certificate up to date)~~). To reinstate such an expired continuing certificate the individual must complete the requirements for reinstatement stated within chapter 181-85 WAC and must meet the conditions stated in WAC 181-79A-253.

WSR 18-10-067

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 30, 2018, 1:55 p.m., effective June 1, 2018]

Effective Date of Rule: June 1, 2018.

Purpose: The department, in coordination with the health care authority, is updating and establishing rules in chapter 388-79A WAC. As part of this review, the department and agency will consider fees allowed for establishing and maintaining guardianships for individuals who must participate in the cost of their health care under chapters 182-513 and 182-515 WAC and will revise rules in chapter 388-79A WAC to clarify the process in place prior to the adoption of the permanent rule that will be in chapter 182-513 WAC.

Citation of Rules Affected by this Order: New WAC 388-79A-001 and 388-79A-005.

Statutory Authority for Adoption: RCW 43.20B.460, 11.92.180, 74.08.090.

Adopted under notice filed as WSR 17-24-129 on December 6, 2017.

Changes Other than Editing from Proposed to Adopted Version: The self-referencing placeholder text intended to identify the effective date of the rule was changed from "(CR-103 effective date)" to "June 1, 2018" under WAC 388-79A-005(2).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; and

Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: April 25, 2018.

Katherine I. Vasquez
Rules Coordinator

Chapter 388-79A WAC

GUARDIANSHIP FEES FOR MEDICAID CLIENTS

NEW SECTION

WAC 388-79A-001 Definitions. The following definitions apply to this chapter:

(1) "Client" means a person who is eligible for and is receiving medicaid-funded long-term care.

(2) "Guardianship fees" or "fees" means necessary fees charged by a guardian for services rendered on behalf of a client.

(3) "Participate" or "participation" means the amount a client must pay each month toward the cost of long-term care services received each month. It is the amount remaining after the post-eligibility process under:

(a) WAC 182-513-1380 for a client residing in a medical institution, as defined under WAC 182-500-0050;

(b) WAC 182-515-1509 for a client receiving home and community services (HCS) waived services in an alternate living facility (ALF), as defined under WAC 182-513-1100, or in an at-home setting; or

(c) WAC 182-515-1514 for a client receiving developmental disability administration (DDA) waived services in an ALF, as defined under WAC 182-513-1100, or in an at-home setting.

(4) "Related costs" or "costs" means necessary costs paid by the guardian, including attorney fees.

NEW SECTION

WAC 388-79A-005 Maximum amount of guardianship fees and related costs for a long-term care medicaid eligible client. (1) As mandated by RCW 43.20B.460 and in accordance with RCW 11.92.180, the maximum amount of guardianship fees and related costs must not exceed the limits of this section when the person under guardianship is:

(a) A medicaid eligible client, residing in:

(i) A medical institution, as defined under WAC 182-500-0050;

(ii) An alternate living facility (ALF), as defined under WAC 182-513-1100; or

(iii) An at-home setting; and

(b) Required under chapter 182-513 WAC or chapter 182-515 WAC to participate towards the cost of long-term care.

(2) The maximum amount of guardianship fees and related costs must not exceed the limits of chapter 388-79A WAC when:

(a) The court order establishing guardianship was entered before June 1, 2018; and

(b) The client under guardianship was receiving medic-aid-funded long-term care before June 1, 2018.

(3) For all other clients not described under subsection (2) of this section, the maximum amount of guardianship fees and related costs must not exceed the limits under WAC 182-513-1530.

WSR 18-10-071

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed April 30, 2018, 3:44 p.m., effective May 31, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is creating WAC 388-823-1096 What requirements must my home or community-based service setting meet?, in order to align with federal regulations. All of the developmental disabilities administration's 1915(c) medicaid waivers must comply with settings-based requirements under 42 C.F.R. Section 441.301 (c)(4).

Citation of Rules Affected by this Order: New WAC 388-823-1096.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: 42 C.F.R. Section 441.301 (c)(4).

Adopted under notice filed as WSR 18-06-061 on March 5, 2018.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: April 30, 2018.

Cheryl Strange
Secretary

NEW SECTION

WAC 388-823-1096 What requirements must my home or community-based service setting meet? If you receive home or community-based services under 42 C.F.R. Section 440.180, the setting must meet requirements under 42 C.F.R. Section 441.301 (c)(4).

WSR 18-10-073

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed April 30, 2018, 4:49 p.m., effective May 31, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is repealing WAC 388-835-0150 When does DSHS require discharge and readmission of a resident?, to harmonize department of social and health services internal processes with guidance from the federal Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: Repealing WAC 388-835-0150.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.120.

Adopted under notice filed as WSR 18-05-063 on February 16, 2018.

A final cost-benefit analysis is available by contacting Chantelle Diaz, Developmental Disabilities Administration, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshsh[dshs].wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 1.

Date Adopted: April 30, 2018.

Cheryl Strange
Secretary

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-835-0150 When does DSHS require discharge and readmission of a resident?

WSR 18-10-074
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed May 1, 2018, 9:33 a.m., effective June 1, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the rule is to establish the procedures that need to be followed by the lead organization in appropriate fees for data from the Washington all payer claims database. The rule ensures review by the appropriate advisory committee and the office of financial management, as well as providing transparency for the process.

Citation of Rules Affected by this Order: New WAC 82-75-550, 82-75-560, and 82-75-570.

Statutory Authority for Adoption: RCW 43.371.070 (1)(f).

Adopted under notice filed as WSR 18-07-105 on March 21, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 0, Repealed 0.

Date Adopted: May 1, 2018.

Roselyn Marcus
Assistant Director
Legal and Legislative Affairs

FEE SCHEDULES

NEW SECTION

WAC 82-75-550 Requirement for fee schedules and processes. (1) RCW 43.371.020 (5)(g) requires the lead organization to develop a plan for the financial sustainability of the database, and charge fees for reports and data files to fund the database.

(2) The office must approve any fee established by the lead organization.

(3) RCW 43.371.070 requires the office to establish by rule, procedures for the lead organization to establish these statutorily required fees.

(4) The process to develop, review and approve fee schedules will be open and transparent, and allow for stakeholder feedback.

NEW SECTION

WAC 82-75-560 Process to establish fee schedules.

(1) The lead organization must develop a draft fee schedule consistent with the requirements in RCW 43.371.020 (5)(g). The lead organization must maintain documentation that supports the development of and final decisions regarding the fee schedule.

(2) The lead organization must present the draft fee schedule and supporting documentation to the data policy committee for review and feedback. The lead organization must provide any other available data requested by the DPC that supports the development and draft fee schedule presented.

(3) The DPC must review the draft fee schedule, supporting documentation, and adopt recommendations, including the basis for each recommendation, as to whether the fee schedule should be approved by the office. The DPC must provide the recommendations to the lead organization for its consideration.

(4) The lead organization must review the DPC recommendations and make any changes to the draft fee schedule based on the recommendations. The lead organization must document which recommendations it implemented into the fee schedule. For those recommendations that the lead organization did not act upon, the lead organization must document the reasons why each recommendation was not accepted.

(5) The lead organization must provide the office the draft fee schedule, as modified, supporting documentation, the DPC recommendations, and the reasoning for why the lead organization did not make changes for any recommendation not accepted. The lead organization must also provide any other available data requested by the office that supports the development and draft fee schedule provided to the office.

(6) The office shall post on the agency web site the draft fee schedule, and solicit public comment for thirty days. The office may also convene a stakeholder meeting to provide an opportunity for interested parties another avenue to give feedback on the draft fee schedule. If the office decides to hold a stakeholder meeting, the meeting may be in person, by telephone or other electronic means, as determined by the office.

After the comment period, the office will review all the stakeholder feedback, recommendations of the DPC, and any data received from the lead organization and make a final determination regarding the fee schedule. The office shall provide the final determination to the lead organization, publish the final determination on the agency web site, and send notification through the office listserv or other electronic means.

NEW SECTION

WAC 82-75-570 Process to modify fee schedules. (1)

Fee schedules shall be reissued no less frequently than on an annual basis. The reissuance of the fee schedule can include maintaining the fee schedule without modification, modifying the fee schedule, or a combination of these two actions.

(2) The lead organization shall review fee schedules at least once every year. Annual period shall be from the date upon which the fee schedule is adopted. The review shall include whether any fee should be changed, removed from the schedule, or new fees added. The lead organization must maintain documentation that supports the recommended changes from the review of the fee schedule.

(3) The lead organization must present the changes, supporting documentation, and proposed modifications to the fee schedule to the data policy committee for review and feedback. The lead organization must provide any other available data requested by the DPC that supports the proposed modifications to the fee schedule.

(4) The DPC must review the changes, supporting documentation, and proposed modifications to the fee schedule and adopt recommendations, including the basis for each recommendation, as to whether the changes should be accepted and the modified fee schedule approved by the office. The DPC must provide the recommendations to the lead organization for its consideration.

(5) The lead organization must review the DPC recommendations and make any changes to the recommendations and proposed modifications to the fee schedule based on the recommendations. The lead organization must document which recommendations it implemented into the fee schedule. For those recommendations that the lead organization did not act upon, the lead organization must document the reasons why each recommendation was not accepted.

(6) The lead organization must provide the office the proposed modifications to the fee schedule, as modified, with supporting documentation, the DPC recommendations, and the reasoning for why the lead organization did not make changes for any recommendation not accepted. The lead organization must provide any other available data requested by the office that supports the changes and proposed modified fee schedule provided to the office.

(7) The office shall post on the agency web site the recommendations and proposed modifications to the fee schedule, and solicit public comment for thirty days. The office may also convene a stakeholder meeting to provide an opportunity for interested parties another avenue to give feedback on the draft fee schedule. If the office decides to hold a stakeholder meeting, the meeting may be in person, by telephone or other electronic means, as determined by the office.

(8) After the comment period, the office will review all the stakeholder feedback, recommendations of the DPC, and any data received from the lead organization and make a final determination regarding the fee schedule. The office shall provide the final determination to the lead organization, publish the final determination on the agency web site, and send notification through the office listserv or other electronic means.

WSR 18-10-081
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 1, 2018, 11:06 a.m., effective June 1, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to implement an agency fee schedule for reimbursement of the costs associated with fulfilling public records requests. The current rule does not include a fee schedule for providing electronic records. An agency study has been conducted to determine the actual costs associated with copying, scanning, electronically producing and delivering records and the guidelines to appropriately assess the fees.

Citation of Rules Affected by this Order: Amending WAC 296-06-120.

Statutory Authority for Adoption: RCW 42.56.120.

Adopted under notice filed as WSR 18-05-084 on February 20, 2018.

Changes other than editing from proposed to adopted version: There is a minor change in the adopted rule and the proposed rule. We removed "+cost for hardware that records are stored on (DVD, CD, flash drive, etc.)" that was located on the fee schedule next to the cost item for copying records. The cost of hardware is already included in the fee schedule, so removing this portion takes out the redundancy. Also, it did not make sense to include the potential cost of hardware when the cost item is for hardcopies. The change is not based on any stakeholder feedback.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 1, 2018.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 05-13-151, filed 6/21/05, effective 7/22/05)

WAC 296-06-120 Copying fees. ~~((The department may charge the requestor a fee for reimbursement of actual copying costs and postage costs. The department may require a deposit of up to ten percent of the estimated cost of all copies. If the department delivers a public records request on a partial or installment basis, it may charge for each part of the request as it is provided. If an installment of a records request is not~~

~~claimed or reviewed within thirty days, subject to a case-by-case consideration, the department is not obligated to complete the balance of the request. Requestors may make their own copies at a department location, under the supervision of a department staff member, if the records will not be harmed and it will not interfere with the normal work of the department.~~

Note: Copying charges for various media are found on the internet at www.lni.wa.gov. The contractor registration section and electrical program charge separate fees for copies of material from a contractor's or an electrician's files. These fees are in WAC 296-200-900 and 296-46B-910.)

Under RCW 42.56.120(2), the department may charge the requestor a fee for reimbursement of costs directly related to the copying of public records. If the department delivers copies of records request on a partial or installment basis, it may charge for each part of the request as it is provided. The agency is not allowed to make a profit from copy fees.

(1) There is no fee for locating or preparing records for inspection or copying.

(2) The department does not charge fees for a person to inspect or access records on the agency's public internet web site.

(a) The department will provide space to inspect public records.

(b) The department will notify the requestor in writing that the records are available to inspect. Within twenty days after the department sends notification, the requestor must make arrangements with the department to inspect the records.

(c) After inspection, the requestor must identify which records he or she wishes the department to copy.

(d) Depending on staff availability and the volume of records requested, the department may determine the actual cost of the records requested and provide an invoice to the requestor at that time or provide the invoice at a later date.

(e) Once payment has been made, staff will copy the requested records and provide them to the requestor.

(f) When the inspection is complete and all requested copies are provided, the department will send notification to the requestor that the request is closed.

(3)(a) Fee waivers are an exception and are granted within the discretion of the public records officer. Copying fees will be waived when the requestor or their representative requests a copy of their own individual case file, or an employer or its representative requests a copy of the case file for an employee/claimant including, but not limited to, safety and health inspection files, wage and hour investigation files, construction compliance investigation files, employer audits, or provider investigation files and no other records. Additional records may be subject to the appropriate fees.

(b) If the department waives fees for an installment, the waiver may not apply to other installments of the request.

(4) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment, an entire request, or customized service charge exceeds twenty-five dollars.

(5) Requestors must pay fees in advance of the release of the copies, or an installment of copies, or in advance when a

deposit is required. The department will notify the requestor of the amount owed and the date payment is due.

(6) If payment of fees is required, the department will send notification to the requestor. Within thirty days after the department sends notification, the requestor must pay the fee or make other arrangements with the department. The request will be closed if the fees are not paid by the due date or other arrangements made within the thirty days.

(7) If an outside vendor is used the department may charge the vendors actual costs to copy records. The department may use an outside vendor if they can make copies more quickly and less expensively than the agency.

(8) The department conducted a study to determine the actual costs associated with copying, scanning, and delivering records and the guidelines to appropriately assess the fees.

**Labor and Industries Public
Records Copy Fee Schedule**

<u>Cost Item</u>	<u>Manner Used to Determine Costs</u>
<u>Inspection</u>	
No fee	Inspection of agency records on agency public internet web site or scheduled at agency.
No fee	Accessing or downloading records the agency routinely posts on its public internet web site, unless the requestor asks the agency for records to be provided through other means (the following copy charges below then apply).
<u>Copies</u>	
\$.44 per minute	Photocopies, printed copies of electronic records when requested by the requestor, or for the use of agency equipment to make photocopies. Fees are determined by charging the per minute rate of the salary and benefits for a forms and records analyst 3 (FRA3) (FY18).
\$.02 per page	Scanned records, or use of agency equipment for scanning. Fees are determined by charging the per minute rate of the salary and benefits for an office assistant 3 (OA3) (FY18).
Actual cost	Vendor copying/scanning costs.
\$.44 per minute	Convert electronic records into PDF and sanitize as needed for redactions. Fees are determined by charging the per minute rate of the salary and benefits for an FRA3 (FY18).
\$.44 per minute	Copying electronic records to media/storage/etc. Fees are determined by charging the per minute rate of the salary and benefits for an FRA3 (FY18).
\$.16 per compact disc (CD)	Disc and disc sleeve.
\$.30 per digital video disc (DVD)	

<u>Cost Item</u>	<u>Manner Used to Determine Costs</u>
Actual costs	Flash drives and other formats. \$12.61 (8GB flash drive).
Actual cost (based on weight)	Postage, including the department of enterprise services (DES) consolidated mail service (CMS) metering fees.
\$.04 small CD/DVD envelope	Mailing materials.
\$.09 manila envelope (6"x9")	
\$.30 bubble envelope (7"x9.5")	
\$.04 CD sleeve	
Customized Service:	
Actual cost	Data compilations prepared or accessed as a customized service (cost is in addition to copying and delivery fees).

**WSR 18-10-082
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed May 1, 2018, 11:09 a.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: This rule updates conversion factors provided in WAC 296-20-135 and maximum daily fees provided in WAC 296-23-220 and 296-23-230 for certain professional health care services for injured workers. Rule changes are necessary to maintain current overall fees for health care services, which are published annually in the medical aid rules and fee schedules.

These rules increase the resource based relative value scale, anesthesia conversion factors and the maximum daily caps to be consistent with the changes for other professional fees resulting from increases in the relative value units published by the Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: Amending WAC 296-20-135, 296-23-220, and 296-23-230.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Adopted under notice filed as WSR 18-04-098 on February 6, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: May 1, 2018.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 17-10-060, filed 5/2/17, effective 7/1/17)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of \$((~~63.25~~) 64.74). The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of \$((~~3.44~~) 3.47) per minute, which is equivalent to \$((~~51.60~~) 52.05) per 15 minutes. The base units and payment policies can be found in the fee schedules.

AMENDATORY SECTION (Amending WSR 17-10-060, filed 5/2/17, effective 7/1/17)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a), or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or \$((~~+26.94~~) 127.70) whichever is less. These limits

will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 17-10-060, filed 5/2/17, effective 7/1/17)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment

must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or \$((+26.94)) 127.70 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

WSR 18-10-083

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed May 1, 2018, 11:12 a.m., effective June 1, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to bring the rules in compliance with the statutory changes of ESHB 1739 (chapter 235, Laws of 2017), which became effective on July 23, 2017.

ESHB 1739 changed the crime victims' compensation law, chapter 7.68 RCW, in two ways. First, it clarified when a vehicular assault can be the basis for a claim. Second, it now requires labor and industries to pay providers at one hundred percent of the worker compensation fee schedule. The rules for the program are updated to comply with the law.

As a result of the changes to RCW 7.68.020(6), WAC 296-30-020 was no longer needed and is repealed.

As a result of the changes to RCW 7.68.030 (2)(g), WAC 296-30-090 was updated to reflect the updated fee schedule payment levels.

Citation of Rules Affected by this Order: Repealing WAC 296-30-020; and amending WAC 296-30-090.

Statutory Authority for Adoption: Chapter 34.05 RCW, RCW 7.68.030.

Adopted under notice filed as WSR 18-03-161 on January 23, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 1.

Date Adopted: May 1, 2018.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 11-22-054, filed 10/31/11, effective 12/1/11)

WAC 296-30-090 What are the maximum allowable fees? (1) Maximum allowable fees for medical and mental health services (~~(- that are not hospital inpatient or outpatient services, are a percentage of those fees)~~) are published in the medical aid rules and fee schedules and the crime victims' compensation program mental health fee schedule and billing guidelines less any available benefits of public or private insurance.

((EXCEPTION: If any of the percentage of the maximum allowable fees in the medical aid rules and fee schedules, are lower than the maximum allowable fees for those procedures established by the department of social and health services under Title 74 RCW, the Title 74 RCW fees are the maximum allowable fees for those procedures.))

(2) The percent of allowed charges for authorized hospital inpatient and outpatient services billed by revenue codes are those rates established by the department. (~~(If the maximum allowable fees for hospital inpatient or outpatient services is lower than the maximum allowable fees for those procedures established under Title 74 RCW for the ratio of~~

~~costs to charges (RCC) rate, the department will use the RCC rate as the percent of allowed charges for hospital inpatient and outpatient services, regardless of whether the hospital is diagnosis related group (DRG) exempt.))~~

(3) If sufficient funding is not provided to continue payments equal to the medical aid rules and fee schedules and the crime victims' compensation program mental health fee schedule and billing guidelines, payments will be reduced based on caseload estimates and available funding. The reduced payments will not be less than seventy percent of payments provided under the fee schedules.

(4) If an unforeseeable catastrophic event results in insufficient funding to continue payments equal to the medical aid rules and fee schedules and the crime victims' compensation program mental health fee schedule and billing guidelines, payments will be reduced to not less than seventy percent of payments provided under the fee schedules to the extent the reduction in payments is necessary to fund benefits.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-30-020 Who is covered when a motor vehicle crime occurs?

WSR 18-10-085 PERMANENT RULES DEPARTMENT OF LICENSING

[Filed May 1, 2018, 11:51 a.m., effective June 1, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Editing this chapter has multiple parts. (1) It would allow out-of-state applicants who have passed the national board exam that are not licensed in another state to apply for initial licensure in Washington; (2) there are policies put in place by the board that need to be codified in rule; (3) it would identify experience requirements for licensure as a structural engineer and have them outlined in rule.

Citation of Rules Affected by this Order: New WAC 196-12-047; and amending WAC 196-12-010 and 196-12-045.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 18-06-056 on March 5, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: May 1, 2018.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-08-064, filed 3/27/15, effective 4/30/15)

WAC 196-12-010 Registration requirements. ~~((The requirements))~~ To become licensed as a professional engineer ~~((are)),~~ you must meet the requirements below:

(1) ~~Have~~ eight years of experience in engineering work of a character satisfactory to the board~~((:));~~

(a) ~~((These))~~ The eight years ~~((must be of broad based, progressive experience to include gaining knowledge and comprehension of engineering subjects and applying engineering principles.))~~ of experience may be a combination of education and practical work experience. Under selected circumstances a maximum of five years of education (baccalaureate and master's degrees in engineering) can be granted toward the eight-year requirement;

(b) The eight years of experience ~~((may be a combination of education and practical work experience. Under selected circumstances a maximum of five years of education (baccalaureate and masters degrees) can be granted toward the eight-year requirement))~~ must be broad based, progressive experience to include gaining knowledge and comprehension of engineering subjects and applying engineering principles.

(2) ~~((Obtaining))~~ Receive a passing score on the National Council of Examiners for Engineering and Surveying (NCEES) fundamentals-of-engineering (FE) examination. Or, have a current license as a Canadian professional engineer (P.Eng), and having received a passing score on the Engineers Canada Professional Practice Examination (PPE);

(3) ~~((Obtaining))~~ Receive a passing score on the NCEES principles and practice of engineering (PE) examination;

(4) ~~((Obtaining))~~ Receive a passing score on the ~~((board's))~~ Washington law review;

(5) Be of good character and reputation; and

(6) Payment of applicable fees.

Exam results must be independently verified by the NCEES member board, or engineers Canada constituent association that granted approval to take the exam.

AMENDATORY SECTION (Amending WSR 08-11-100, filed 5/20/08, effective 7/1/08)

WAC 196-12-045 ((Comity)) Registration of applicants ((qualified)) licensed in other jurisdictions. Licenses ~~((will))~~ may be issued ~~((by comity))~~ only in the branches of engineering offered by the board. ~~((Applicants for registration as a professional engineer by comity must.))~~ The board has discretion to issue a license to an out-of-state licensee who meets the following requirements:

(1) ~~Completes~~ an application on forms provided by the board and ~~((be accompanied by))~~ pays the appropriate fee~~((:));~~

(2) ~~Hold~~s a currently valid license in a board recognized licensing jurisdiction in a state, territory, possession, district, or foreign country~~((:)); and~~

(3) ~~((Have been qualified to))~~ Meets minimum requirements for licensure as determined by the board under WAC 196-12-010, including testing that adequately measures the fundamentals and principles and practice of engineering.

NEW SECTION

WAC 196-12-047 Structural licensing requirements.

The branch of structural engineering requires specialized work experience to protect the public health, safety, and welfare. To be licensed as a structural engineer, an applicant must:

(1) Be licensed as a professional engineer in Washington state;

(2) Have at least two years of progressive responsibility in structural engineering experience in addition to the eight years of engineering experience required to be registered as a professional engineer. The structural experience should:

(a) Demonstrate the applicant's ability to design building structures or nonbuilding structures integrated within "significant structures" as defined in RCW 18.43.020(11) and located in International Building Code (IBC) Seismic Design Category D or above;

(b) Be progressive in difficulty and magnitude;

(c) Demonstrate breadth and depth of seismic design subject matter;

(d) Incorporate two of the four common construction materials (steel, concrete, wood, and masonry);

(e) Reflect ability to design and apply structural engineering principles that show sound judgment on projects involving public health, safety, and welfare;

(f) Be supervised by a licensed professional engineer in the branch of structural engineering or a licensed professional engineer with substantial structural engineering work experience; and

(3) Pass a board approved structural exam.

WSR 18-10-088

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed May 1, 2018, 12:54 p.m., effective June 1, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: RCW 42.17A.570 requires an annual statement (T-1) from "the state treasurer, each county, public utility district, and port treasurer, and each treasurer of an incorporated city or town whose population exceeds one thousand" to be filed under oath with the public disclosure commission that no public funds under that treasurer's control were invested in any institution where the treasurer or, in the case of a county, a member of the county finance committee, held an office, directorship, partnership interest, or ownership interest during the reporting period. These reports are to be filed with

the commission after January 1 and before April 15. This rule will ensure that the commission can assess penalties for failure to file the required T-1 reports.

Citation of Rules Affected by this Order: Amending WAC 390-37-143.

Statutory Authority for Adoption: RCW 42.17A.110(1) and 42.17A.570.

Adopted under notice filed as WSR 18-04-115 on February 7, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 26, 2018.

B. G. Sandahl
Deputy Director

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-143 Brief enforcement hearings (adjudicative proceeding)—Penalty schedule. The presiding officer may assess a penalty up to one thousand dollars upon finding a violation of chapter 42.17A RCW or Title 390 WAC.

(1) Base penalty amounts:

Violation	1st Occasion	2nd Occasion	3rd Occasion
Failure to timely file an accurate and complete statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Candidate's failure to timely file an accurate and complete registration statement (C-1)/statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150 per report	\$150 - \$300 per report	\$300 - \$600 per report up to \$1,000
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150 per report	\$300 per report	\$600 per report up to \$1,000
Failed to file report by date of enforcement hearing.	\$250 per report	\$500 per report	consideration by full commission
Failure to timely file an accurate and complete lobbyist monthly expense report (L-2):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Failure to timely file an accurate and complete lobbyist employer report (L-3):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000

Violation	1st Occasion	2nd Occasion	3rd Occasion
Failure to timely file accurate and complete disclosure reports:			
Political committee registration (C-1pc).	\$150	\$300	\$600
Statement of contributions deposit (C-3).	\$150	\$300	\$600
Summary of total contributions and expenditures (C-4).	\$150	\$300	\$600
Independent expenditures and electioneering communications (C-6).	\$150	\$300	\$600
Last minute contribution report (LMC).	\$150	\$300	\$600
Out-of-state committee report (C-5).	\$150	\$300	\$600
Annual report of major contributors (C-7).	\$150	\$300	\$600
Failure to timely file accurate and complete reports disclosing lobbying activities:			
Lobbyist registration (L-1).	\$150	\$300	\$600
Public agency lobbying report (L-5).	\$150	\$300	\$600
Grass roots lobbying report (L-6).	\$150	\$300	\$600
Failure to file electronically.	\$350	\$650	\$1,000
Exceeding contribution limits.	\$150	\$300	\$600
Exceeding mini reporting threshold.	\$150	\$300	\$600
Failure to comply with political advertising sponsor identification requirements.	\$150	\$300	\$600
Failure to include required candidate's party preference in political advertising.	\$150	\$300	\$600
Failure to comply with other political advertising requirements, RCW 42.17A.330 through 42.17A.345.	\$150	\$300	\$600
Use of public facilities to assist a campaign for election or promote a ballot measure.	\$150	\$300	\$600
<u>Treasurer's failure to timely file an accurate and complete annual treasurer's report (T-1):</u>			
<u>Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.</u>	<u>\$0 - \$150</u>	<u>\$150 - \$300</u>	<u>\$300 - \$600</u>
<u>Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.</u>	<u>\$150</u>	<u>\$300</u>	<u>\$600</u>
<u>Failed to file report by date of enforcement hearing.</u>	<u>\$250</u>	<u>\$500</u>	<u>\$1,000</u>

"Occasion" means established violation. Only violations in the last five years will be considered for the purpose of determining second and third occasions.

(2) In determining the appropriate penalty, the presiding officer may consider the nature of the violation and aggravating and mitigating factors, including:

- (a) Whether the respondent is a first-time filer;
- (b) The respondent's compliance history for the last five years, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;
- (c) The respondent's unpaid penalties from a previous enforcement action;
- (d) The impact on the public, including whether the non-compliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;

mation during a time-sensitive period, or otherwise had a significant or material impact on the public;

- (e) The amount of financial activity by the respondent during the statement period or election cycle;
- (f) Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;
- (g) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention;
- (h) Good faith efforts to comply, including consultation with commission staff prior to initiation of enforcement action and cooperation with commission staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation;
- (i) Personal emergency or illness of the respondent or member of his or her immediate family;

(j) Other emergencies such as fire, flood, or utility failure preventing filing;

(k) Sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization;

(l) Commission staff, third-party vendor, or equipment error, including technical problems at the agency preventing or delaying electronic filing.

(3) The presiding officer has authority to suspend all or a portion of an assessed penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of the entry of the order in that case.

(4) If, on the third occasion, a respondent has outstanding penalties or judgments, the matter will be directed to the full commission for consideration.

(5) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission. Cases will automatically be scheduled before the full commission for an enforcement action when the respondent:

(a) Was found in violation during a previous reporting period;

(b) The violation remains in effect following any appeals; and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

WSR 18-10-089

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed May 1, 2018, 1:59 p.m., effective June 1, 2018]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This proposed new chapter 446-95 WAC seeks to prescribe and standardize the format of sexual assault kits used by medical facilities throughout the state.

Citation of Rules Affected by this Order: New chapter 446-95 WAC.

Statutory Authority for Adoption: RCW 43.17.060.

Adopted under notice filed as WSR 18-07-107 on March 21, 2018.

A final cost-benefit analysis is available by contacting Kimberly Mathis, Agency Rules Coordinator, 106 11th Avenue S.W., Olympia, WA 98504, phone 360-596-4017, email Kimberly.mathis@wsp.wa.gov, web site wsp.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 1, 2018.

John R. Batiste
Chief

Chapter 446-95 WAC

STATEWIDE SEXUAL ASSAULT KIT TRACKING SYSTEM

NEW SECTION

WAC 446-95-010 Authority and purpose. (1) RCW 43.43.545 requires the Washington state patrol to create and operate a statewide sexual assault kit tracking system. The authority the legislature gave to the Washington state patrol to implement a tracking system requires adoption of rules establishing a uniform sexual assault kit to allow successful implementation of the sexual assault kit tracking initiative.

(2) The purposes of these rules are to:

(a) Implement the intent and purpose of RCW 43.43.545 and 43.43.546 to track the location and status of sexual assault kits throughout the criminal justice process, including the initial collection and possible storage at medical facilities, receipt and storage at law enforcement agencies, receipt and analysis at forensic laboratories, and possible destruction.

(b) Establish standards and procedures to track the location and status of sexual assault kits throughout the criminal justice process.

(3) These rules are necessary to:

(a) Ensure all sexual assault kits used within the state of Washington are standardized for tracking in the sexual assault kit tracking system;

(b) Allow medical facilities performing sexual assault forensic examinations, law enforcement agencies, prosecutors, the Washington state patrol forensic laboratory services bureau, and other entities having custody of sexual assault kits to update the status and location of sexual assault kits; and

(c) Allow survivors of sexual assault to anonymously track or receive updates regarding the status and location of their sexual assault kits.

(4) These rules apply to all entities participating in the sexual assault kit tracking system established by the Washington state patrol. Pursuant to RCW 35.21.195, 36.27.020, 36.28.200, 43.43.546, and 70.41.365, those entities include, but are not limited to:

(a) Hospitals licensed under chapter 70.41 RCW performing sexual assault forensic examinations in the state of Washington;

(b) Washington state patrol forensic laboratory services bureau;

(c) All commissioned city, county, and state law enforcement officers; and

(d) Prosecuting attorneys.

(5) The sexual assault kit tracking system is not intended to replace or alter existing chain of custody systems, pro-

cesses, procedures, rules, regulations, or legal requirements of any participating entity.

(6) This rule is not intended to provide grounds to challenge the admissibility of DNA evidence in court proceedings. Nothing in this section is intended to create a private right of action or claim on the part of any individual, entity, or agency against commissioned city, county, and state law enforcement agencies.

NEW SECTION

WAC 446-95-020 Definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "Hospital" means any institution, place, building, or agency licensed under chapter 70.41 RCW;

(2) "Sexual assault kit" or "SAK" means a standardized box containing items for collecting and storing forensic evidence;

(3) "Washington sexual assault kit" or "WSAK" means a standardized SAK distributed by the approved vendor including a unique identifier, containing items for collecting and storing forensic evidence; with unique login information to be provided to the survivor allowing tracking of the WSAK;

(4) "Sexual assault kit tracking system" or "tracking system" means a secure system accessible via the internet intended for the purposes of tracking all Washington sexual assault kits, regardless of when they were collected;

(5) "Survivor" or "victim" means any person who suffers physical, emotional, financial, and/or psychological impact as a proximate result of a sexual assault;

(6) "Sexual assault" has the same meaning as in RCW 70.125.030;

(7) "Unique identifier" means a numeric or alphanumeric string that is associated with a single entity within a given system (i.e., barcode).

NEW SECTION

WAC 446-95-030 Washington sexual assault kits. (1) The Washington state patrol shall ensure that the standards for the WSAK are consistent with the standards or guidelines established by a committee which may include representatives from medical specialists, sexual assault nurse examiners, attorneys, forensic scientists, and law enforcement personnel in Washington state. The Washington state department of enterprise services may establish a master contract for the supply of WSAKs that meet these standards or guidelines.

(2) WSAKs procured by hospitals or other entities shall be ordered from and payment provided to the approved contracted vendor.

(3) Each WSAK shall bear a Washington sexual assault kit tracking system unique identifier.

(4) Each WSAK shall contain the information needed for a survivor to track the location of their WSAK using the tracking system.

NEW SECTION

WAC 446-95-040 Survivor tracking of their Washington sexual assault kit. (1) The tracking system shall

allow survivors of sexual assault to anonymously track or receive updates regarding the status and location of their sexual assault kits.

(2) Survivors shall be given unique login information to access the status and location of their WSAK at the discretion of the appropriate hospital, medical facility, or law enforcement agency personnel.

(3) Destruction of a WSAK shall be documented in the system.

NEW SECTION

WAC 446-95-050 Receipt and processing of sexual assault kits. (1) The approved vendor will distribute WSAKs with a unique identifier. The WSAK is entered by the vendor using the tracking system prior to shipment. Upon delivery, the WSAKs are entered using the tracking system as acknowledgment of receipt.

(2) The WSAK becomes trackable by the survivor when the unique identifier is entered to document that a forensic medical examination has taken place.

(3) The tracking system is not intended to replace existing processes and procedures established regarding the collection of evidence, or delay in any way the care of the survivor or law enforcement notification.

NEW SECTION

WAC 446-95-060 Updates and tracking of sexual assault kits. (1) The use of the tracking system or a WSAK should not alter the existing procedures, rules, regulations, or legal requirements for hospitals and law enforcement agencies.

(2) The tracking system is not intended to provide "real-time" location data. There are circumstances (such as shipping times) that might create delays in location status being reported. Kits are entered into the tracking system upon arrival at their intended destination. WSAKs are not recorded as they leave a destination.

(3) To ensure proper tracking of the WSAK, the affixed unique identifier must be readable. The WSAK should be packaged separately from other evidence, and without secondary packaging.

(4) Tracking begins when a WSAK or SAK is initially entered in the tracking system.

(a) Sexual assault kits not bearing a tracking system unique identifier, located at hospitals and law enforcement agencies, shall be provided a unique identifier. This shall be affixed to the SAK and entered for use by the tracking system.

(b) The tracking system will not provide historical data for existing SAKs prior to the initial entry.

(5) Subsequent transfers/changes in location will be documented by the tracking system.