

WSR 14-12-081
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)
 [Filed June 3, 2014, 10:41 a.m.]

Supplemental Notice to WSR 14-03-026 [13-15-115].

Preproposal statement of inquiry was filed as WSR 14-03-026 [13-15-115].

Title of Rule and Other Identifying Information: The department is adding new chapter 388-107 WAC that will provide safety and licensing requirements for enhanced services facilities.

Hearing Location(s): Office Building 2, Auditorium, (DSHS Headquarters), 1115 Washington Street S.E., Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at [http://www11\[www\].dshs.wa.gov/msa/tpau/RPAU-OB-2directions.html](http://www11[www].dshs.wa.gov/msa/tpau/RPAU-OB-2directions.html) or by calling (360) 664-6094), on August 5, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 6, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@Qdshs[dshs].wa.gov, fax (360) 664-6185, by 5 p.m. on August 5, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 22, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing these rules as a result of 3ESSB 5034. These rules will provide licensing requirements for enhanced services facilities. The legislature has directed that residents be placed in enhanced services facilities in 2014. This supplemental is filed in response to significant changes made as a result of public comment.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 70.97 RCW, Enhanced services facilities.

Statute Being Implemented: Chapter 70.97 RCW, Enhanced services facilities.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Melissa G. Lovell, P.O. Box 45600, Olympia, WA 98513, (360) 725-2408; Implementation: Carl I. Walters, II, P.O. Box 45600, Olympia, WA 98513, (360) 725-2489; and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

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

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: DSHS residential care services (RCS) is proposing regulations in new chapter 388-

107 WAC, Enhanced services facilities licensing requirements.

The purpose of this proposed rule making is to establish licensing requirements for enhanced services facilities, which is a new long-term care facility type established by chapter 70.97 RCW and funded by the 2013 legislature. RCS is proposing these new administrative rules because RCW 70.97.-230 directs DSHS to adopt rules to implement chapter 70.97 RCW that, at a minimum, promote safe treatment and necessary care for residents who may reside at this newly-created facility type, to provide for safe and clean conditions, to establish licensee qualifications, to establish licensing and enforcement procedures, and to establish licensing fees.

The highlights of these new regulations include:

- Facilities must meet specific building physical plant requirements;
- Facilities may have up to sixteen residents;
- Facilities are required to report abuse and neglect;
- Residents have specific rights;
- Required trainings or credentials for staff providing direct care and services;
- Background checks for anyone having unsupervised access to residents;
- Residents will receive personal care and services, as well as mental health and/or behavioral health support;
- Some residents are medicaid;
- Facilities will have a high staffing ratio, including the presence of (or access to) a registered nurse at all times.

The department has followed this stakeholder process to obtain input:

- Shared the draft language and draft small business economic statement and cost-benefit analysis with interested parties who are on the enhanced services facilities interested party mailing list.
- In addition, the draft language and draft small business economic statement and cost-benefit analysis will be posted on the aging and long-term support administration, enhanced services facilities internet web site for anyone in the public to review and comment.
- Department's process is to use the input from internal and external stakeholders to determine cost impacts for the drafting of the rule. To date, no comments have yet been received about costs for these proposed rules.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS): Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. This statute outlines information that must be included in an SBEIS. Preparation of an SBEIS is required when a proposed rule has the potential of placing more than a minor impact on a business.

RCW 19.85.020 defines a "small business" as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees."

RCS evaluated the impacts of this new WAC chapter. Since this is a brand new facility type that currently does not exist, there are no existing enhanced services facilities small

businesses that will be impacted by these rules. Instead, the only small businesses that would be affected by these new rules are those who choose to be licensed as this new facility type. The costs will not have disproportionate economic impact on small businesses when compared to large businesses. It is believed that all enhanced services facilities will meet the definition of small business having fifty employees or less.

Each facility will need approximately six to seventeen staff each day, at a minimum. Specific staffing ratios will vary, depending on the needs of the residents. For example, a mental health professional is required to be on staff at the facility for sixteen hours per day, a licensed nurse must be in the facility at all times, and a registered nurse must be on site for at least eight hours per day and on call at all other times. A facility would require additional staff to ensure all shifts are adequately staffed throughout the week in order to comply with these rules. Depending on the facility's staffing plans, six to thirty-four new jobs could be created at each facility (six jobs would require each staff to work every day for seven days and would incur extremely high overtime costs; thirty-four jobs would allow for seventeen staff for weekdays and seventeen staff for weekends). Facilities may need to hire beyond these staffing estimates in order to ensure the services required in the contract are provided to the residents. Since this is a new facility type, no jobs are anticipated to be lost.

RCS has looked at ways to mitigate costs to small businesses that may decide to be licensed as an enhanced services facility. Here are some examples:

- The statute allows for existing adult family homes, nursing homes, and assisted living facilities who convert to enhanced services facilities to be deemed to meet the applicable state and local rules, regulations, permits, and code requirements. This helps mitigate disproportionate costs to these small businesses since they will not need to renovate or remodel to meet the physical plant requirements unless it is a risk to resident health and safety.
- The department used staffing ratio requirements to help determine the rate the providers will receive.
- The enhanced services facilities statute requires that the department set a license fee to cover the oversight costs. The department is looking at offering payment options to mitigate an upfront large fee payment due.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: RCS has determined that some of the proposed rules are "significant legislative rules" as defined by legislature. As required by RCW 34.05.328 (1)(c) and (d), RCS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented. In RCW 70.97.230, the legislature mandated DSHS to adopt rules to implement chapter 70.97 RCW, including at a minimum to adopt rules sufficient to promote safe treatment and necessary care of individuals residing in this new facility type, to provide for safe and clean conditions, to establish licensee qualifications, to establish licensing and enforcement procedures, and to establish licensing fees sufficient to cover the cost of licensing and

enforcement. This new WAC chapter is created to fulfill the specific directive of the statute being implemented.

COSTS: There are currently no small businesses that operate this facility type. RCS is mandated by the legislature in RCW 70.97.230 to establish licensing requirements for this brand new facility type.

It is the intent of the department that some residents served in enhanced services facilities will be department clients and services paid through a medicaid waiver. Each enhanced services facilities will need to contract with the department (home and community services) to receive payment and will need to adhere to contract requirements. The following are examples of contract requirements that may cost but were put into licensing regulations to be consistent:

- Approximately six to thirty-four jobs would be created to provide direct care and services to the residents of the enhanced services facility; additional staff that do not provide direct care and services may be needed.
- The liability insurance requirement for enhanced services facilities may impose additional costs.
- Background check requirements for staff with unsupervised access are required, but this is paid by the department so that the facility will not incur any costs for this requirement.
- Specialty training requirements such as mental health and dementia for staff with unsupervised access and long-term care worker training requirements.
- If a resident needs chemical dependency treatment, the facility must contract with a chemical dependency agency or provider for this service.
- The contract requires the facility to have an administrator, which may be an additional staff person, unless the administrator will also provide direct care and services to residents.

Other examples of cost enhanced services facilities may incur are:

- Licensing fee; however, the department is looking at offering payment options to mitigate an upfront large fee payment due.
- Newly constructed enhanced services facilities will need to meet applicable state and local rules, regulations, permits, and code requirements. There may be building, renovation, and physical plant improvements needed for existing facilities to ensure the health and safety of residents.
- Adult family homes and assisted living facilities converting to an enhanced services facility will likely incur costs related to specific physical plant requirements, such as a significant backup power system.
- Cost of administering each staff person tuberculosis test within three days of employment.

BENEFITS: The rules result in several benefits which include:

- Residents will be in a less restrictive environment and will receive recommended services including mental health and chemical dependency services, along with having their care needs met.

- Residents will reside in a homelike community setting.
- Residents will be served by staff that passed background checks and are trained specifically in specialty areas to meet their needs.
- Placing residents in enhanced services facilities will potentially open up beds in the state hospitals for individuals who are in the need of active mental health treatment.
- Jobs will be created to work at this new licensed facility category.
- The liability insurance, license fee, background checks, training, tuberculosis testing and administrator requirements will provide a consistent standard among all licensed long-term care settings in Washington.
- The liability insurance requirement will provide all residents with another level of consumer protection. It can also help enhanced services facilities defend themselves and pay awarded damages without threatening their financial stability.
- The tuberculosis testing requirement will ensure that residents in enhanced services facilities are not at higher risk for contacting [contracting] infectious diseases.
- Requiring an administrator protects residents since this staff must be readily accessible to meet with residents and is ultimately responsible for ensuring residents receive the care and services identified in their individual treatment plan and assessment.

CONCLUSION: RCS concludes that the benefits of these regulations exceed any possible cost. These rules will implement state laws and carry out legislative directive to create this new license category. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact Melissa Lovell by e-mail Melissa.lovell@dshs.wa.gov or phone (360) 725-2408 if you have questions.

A copy of the statement may be obtained by contacting Melissa G. Lovell, P.O. Box 45600, Olympia, WA 98513, phone (360) 725-2408, fax (360) 438-7903, e-mail Melissa.lovell@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Melissa G. Lovell, P.O. Box 45600, Olympia, WA 98513, phone (360) 725-2408, fax (360) 438-7903, e-mail Melissa.lovell@dshs.wa.gov.

May 29, 2014
Katherine I. Vasquez
Rules Coordinator

Definitions

NEW SECTION

WAC 388-107-0001 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

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

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints except as described in section 388-107-0420;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

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

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

"Administrator" means an enhanced services facility administrator who must be in active administrative charge of the enhanced services facility as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care worker training and home care aide certification.

"Advance directive," as used in this chapter, means any document indicating a resident's choice with regard to a specific service, treatment, medication or medical procedure option that may be implemented in the future such as power of attorney health care directive, limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

"Aggressive behavior" means actions by the individual that constitute a threat to the individual's health and safety or the health and safety of others in the environment.

"Antipsychotic medications" means that class of medications primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

"Applicant" means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for an enhanced services facility license.

"Capacity" means the maximum amount an enhanced services facility can serve is sixteen residents.

"Caregiver" means the same as "Long-Term Care Worker" as defined in RCW 74.39A.009, as follows: "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care agencies to persons with developmental disabilities under title 71A RCW, all direct care workers in state-licensed enhanced services facilities, assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

"Challenging behavior" means a persistent pattern of behaviors that inhibit the individual's functioning in public places, in the facility and integration within the community, or uncontrolled symptoms of a physical or mental condition. These behaviors may have been present for long periods of time or have manifested as an acute onset.

"Chemical dependency" means alcoholism, medication addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter 70.96A RCW.

"Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

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

"Direct supervision" means oversight by a person on behalf of the enhanced services facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Enhanced services facility" means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues. For the purposes of this chapter, an enhanced services facility is not an evaluation and treatment facility certified under chapter 71.05 RCW.

"Facility" means an enhanced services facility.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person

or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Holding technique" means using the least amount of force necessary to manually hold all or part of a person's body in a way that restricts the person's free movement; also includes any approved controlling maneuvers identified in the individual treatment plan. Examples include holds taught in approved training for de-escalation techniques and control of self-harm or aggressive behavior. This definition does not apply to briefly holding, without force, a person in order to calm the person, or holding a person's hand to escort the person safely from one area to another.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Inspection" means the process by which department staff evaluates the enhanced services facility licensee's compliance with applicable statutes and regulations.

"License suspension" is an action taken by the department to temporarily revoke an enhanced services facility license in accordance with RCW 70.97.120 and this chapter.

"Licensee" means the person, as defined in this chapter, to whom the department issues the enhanced services facility license.

"Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

"Likelihood of serious harm" means a substantial risk that:

(1) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(2) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(3) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others.

"Long-term care worker" as defined in RCW 74.39A.009, has the same meaning as the term "caregiver."

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, Assisted living facility; chapter 18.51 RCW, Nursing homes; chapter 70.128

RCW, Adult family homes; chapter 72.36 RCW, Soldiers' homes; chapter 71A.20 RCW, Residential habilitation centers; chapter 70.97 RCW, Enhanced services facility or any other facility licensed by the department.

"Medically fragile" means a chronic and complex physical condition which results in prolonged dependency on specialized medical care that requires frequent daily skilled nursing interventions. If these medically-necessary interventions are interrupted or denied, the resident may experience irreversible damage or death. Examples of specialized medical care and treatment for medically fragile residents include but are not limited to: IV therapies requiring monitoring of vital signs and dose titration dependent on lab values; wound care requiring external vacuum or other mechanical devices for debridement; complicated wound care requiring other specialized or extensive interventions and treatment; ventilator or other respiratory device dependence and monitoring; dependence on licensed staff for complex respiratory support; and peritoneal or hemodialysis (on-site).

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication service" means any service provided either directly or indirectly by an enhanced services facility related to medication administration medication assistance, or resident self-administration of medication.

"Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

"Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, licensed mental health counselor, licensed mental health counselor-associate, licensed marriage and family therapist, licensed marriage and family therapist-associate, licensed independent clinical social worker, licensed independent clinical social worker-associate, licensed advanced social worker, or licensed advanced social worker-associate and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

"Neglect" means:

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

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

"Permanent Restraining Order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 5 years), after which it expires.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe medications.

"Professional person" means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

"Reasonable accommodation" and "reasonably accommodate" have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the enhanced services facility must:

(a) Not impose an admission criterion that excludes individuals unless the criterion is necessary for the provision of enhanced services facility services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the enhanced services facility; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

"Resident" means a person admitted to an enhanced services facility.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the enhanced services facility and to receive information from the enhanced services facility if there is no legal representative. The resident's representative may not be affiliated with the licensee, enhanced services facility, or management

company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88-010 (1)(e).

"Secretary" means the secretary of the department or the secretary's designee.

"Significant change" means:

(1) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(2) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for discharge or for treatment in a less intensive or less secure setting.

"Significant medication error" includes any failure to administer or receive a medication according to an authorized health care provider's order, or according to the manufacturer's directions for nonprescription medications, that results in an error involving the wrong medication, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration.

"Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320-010.

"Staff" or "Staff person" means any person who:

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

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

"Stop placement" or "stop placement order" is an action taken by the department prohibiting enhanced services facility admissions, readmissions, and transfers of patients into the enhanced services facility from the outside.

"Temporary Restraining Order" means restraining order or order of protection that expired without a hearing, was terminated following an initial hearing, or was terminated by stipulation of the parties in lieu of an initial hearing.

"Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, physical therapy, restorative nursing, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling.

"Violation" is an enhanced services facility failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a Medicare and Medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal Medicare and Medicaid regulations.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

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

(2) Found incapacitated under chapter 11.88 RCW; or

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

(4) Admitted to any facility, including any enhanced services facility; or

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

(6) Receiving services from an individual provider.

(7) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

(8) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

General

NEW SECTION

WAC 388-107-0010 Scope and purpose. This implements Chapter 70.97 RCW and sets the minimum health and safety standards for licensure and operations of enhanced services facilities. An enhanced services facility will provide treatment and services to a maximum of sixteen residents for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues.

NEW SECTION

WAC 388-107-0020 Department authority. Chapter 70.97 RCW authorizes the department to develop rules to implement the chapter, and to license enhanced services facilities. At a minimum the rules are to be written to promote safe treatment and necessary care of individuals residing in each facility, to provide for safe and clean conditions and to establish licensee qualifications, licensing and enforcement standards, and license fees sufficient to cover the cost of licensing and enforcement.

Admission and Assessment

NEW SECTION

WAC 388-107-0030 Admission criteria. The enhanced services facility will only admit residents who:

(1) Are at least eighteen years old; and

(2) Require:

(a) Daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or

(b) Assistance with three or more activities of daily living; and

(3) Have any of the following:

(a) A mental disorder, chemical dependency disorder, or both;

(b) An organic or traumatic brain injury; or

(c) A cognitive impairment that results in symptoms or behaviors requiring supervision and facility services.

(4) Will benefit from the staffing levels and professional supports provided in this setting.

(5) If at a state hospital, has been deemed stable and ready for discharge.

(6) Does not meet the requirement for active treatment at a state hospital, but has not found appropriate placement in other community settings due to a history of two or more of the following:

(a) Self-endangering behaviors that are frequent or difficult to manage;

(b) Aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage;

(c) Intrusive behaviors that put residents or staff at risk;

(d) Complex medication needs which include psychotropic medications;

(e) A history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the resident's behaviors, history, or security needs;

(f) A history of frequent or protracted mental health hospitalizations; and/or

(g) A history of offenses against a person or felony offenses that created substantial damage to property.

NEW SECTION

WAC 388-107-0040 Preadmission assessment. (1)

The enhanced services facility must complete a face to face preadmission assessment at the hospital with each potential resident prior to admission which includes the following minimum information:

(a) Resident identification information such as but not limited to the name, address and telephone number of the resident's:

(i) Representative;

(ii) Health Care providers;

(iii) Significant family members identified by the resident;

(iv) Other individuals the resident wants involved or notified; and

(b) Presenting issues;

(c) Current medical and mental health history;

(d) Necessary and contraindicated medications, including psychotropic;

(e) A licensed medical or health professional's physical and mental health diagnoses;

(f) Significant known behaviors such as but not limited to aggressive, threatening, intrusive, assaultive, self-endangering including attempted suicide and/or homicide or other symptoms that may cause concern or require special care and staffing;

(g) Chemical dependency history, including tobacco;

(h) Level of personal care needs, assistance with activities of daily living;

(i) Activities and service preferences;

(j) Preferences regarding other issues important to the prospective resident, such as food and daily routine;

(k) Information that a potential resident is or is not court-ordered for treatment or under the supervision of the department of corrections;

(l) Individual's anticipated level of need for supervision in the community;

(m) Cognitive impairments that result in symptoms of behaviors requiring supervision and facility services;

(n) History of unsuccessful placement in the community settings; and

(o) Treatment recommendations or recommendations for additional program-specific assessment.

(p) A transition plan that:

(i) Allows the facility to work with the state hospital staff to understand what the resident responds to in difficult situations; and

(ii) Allows the facility to request hospital staff to visit resident in new environment and teach enhanced services facility staff techniques that have been successful in the hospital.

(2) The enhanced services facility will integrate information from the state's last comprehensive assessment reporting evaluation (CARE) into the facility's preadmission assessment.

NEW SECTION

WAC 388-107-0050 Timing of preadmission assessment. The assessor must complete the preadmission assessment of the prospective resident before the resident moves into the enhanced services facility.

NEW SECTION

WAC 388-107-0060 Comprehensive assessment required. (1) The enhanced services facility must complete a comprehensive assessment for each resident within fourteen (14) days of admission.

(2) The assessment will be repeated when there is a significant change in the resident's condition or, at a minimum, every one hundred eighty days if there is no significant change in condition.

NEW SECTION

WAC 388-107-0070 Comprehensive assessment. The enhanced services facility must obtain sufficient information to be able to assess the capabilities, needs, and preferences for each resident, and must complete a comprehensive assessment. The assessment addresses the following, within fourteen days of the resident's move-in date:

(1) Individual's recent medical history, including, but not limited to:

(a) Diagnoses from a licensed medical or health professional, unless the resident objects for religious reasons;

(b) Chronic, current, and potential skin conditions; or

- (c) Known allergies to foods or medications; or
- (d) Other considerations for providing care or services.
- (2) Currently necessary and contraindicated medications and treatments for the individual, including any prescribed medications, over-the-counter medications, and antipsychotic medications.
- (3) The individual's nursing needs.
- (4) Significant known challenging behaviors or symptoms of the individual causing concern or requiring special care, including:
 - (a) History of substance abuse;
 - (b) History of harming self, others, or property;
 - (c) Other conditions that require behavioral intervention strategies;
 - (d) Individual's ability to leave the enhanced services facility unsupervised;
 - (e) Any court order or court stipulation regarding activities, surroundings, behaviors, and treatments; and
 - (f) Other safety considerations that may pose a danger to the individual or others, such as use of medical devices or the individual's ability to smoke unsupervised, if smoking is permitted outdoors in a specific location on the premises.
- (5) Individual's special needs, by evaluating available information, or if available information does not indicate the presence of special needs, selecting and using an appropriate tool to determine the presence of symptoms consistent with, and implications for, care and services of:
 - (a) Mental illness, or needs for psychological or mental health services;
 - (b) Developmental disability;
 - (c) Dementia. While screening a resident for dementia, the enhanced services facility must:
 - (i) Base any determination that the resident has short-term memory loss upon objective evidence; and
 - (ii) Document the evidence in the resident's record.
 - (d) Other conditions affecting cognition, such as traumatic brain injury or other neurological conditions.
- (6) Individual's activities, typical daily routines, habits and service preferences.
- (7) Individual's personal identity and lifestyle, to the extent the individual is willing to share the information, and the manner in which they are expressed, including preferences regarding food, community contacts, hobbies, spiritual preferences, or other sources of pleasure and comfort.
- (8) Who has decision-making authority for the individual, including:
 - (a) The presence of any advance directive or other legal document that will establish a substitute decision maker in the future;
 - (b) The presence of any legal document that establishes a current substitute decision maker or court orders for treatment, or documents indicating resident is under the supervision and care of the department of corrections; and
 - (c) The scope of decision-making authority of any substitute decision maker.
- (9) A plan to use antipsychotic medications as prescribed and documented in the clinical record in accordance with chapters 71.05 and 70.97 RCW.
- (10) If the resident is a medicaid client the assessment must include elements of the CARE assessment.

NEW SECTION

WAC 388-107-0080 On-going comprehensive assessments. The enhanced services facility must:

- (1) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070, upon a significant change in the resident's condition or at least every 180 days if there is no significant change in condition;
- (2) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations and related issues:
 - (a) Consistent with the resident's change of condition as specified in WAC 388-107-0060;
 - (b) When the resident's individual treatment plan no longer addresses the resident's current needs and preferences;
 - (c) When the resident has an injury requiring the intervention of a practitioner.
- (3) Ensure the staff person performing the on-going assessments is qualified to perform them.

NEW SECTION

WAC 388-107-0090 Qualified assessor. (1) The enhanced services facility must ensure that an assessor performing an assessment for any potential or admitted resident has experience working with residents who have severe behavioral issues due to but not limited to functional or cognitive disabilities, mental health or chemical dependency disorder, or both, or an organic or traumatic brain injury and meets the following qualifications:

- (a) A master's degree in social services, human services, behavioral sciences or an allied field and two years social service experience working with adults who have severe behavioral issues; or
- (b) A bachelor's degree in social services, human services, behavioral sciences or an allied field and five years social service experience working with adults who have severe behavioral issues; or
- (c) Has a valid Washington state license to practice as a nurse under chapter 18.79 RCW and three years of clinical nursing experience working with adults who have severe behavioral issues; or
- (d) Is currently a licensed physician, including an osteopathic physician, in Washington state with experience working with adults who have severe behavioral issues; or
- (e) Is a licensed psychologist or psychiatrist; or
- (f) Is a professional appropriately credentialed or qualified to provide chemical dependency, mental health, organic or traumatic brain injury and/or functional or cognitive services and work experience with adults who have severe behavioral issues.

(2) The facility must ensure that an assessor who meets the requirements of subsections (1)(a), (b), (c), (d), (e), or (f) of this section does not have unsupervised access to any resident unless the assessor has:

- (a) A current criminal history background check; and
- (b) Has no disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290, unless the individual is eligible for an exception under chapter 388-113 WAC.

Individual Treatment Plan

NEW SECTION

WAC 388-107-0100 Enhanced services facility team.

The facility will identify a team for each resident. The team will:

- (1) Include the resident and any support persons identified by the resident, as well as a mental health professional, nursing staff, and other persons identified by the facility;
- (2) Ensure a coordinated approach to the development, implementation and evaluation of the individual treatment plan for the resident; and
- (3) Meet at least monthly to review and modify the individual treatment plan as needed.

NEW SECTION

WAC 388-107-0110 Initial individual treatment plan. The enhanced services facility team must develop the initial individual treatment plan, using information from the resident, the resident's representative if the resident has one, the Comprehensive Assessment Reporting Evaluation (CARE) assessment for medicaid clients, and the preadmission assessment, prior to admitting the resident to the facility. The enhanced services facility team must ensure that each resident has an initial individual treatment plan that includes:

- (1) The resident's immediate specific problems and needs (physical, mental and behavioral) identified in the pre-assessment;
- (2) Direction to staff and caregivers relating to the resident's immediate needs, capabilities, and preferences;
- (3) The means for which the resident chooses not to accept or refuses care or services;
- (4) What the facility will do to ensure the resident's health and safety related to the refusal of any care or service;
- (5) Resident defined goals and preferences;
- (6) How the facility will provide behavioral support to prevent a crisis and maintain placement in the facility; and
- (7) While in the community, what the facility will do to ensure resident and community safety; and
- (8) Identifying factors that will prevent the resident from accessing less restrictive community based services and developing a plan regarding when and how the resident may be able to transfer or transition from the enhanced services facility to a more independent living situation in the community.

NEW SECTION

WAC 388-107-0120 Comprehensive individual treatment plan. The enhanced services facility team must integrate the information obtained in the resident's preadmission assessment, medicaid client's CARE assessment information from the department's case manager, comprehensive assessment and initial individual treatment plan to develop a written comprehensive individual treatment plan. The enhanced services facility team must ensure each resident's comprehensive individual treatment plan includes:

- (1) A list of the care and services to be provided;

- (2) Identification of who will provide the care and services;
- (3) When and how the care and services will be provided;
- (4) How medications will be managed, including how the resident will receive medications when the resident is not in the facility;
- (5) The resident's daily activities preferences, spiritual and/or cultural preferences, interests, strengths and needs and how the facility will meet those within the behavioral challenges of the resident;
- (6) Other preferences and choices about issues important to the resident, including, but not limited to:
 - (a) Food;
 - (b) Daily routine;
 - (c) Grooming; and
 - (d) How the enhanced services facility will accommodate the preferences and choices.
- (7) A behavioral support plan to prevent crisis and maintain placement in the facility by:
 - (a) A crisis prevention and response protocol that outlines specific indicators which may signal a potential crisis for the resident;
 - (b) Specific interventions and pre-crisis prevention strategies for each of the resident's indicators of a potential crisis;
 - (c) A crisis prevention and response protocol that outlines steps to be taken if the prevention or intervention strategies are unsuccessful in diverting the crisis including the community crisis responder's coordination plan; and
 - (d) A plan on how to respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal.
- (8) Identification of any communication barriers the resident may have and how the home will use behaviors and nonverbal gestures to communicate with the resident;
- (9) A hospice care plan if the resident is receiving services for hospice care delivered by a licensed hospice agency.
- (10) Advance directives, if the resident chooses, that are validly executed pursuant to chapters 70.122 RCW and 71.32 RCW, as applicable;
- (11) A plan regarding how the facility will work with the Department of Corrections (DOC) if the resident is under the supervision of DOC, collaborating to maximize treatment outcomes and reduce the likelihood of re-offense.
- (12) A plan which maximizes the opportunities for independence, maintaining health and safety, recovery, employment, the resident's participation in treatment decisions, collaboration with peer-supported services and care and treatment provided in the least restrictive manner appropriate to the resident and to any relevant court orders with which the resident must comply.
- (13) A discharge plan that addresses factors and barriers that prevent a resident from being placed in a less restrictive community placement and assist the resident in the transition. This plan will include an assessment of all current medications and the resident's ability to self-medicate in a more independent living situation.
- (14) The enhanced services facility must complete the comprehensive individual treatment plan within fourteen days of the resident's move-in date.

NEW SECTION

WAC 388-107-0130 On-going comprehensive individual treatment plan. (1) The enhanced services facility team will review and update each resident's comprehensive individual treatment plan, as follows:

(a) Within a reasonable time consistent with the needs of the resident following any change in the resident's physical, mental, emotional or behavioral functioning; and

(b) Whenever the comprehensive individual treatment plan no longer adequately addresses the resident's current assessed needs and preferences; and

(c) Following every full comprehensive assessment.

(2) The process of developing and updating the comprehensive individual treatment plan will include the following:

(a) The resident;

(b) The resident's representative to the extent he or she is willing and capable, if the resident has one;

(c) Other individuals the resident wants included;

(d) The medicaid client's department case manager; and

(e) Staff designated by the enhanced services facility.

(3) The enhanced services facility team will ensure:

(a) Individuals participating in developing the resident's comprehensive individual treatment plan:

(i) Discuss the resident's assessed needs, capabilities, and preferences; and

(ii) Negotiate, if possible and feasible, an agreed upon comprehensive individual treatment plan which would support the resident; and

(b) Staff persons document in the resident's record the agreed upon plan for services.

NEW SECTION

WAC 388-107-0140 Implementation of the individual treatment plan. (1) The enhanced services facility must provide the care and services as agreed upon or outlined in the initial and comprehensive individualized treatment plan to each resident unless a deviation from the plan is mutually agreed upon between the enhanced services facility team, the medicaid client's department case manager, and the resident or the resident's representative at the time the care or services are scheduled.

(2) The details of any deviation from the plan must be clearly documented in the resident record.

NEW SECTION

WAC 388-107-0150 Comprehensive individual treatment plan sent to the state. When a resident's services are paid for by the department, the enhanced services facility must give the department case manager a copy of the comprehensive individual treatment plan each time it is completed or updated and after it has been signed and dated. The department's case manager will:

(1) Review the individual treatment plan;

(2) Sign, date, and return the individual treatment plan to the facility;

(3) Document the review in the resident record, indicating it was signed and approved; and

(4) Schedule a department reassessment.

NEW SECTION

WAC 388-107-0160 Behavioral support plan. The enhanced services facility will ensure that each resident's individual treatment plan has interventions for behavioral support that are used first when a resident's behavior is escalating at home or in the community, including but not limited to the following:

(1) Strengths the individual holds that support strategies for prevention and intervention.

(2) Specific indicators which may signal a potential crisis for the individual or that left unaddressed in the past has led to a behavioral crisis. Examples include but are not limited to typical challenging behaviors the individual displays when escalating, actions the resident may typically take before a behavioral outburst, or words or phrases the individual has been known to express during a time of escalation.

(3) Specific interventions and pre-crisis prevention strategies for each of the indicators identified above.

(4) Steps to be taken by each of the facility team members if the prevention or intervention strategies are unsuccessful in diverting the individual from a behavior or action that leads to crisis.

(5) A plan to ensure coordination with community crisis responders in regard to each resident's treatment plan as part of a regular, routine protocol for crisis prevention and intervention.

(6) A resident may not be secluded or isolated as part of the behavior support plan.

Resident RightsNEW SECTION

WAC 388-107-0170 Resident dignity and accommodation of needs. (1) The enhanced services facility must ensure that:

(a) Resident care is provided in a manner to enhance each resident's dignity and quality of life including a safe, clean, comfortable and homelike environment, and to respect and recognize his or her individuality; and

(b) Each resident's personal care needs and behavioral health treatment are provided in a manner that protects resident's dignity and privacy.

(2) Each resident has the right to reasonable accommodation of personal needs and preferences, except when the health or safety of the individual, other residents, or members of the community would be endangered.

NEW SECTION

WAC 388-107-0180 Self-determination and participation. Except when the health or safety of the individual or other residents or members of the community would be endangered and consistent with the individual treatment plan, each resident has the right to:

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and individual treatment plan;

(2) Interact with members of the community both inside and outside the enhanced services facility;

(3) Make choices about aspects of his or her life in the facility that are significant to the resident; and

(4) Participate in social, religious, and community activities that do not interfere with the rights of other residents in the enhanced services facility.

NEW SECTION

WAC 388-107-0190 Rights of residents. (1) Each resident of an enhanced services facility is entitled to all the rights set forth in this chapter, and chapters 71.05 and 70.96A RCW, and must retain all rights not denied him or her under these chapters.

(2) The enhanced services facility will only consider a resident's competence as determined or withdrawn under the provisions of chapters 10.77 or 11.88 RCW.

(3) The facility must give each resident, at the time of his or her treatment planning meeting, a written statement setting forth the substance of this section.

(4) Every resident of an enhanced services facility has the right to adequate care and individualized treatment.

(5) The provisions of this chapter must not be construed to deny to any resident treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(6) Each resident of an enhanced services facility must have, in addition to other rights not specifically withheld by law, the rights enumerated in (a) through (m) below, unless exercise of these rights creates a danger to the resident or to others. The facility must prominently post a list of these rights in a place accessible to residents and must make this list available to residents without need of request. The resident has the right:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To have access to fluids and snacks of choice;

(c) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(d) To have access to individual locked storage space for his or her private use;

(e) To have visitors at reasonable times;

(f) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(g) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(h) To discuss and actively participate in treatment plans and decisions with professional persons;

(i) To a clean, comfortable and home-like environment;

(j) Not to have psychosurgery performed on him or her under any circumstances;

(k) To dispose of property and sign contracts unless the resident has been adjudicated an incompetent in a court proceeding directed to that particular issue; and

(l) To complain about rights violations or conditions and request the assistance of a mental health ombuds or represen-

tative of Washington protection and advocacy. The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice.

(m) To receive a minimum of thirty days written notice if there are any changes to the scope of services identified in the individual treatment plan.

(7) Nothing contained in this chapter must prohibit a resident from petitioning by writ of habeas corpus for release.

(8) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

(9) A resident has a right to refuse placement in an enhanced services facility. No person must be denied other department services solely on the grounds that he or she has made such a refusal.

(10) A resident has a right to appeal the decision of the department that he or she is eligible for placement at an enhanced services facility, and must be given notice of the right to appeal in a format that is accessible to the resident with instructions regarding what to do if the resident wants to appeal.

Quality of Care

NEW SECTION

WAC 388-107-0200 Quality of care. (1) Consistent with resident rights, the enhanced services facility must provide each resident with the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, self-care and independence in accordance with his or her comprehensive assessment and individual treatment plan.

(2) Based on the comprehensive assessment of a resident, the enhanced services facility must ensure that:

(a) A resident's abilities in activities of daily living do not decline unless circumstances of the resident's clinical condition demonstrate that the decline was unavoidable. This includes the resident's ability to:

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet;

(iv) Eat; and

(v) Use speech, language, or other functional communication systems.

(b) A resident is given the appropriate treatment and services to maintain or improve the resident's abilities in activities of daily living specified in subsection (2)(a) of this section; and

(c) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(3) The enhanced services facility must ensure that the appropriate care and services are provided to the resident in a minimum of the following areas, as applicable in accordance with the resident's individualized assessments and individual treatment plan:

(a) Mental health treatment;

(b) Chemical dependency treatment;

- (c) Vision and hearing;
- (d) Skin;
- (e) Continence;
- (f) Range of motion;
- (g) Mental and psychosocial functioning and adjustment;
- (h) Nutrition;
- (i) Hydration;
- (j) Special needs, including but not limited to:
 - (i) Injections;
 - (ii) Parenteral and enteral fluids;
 - (iii) Colostomy, ureter ostomy, or ileostomy care;
 - (iv) Tracheostomy care and/or tracheal suctioning;
 - (v) Respiratory care;
 - (vi) Dental care;
 - (vii) Foot care; and
 - (viii) Prostheses.
- (k) Medications, including freedom from:
 - (i) Unnecessary medications; and
 - (ii) Significant medication errors; and
- (l) Independent living skills.

NEW SECTION

WAC 388-107-0210 Care and services. The enhanced services facility must develop and implement a program to meet the needs of each resident and to ensure each resident receives:

- (1) The care and services identified in the individualized treatment plan.
- (2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status and potential for improvement or decline.
- (3) The care and services in a manner and in an environment that:
 - (a) Actively supports, maintains or improves each resident's quality of life;
 - (b) Actively supports the safety of each resident; and
 - (c) Reasonably accommodates each resident's individual needs and preferences except when the accommodation endangers the health or safety of the individual, another resident, or a member of the community.
- (4) Services by the appropriate professionals based upon the resident's assessment and individualized treatment plan.

Quality Improvement

NEW SECTION

WAC 388-107-0220 Quality improvement. (1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any enhanced services facility licensed under this chapter must maintain an active quality improvement committee.

- (2) The quality improvement committee will include a multi-disciplinary team.
- (3) The quality improvement committee will maintain an ongoing plan that includes areas the facility is working on improving and one continuous quality improvement project annually, beginning in the second contract year for completion by the end of the second calendar year.

(4) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

- (a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and
 - (b) The records or reports are created for and collected and maintained by the committee.
- (5) If the enhanced services facility refuses to release records or reports that would otherwise be protected under this section, the department may then request only that information that is necessary to determine whether the enhanced services facility has a quality assurance committee and to determine that it is operating in compliance with this section. However, if the enhanced services facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with enhanced services facility requirements, the documents are not protected as quality assurance committee documents when in the possession of the department.

(6) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

(7) Any records that are created for and collected and maintained by the quality assurance committee shall not be discoverable or admitted into evidence in a civil action brought against an enhanced services facility.

(8) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

Nursing Services and Staffing

NEW SECTION

WAC 388-107-0230 Sufficient staffing. An enhanced services facility must have sufficient numbers of staff with the appropriate credentials and training to provide residents with the identified care and treatment needs. At a minimum the facility must have staff to provide:

- (1) Mental health and/or chemical dependency treatment;
- (2) Medication management services;
- (3) Personal care, assistance with the activities of daily living;
- (4) Medical treatment, including psychiatric;
- (5) Activities;
- (6) Social service support;
- (7) Negotiated services;
- (8) Dietary services; and
- (9) Security.

NEW SECTION

WAC 388-107-0240 Staffing ratios. (1) The enhanced services facility must ensure that:

(a) Sufficient numbers of appropriately qualified and trained staff are available to provide necessary care and services consistent with residents' negotiated service agreements safely under routine conditions, as well as during fire, emergency, and disaster situations; and

(b) At least two staff are on duty in the facility at all times if there are any residents in the facility.

(2) A licensed nurse must be on duty in the facility at all times.

(a) A registered nurse must be on duty in the facility at least eight hours per day; and

(b) A registered nurse must be on call during any shift that a licensed practical nurse is on duty in the facility.

(3) A mental health professional must be on-site at least six-teen hours per day.

NEW SECTION

WAC 388-107-0250 Staffing credentials and qualifications. (1) The enhanced services facility must ensure the staffing ratios are met with the following credentialed staff, who are in good professional standing:

(a) Registered nurse;

(b) Licensed practical nurse;

(c) Nursing Assistant Certified or Certified Home Care Aide; and

(d) Mental health professional.

(2) The enhanced services facility must ensure that any caregiver, excluding professional licensed nursing staff:

(a) Must be at least 18 years of age;

(b) Has successfully completed a department-approved certified nursing assistant training program; or

(c) Meets the long-term worker training and certification requirements of Chapter 388-112 WAC.

NEW SECTION

WAC 388-107-0260 Staffing for medically fragile residents. If an enhanced services facility serves one or more medically fragile residents, the facility must ensure that a registered nurse is on site for at least sixteen hours per day. A registered nurse or a doctor must be on-call during the remaining eight hours.

NEW SECTION

WAC 388-107-0270 Providing care and services. The enhanced services facility must ensure that all staff, including management, provides care and services consistent with:

(1) Empowering each resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being, self-care and independence;

(2) Respecting resident rights; and

(3) Enhancing each resident's quality of life.

OperationsNEW SECTION

WAC 388-107-0280 Transfer and discharge. (1) Upon completion of the annual reassessment and/or significant change assessment by both case management and enhanced services facility staff, the enhanced services team will review each resident for possible discharge. The team will determine if the resident:

(a) No longer needs the level of behavioral support provided by the enhanced services facility;

(b) Behaviors are now mitigated by changed medical or personal care needs;

(c) Expresses the desire to move to a different type of community based setting and has demonstrated the ability or capacity to be successful; or

(d) Is a good candidate for relocation and recommends other community based programs to the resident.

(2) The enhanced services facility, with input from the team, will meet with case management staff to identify residents with potential for discharge or transfer to a less restrictive program, and will participate in discharge planning for each resident who meets the above criteria for potential discharge from the facility.

(3) The enhanced services facility must provide a thirty (30) day notice before discharging a resident unless the situation is emergent and the case manager is involved in the decision.

Service ProvidedNEW SECTION

WAC 388-107-0290 Activities. The enhanced services facility must:

(1) Provide space and staff support necessary for:

(a) Each resident, at any time, to engage in independent or self-directed activities that are appropriate to the setting, consistent with the resident's assessed interests, choices, functional abilities, preferences, and individualized treatment plan; and

(b) Group activities at least five times per week that may be planned and facilitated by caregivers consistent with the collective interests of a group of residents.

(2) Make available routine supplies and equipment necessary for activities described in subsection (1) of this section.

NEW SECTION

WAC 388-107-0300 Admission and continuation of services. The enhanced services facility must only admit or continue to provide services to a resident when:

(1) The department has determined that the individual is eligible for placement in an enhanced services facility.

(2) The facility can safely and appropriately meet the assessed needs and preferences of the resident:

(a) With available staff; and

(b) Through reasonable accommodation.

(3) Admitting the resident does not negatively affect the ability of the facility to:

- (a) Meet the needs, and does not endanger the safety, of other residents and members of the community; or
- (b) Safely evacuate all people in the facility during an emergency according to the approved fire safety and evacuation plans appropriate to the occupancy type of the building.

NEW SECTION

WAC 388-107-0310 Medical and/or adaptive equipment. The enhanced services facility is responsible to meet the needs of residents through qualified and trained staff, services, medical and/or adaptive equipment, security and building design.

NEW SECTION

WAC 388-107-0320 Medication services. (1) An enhanced services facility providing medication service, either directly or indirectly, must:

- (a) Meet the requirements of chapter 69.41 RCW regarding legend and prescription medications, and other applicable statutes and administrative rules;
- (b) Develop and implement systems that support and promote safe medication service for each resident; and
- (c) Ensure that each resident is monitored for desired responses and undesirable side effects of prescribed medications.
- (2) The enhanced services facility must ensure residents receive their medications as prescribed.
- (3) If resident requests assistance, the enhanced services facility assumes responsibility for obtaining a resident's prescribed medications and must obtain them in a correct and timely manner.
- (4) The enhanced services facility must generally provide medications in the form they are prescribed when administering medications or providing medication assistance to a resident. The enhanced services facility may provide medications in an altered form consistent with the following:
 - (a) Alteration includes, but is not limited to, crushing tablets, cutting tablets in half, opening capsules, mixing powdered medications with foods or liquids, or mixing tablets or capsules with foods or liquids;
 - (b) Residents must be aware that the medication is being altered or added to their food;
 - (c) A pharmacist or other practitioner practicing within their scope of practice must determine that it is safe to alter a medication; and
 - (d) If the medication is altered, documentation of the appropriateness of the alteration must be on the prescription container, and in the resident's record.
- (5) Alteration of medications for self-administration with assistance is provided in accordance with chapter 246-888 WAC.

NEW SECTION

WAC 388-107-0330 Pharmacy services. (1) The enhanced services facility must:

- (a) Obtain routine and emergency medications for its residents under an agreement with a licensed pharmacy;
- (b) Ensure that pharmaceutical services:
 - (i) Meet the needs of each resident; and
 - (ii) Establish and monitor systems for the accurate acquiring, receiving, dispensing, control and administering of all medications; and
- (c) Employ or obtain the services of a license pharmacist who must:
 - (i) Provide consultation on all aspects of the provision of pharmacy services in the enhanced services facility;
 - (ii) Determine that enhanced services facility medication records are in order;
 - (iii) Perform regular reviews at least once each month of each resident's medication therapy; and
 - (iv) Document and report medication irregularities to the attending physician.
- (2) Medications used in the enhanced services facility must be labeled and stored in accordance with applicable state and federal laws.
- (3) The enhanced services facility must provide pharmaceutical services that meet recognized and accepted standards of pharmacy practice.
- (4) The enhanced services facility must ensure:
 - (a) Education and training for enhanced services facility staff by the licensed pharmacist on medication-related subjects including, but not limited to:
 - (i) Recognized and accepted standards of pharmacy practice and applicable pharmacy laws and rules;
 - (ii) Appropriate monitoring of residents to determine desired effect and undesirable side effects of medication regimens; and
 - (iii) Use of psychotropic medications.
 - (b) Reference materials regarding medication administration, adverse reactions, toxicology, and poison center information are readily available;
 - (c) Pharmacist monthly medication review reports are acted on in a timely and effective manner;
 - (d) Accurate detection, documentation, reporting and resolution of medication errors and adverse medication reactions; and
 - (e) Only individuals authorized by state law to do so will receive medication orders, administer medications, and destroying expired medications.
- (5) The resident has the right to a choice of pharmacies when purchasing prescription and nonprescription medications as long as the following conditions are met to ensure the resident is protected from medication errors:
 - (a) The medications are delivered in a unit of use compatible with the established system of the facility for dispensing medications; and
 - (b) The medications are delivered in a timely manner to prevent interruption of dose schedule.

NEW SECTION

WAC 388-107-0332 Storing, securing, and accounting for medications. (1) The enhanced services facility must secure medications for residents who are not capable of safely storing their own medications.

(2) The enhanced services facility must ensure all medications under the enhanced services facility's control are properly stored and accounted for:

- (a) In containers with pharmacist-prepared label or original manufacturer's label;
 - (b) Together for each resident and physically separated from other residents' medications;
 - (c) Separate from food or toxic chemicals;
 - (d) In a locked compartment that is accessible only to designated responsible staff persons; or as otherwise directed by a physician; and
 - (e) In environments recommended on the medication label.
- (3) The enhanced service facility must develop and implement a system for:
- (a) Safe and secure medication disposal; and
 - (b) Documentation of the medication disposal.

NEW SECTION

WAC 388-107-0334 Resident controlled medications.

(1) The enhanced services facility must ensure all medications are stored in a manner that prevents each resident from gaining access to another resident's medications.

(2) The enhanced services facility must allow a resident to control and secure the medications that he or she self-administers or self-administers with assistance if the enhanced services facility assesses the resident to be capable of safely and appropriately storing his or her own medications and the resident desires to do so.

(3) The enhanced services facility must ensure no staff person other than a nurse or licensed pharmacist fills medication organizers for residents.

(4) The enhanced services facility must ensure that any nurse who fills a medication organizer for a resident labels the medication organizer with:

- (a) The name of the resident;
- (b) The name of the medications in the organizer; and
- (c) The frequency of the dosage.

(3) The enhanced services facility must ensure documentation that accounts for medications that has been properly destroyed, when:

- (a) A medication expires; or
- (b) A resident moves to another location; or
- (c) Upon a residents death.

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

NEW SECTION

WAC 388-107-0340 Prescribed medication authorizations. (1) Before the enhanced services facility may provide medication administration to a resident for prescribed medications, the enhanced services facility must have one of the following:

- (a) A prescription label completed by a licensed pharmacy;
- (b) A written order from the prescriber;

(c) A facsimile or other electronic transmission of the order from the prescriber; or

(d) Written documentation by a nurse of a telephone order from the prescriber.

(2) The documentation required above in subsection (1) of this section must include the following information:

- (a) The name of the resident;
- (b) The name of the medication;
- (c) The dosage and dosage frequency of the medication; and
- (d) The name of the prescriber.

NEW SECTION

WAC 388-107-0350 Medication refusal. (1) When a resident who is receiving medication administration services from the enhanced services facility chooses to not take his or her medications, the enhanced services facility must:

(a) Respect the resident's right to choose not to take medication;

(b) Document the time, date and medication the resident did not take in the resident's medical record;

(c) Notify the physician of the refusal and follow any instructions provided, unless there is a staff person available who, acting within his or her scope of practice, is able to evaluate the significance of the resident not getting his or her medication, and such staff person;

(i) Conducts an evaluation; and

(ii) Takes the appropriate action, including notifying the prescriber or primary care practitioner when there is a consistent pattern of the resident choosing to not take his or her medications.

(2) The enhanced services facility must comply with subsection (1) of this section, unless the prescriber or primary care practitioner has provided the enhanced services facility with:

(a) Specific directions for addressing the refusal of the identified medication;

(b) The enhanced services facility documents such directions; and

(c) The enhanced facility is able to fully comply with such directions.

NEW SECTION

WAC 388-107-0360 Medication refusal—Antipsychotics. (1) When a resident who is being administered antipsychotic medication, chooses to not take his or her medications after two or three attempts, the enhanced services facility must:

(a) Respect the resident's right to choose not to take medication;

(b) Document the time, date and medication the resident did not take in the medical record; and

(c) Notify the physician within eight hours of the refusal.

(d) Notify the DSHS case manager within twenty four hours of the refusal.

(2) The enhanced services facility cannot give the antipsychotic medication in an override of the resident's refusal.

NEW SECTION

WAC 388-107-0370 Treatment services. The enhanced services facility must:

(1) Provide for diagnostic and therapeutic services prescribed by the attending clinical staff that meet all of the resident needs identified in the individual treatment plan, to include mental health and chemical dependency treatment;

(2) Ensure that each resident's individual treatment plan has interventions for behavioral support in accordance with WAC 388-107-0160;

(3) Ensure that all services are provided by specific program professionals, such as mental health professionals and chemical dependency professionals.

NEW SECTION

WAC 388-107-0380 Use of psychopharmacologic medications. (1) The enhanced services facility must ensure that each resident is free from psychopharmacologic medications used for discipline, to restrain, or for convenience of the staff.

(2) The facility must ensure that when a psychopharmacologic medication is used the resident assessment indicates that the use is necessary to treat the resident's medical symptoms and documented in the medical record.

NEW SECTION

WAC 388-107-0390 Use of routine psychopharmacologic medications. When the resident is using a psychopharmacologic medication on a routine basis, the facility must ensure that the:

(1) Medication is prescribed by a physician or health care professional with prescriptive authority;

(2) Resident's individual treatment plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(3) Changes in medication only occur when the prescriber decides it is medically necessary;

(4) The resident's record includes documentation about the specific symptom or behavior that caused the physician to order the medication and what the resident needs to be able to do or stop doing in order to discontinue the medication.

(5) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the psychopharmacologic medication.

NEW SECTION

WAC 388-107-0400 Use of as needed psychopharmacologic medications. If the physician has ordered an as-needed psychopharmacologic medication for a resident, the facility must ensure that the:

(1) Order details the circumstances under which the medication may be used and the medication is given only as specifically ordered;

(2) Resident's individual treatment plan includes behavioral intervention strategies and modifications of the environ-

ment and staff behavior to address the symptoms for which the medication is prescribed;

(3) Documentation in the resident record is done on the specific symptom or behavior that caused the need for the medication and what the results of the use is; and

(4) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the medication.

NEW SECTION

WAC 388-107-0410 Management of escalating behaviors. (1) An enhanced services facility must have a specific procedure for de-escalating, preventing and redirecting aggressive and challenging behavior. This protocol must always be the first approach and strategy in resolving behavioral issues. The protocol must include:

(a) Training on prevention of escalation of behavior before it reaches the stage of physical assault;

(b) Techniques for staff to use in response to challenging client behaviors;

(c) Evaluation of the safety of the physical environment;

(d) Issues of respect and dignity of the resident; and

(e) Use of the least restrictive physical and behavioral interventions depending upon the situation;

(2) If the facility uses holding techniques as a last resort to physically restrain residents in emergency situations and as part of behavioral intervention protocols, the facility must:

(a) Use other established resident-specific behavioral interventions first to attempt to de-escalate the situation;

(b) Limit the holding technique to specific emergent situations where behavioral interventions have not been successful in de-escalating a situation and the resident is at imminent risk of harm to self or others due to aggressive behavior;

(c) Limit the time used to only until the arrival of emergency personnel and/or the emergency ceases;

(d) Release residents from the holding technique as soon as possible;

(e) Instruct observers on how to support signs of:

(i) Distress by the client; and

(ii) Fatigue by the staff.

(f) Document:

(i) The reason for use of the holding technique;

(ii) Other behavioral interventions attempted prior to the use of the holding technique;

(iii) The duration of the use of the holding technique; and

(iv) The condition of the resident at the time of release from the holding technique.

RestraintsNEW SECTION

WAC 388-107-0420 Physical restraints for medical purposes only. (1) For the purposes of this section, "physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, required to treat the resident's

medical symptoms. The enhanced services facility must ensure:

(2) Each resident has the right to be free from physical and chemical restraints used for discipline, behavioral intervention, or staff convenience;

(3) That physical restraints are used only during infrequent and episodic occurrences for the protection of the individual during delivery of medical care or treatment.

(4) That before using the physical restraint, the least restrictive alternatives have been tried and documented, and such restraint is deemed required to temporarily protect the resident from harming themselves during the medical care or treatment;

(5) That before physical restraints are used, the resident has been assessed as needing the restraint to treat the emergent medical symptoms or provide the medical care, and to prevent the resident from self-harm; and

(a) The treatment team has been consulted and evaluated the resistance to medical care; and

(b) The documentation has been updated to include positive interventions and supports used.

(6) That if physical restraints are used, the restraints are episodic and infrequently applied and immediately supervised on-site by a:

(a) Licensed registered nurse;

(b) Licensed practical nurse; or

(c) Licensed physician; and

(d) For the purposes of this subsection, immediately supervised means that the licensed person is in the facility, quickly and easily available;

(7) When any physical restraint is used per (3) above:

(a) A staff person is in the presence of the resident at all times when the restraint is in use;

(b) A physician's order is obtained within one hour;

(c) The order includes treatments to assist in resolving the emergency situation and eliminating the need for the restraint;

(d) Behavioral consultation is obtained within two hours;

(e) Resident is released immediately upon the cessation of the behavior that preceded the need for restraint.

(f) The restraint is removed immediately at the conclusion of the medical emergency, treatment or procedure;

(g) The enhanced services facility self-reports within 24 hours the use of the physical restraint for medical purposes to the complaint resolution unit; and

(h) The use of the physical restraint is documented:

(a) On the specific medical issue that caused the need for restraint and what the resident needs to do or stop doing in order to discontinue the restraint; and

(b) That the resident, guardian or legal representative, if any, was informed of the need for restraint;

(i) The treatment team will consult within twenty four hours to determine less intrusive methods to meet the resident's needs for future care.

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

Food Services

NEW SECTION

WAC 388-107-0430 Food services. The enhanced services facility must provide or contract out food services for residents. If the facility chooses to contract out the food service, the contracted services must meet all of the applicable food codes and requirements.

1) The enhanced services facility must:

(a) Provide a minimum of three meals a day;

(b) Provide snacks;

(i) Between meals and in the evening at regular intervals;

and

(ii) With no more than fourteen hours between the evening meal and breakfast, unless the enhanced services facility provides a nutritious snack after the evening meal and before breakfast.

(c) Provide access to fluids and snacks at all times;

(d) Provide sufficient time and staff support for residents to consume meals;

(e) Ensure all menus:

(i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (h) of this subsection;

(ii) Indicate the date, day of week, month and year;

(iii) Include all food and snacks served that contribute to nutritional requirements;

(iv) Are kept at least six months;

(v) Provide a variety of foods;

(vi) Provide foods at safe and appropriate temperatures;

and

(vii) Are not repeated for at least three weeks, except that breakfast menus in enhanced services facilities that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.

(f) Prepare food on-site, or provide food through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC regarding food service;

(g) Serve nourishing, palatable and attractively presented meals adjusted for:

(i) Age, gender and activities, unless medically contraindicated; and

(ii) Individual preferences to the extent reasonably possible.

(h) Substitute foods of equal nutrient value, when changes in the current day's menu are necessary, and record changes on the original menu;

(i) Make available and give residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The enhanced services facility is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

(j) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

(k) Maintain a dining area or areas approved by the department with a seating capacity for seventy-five percent

or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The enhanced services facility must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The enhanced services facility must ensure the diet manual is:

(i) Available to and used by staff persons responsible for food preparation;

(ii) Approved by a dietitian; and

(iii) Reviewed and updated as necessary or at least every five years.

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The enhanced services facility may provide to a resident at his or her request and as agreed upon in the resident's comprehensive individual treatment plan, non-prescribed:

(a) Modified or therapeutic diets; and

(b) Nutritional concentrates or supplements.

(4) The enhanced services facility must have a means for those residents whose individual treatment plan indicates they have the ability to make or select their own snacks and beverages an opportunity to do so without having to ask a staff member for assistance.

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

Infection Control

NEW SECTION

WAC 388-107-0440 Infection control system. (1) The enhanced services facility must:

(a) Establish and maintain an effective infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection;

(b) Prohibit any employee with a communicable disease or infected skin lesion from direct contact with residents or their food, if direct contact could transmit the disease; and

(c) Require staff to wash their hands after each direct resident contact for which hand-washing is indicated by accepted professional practice.

(2) Under the infection control system, the enhanced services facility must:

(a) Investigate, control and prevent infections in the facility;

(b) Decide what procedures should be applied in individual circumstances; and

(c) Maintain a record of incidence of infection and corrective action taken.

(3) Enhanced services facility personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(4) The enhanced services facility must develop and implement effective methods for the safe storage, transport

and disposal of garbage, refuse and infectious waste, consistent with all applicable local, state, and federal requirements for such disposal.

(5) The enhanced services facility must provide areas, equipment, and supplies to implement an effective infection control program and ensure:

(a) Ready availability of hand cleaning supplies and appropriate drying equipment or material at each sink;

(b) Safe use of disposable and single service supplies and equipment;

(c) Effective procedures for cleaning, disinfecting or sterilizing according to equipment use;

(d) Chemicals and equipment used for cleaning, disinfecting, and sterilizing, including chemicals used to launder personal clothing, are used in accordance with manufacturer's directions and recommendations; and

(e) Safe and effective procedures for disinfecting all therapy tubs and bathing and shower facilities between each resident use.

NEW SECTION

WAC 388-107-0450 Early identification and management of individuals with active tuberculosis (TB). (1) The enhanced services facility must develop and implement policies and procedures that comply with nationally recognized TB standards set by the Centers for Disease Control and Prevention, and applicable state law. Such policies and procedures include, but are not limited to, the following:

(a) Identifying and following up on, staff and residents with symptoms suggestive of TB whether TB test results were positive or negative;

(b) Identifying, and following up on, staff or residents with suspected or confirmed TB, in a timely manner.

(2) The enhanced services facility must comply with chapter 49.17 RCW, Washington Industrial Safety and Health Act requirements to protect the health and safety of staff that may come in contact with persons having infectious TB.

NEW SECTION

WAC 388-107-0460 Tuberculosis (TB)—Testing—Required. The enhanced services facility must:

(1) Develop and implement a system to ensure staff have TB testing upon employment or starting service; and

(2) Ensure that staff have an annual risk assessment completed using the Washington state department of health approved criteria.

NEW SECTION

WAC 388-107-0465 Tuberculosis (TB) testing method—Required. The enhanced services facility must ensure that all TB testing is done through either:

(1) Tuberculin skin test with results read within forty-eight to seventy-two hours of placing the test by a qualified medical professional; or

(2) Other FDA approved TB test.

NEW SECTION

WAC 388-107-0470 Tuberculosis—No testing. The enhanced services facility is not required to have staff tested for TB if they have documentation of the following:

- (1) A positive FDA approved TB test; or
- (2) That the individual is receiving or has received appropriate therapy for active TB disease or latent TB infection and is cleared to safely work in an enhanced services facility.

NEW SECTION

WAC 388-107-0480 Tuberculosis (TB)—One test. The enhanced services facility is only required to have staff have one TB test if the staff person has any of the following:

- (1) A documented history of a negative result from a previous two-step tuberculin skin test; or
- (2) A documented negative result from one tuberculin skin test in the previous twelve months; or
- (3) The person is tested using a FDA approved TB test that does not require a two-step testing process.

NEW SECTION

WAC 388-107-0490 Tuberculosis (TB)—Two-step skin testing. Unless the staff meets the requirement for having no TB test or only one test, the enhanced services facility must ensure that each staff person has the following two-step tuberculin skin testing:

- (1) An initial tuberculin skin test upon employment or starting service; and
- (2) A completed two-step tuberculin skin test within four weeks of initial tuberculin skin test.

NEW SECTION

WAC 388-107-0500 Tuberculosis (TB)—Positive test result. When there is a positive result from a tuberculin skin or other FDA approved TB test, the enhanced services facility must ensure:

- (1) The staff person has a chest radiograph within seven days of a positive TB test result; and
- (2) Each staff person or with a positive TB test result undergoes ongoing observation for signs and symptoms of TB; and
- (3) The recommendation of the staff health care provider is followed.

NEW SECTION

WAC 388-107-0510 Tuberculosis (TB)—Negative test result. The enhanced services facility may be required by the health care provider or licensing authority to ensure that staff with negative TB test results have follow-up testing in certain circumstances, such as:

- (1) After exposure to active TB; or
- (2) When TB symptoms are present.

NEW SECTION

WAC 388-107-0520 Tuberculosis (TB)—Declining a TB test. If staff decline a certain method of TB testing they must provide written documentation from a health care provider that the person is clear to work or reside in an enhanced services facility as evidenced by an alternative FDA approved diagnostic method used to screen for TB.

NEW SECTION

WAC 388-107-0530 Tuberculosis (TB)—Reporting and follow-up—Required. The enhanced services facility must:

- (1) Report any staff person or resident with TB symptoms or a positive chest radiograph to the appropriate health care provider in accordance with chapter 246-101 WAC;
- (2) Follow the infection control and safety measures as suggested in the 2003 CDC Guidelines for Environmental Infection Control in Health-Care Facilities (<http://www.cdc.gov/MMWR/preview/MMWRhtml/rr5210a1.htm>), or as hereafter amended);
- (3) Ensure that staff persons caring for a resident with suspected TB comply with the Washington Industrial Safety and Health Act standard for respiratory protection found in chapter 296-842 WAC.

NEW SECTION

WAC 388-107-0540 Tuberculosis (TB)—Test records. The enhanced services facility must:

- (1) Keep the records of TB test results, reports of chest radiograph findings, and any physician or health care provider orders in the enhanced services facility;
- (2) Make the records readily available to the appropriate health provider and licensing agency;
- (3) Retain the records for at least two years after the date the staff either quits, is terminated, or released; and
- (4) Provide the staff with a copy of his/her test results.

NEW SECTION

WAC 388-107-0542 Care of residents with tuberculosis (TB). (1) When the enhanced services facility accepts the care of a resident with suspected or confirmed TB, the enhanced services facility must:

- (a) Coordinate the resident's admission, enhanced services care, discharge planning, and discharge with the health care provider;
- (b) Provide necessary education about TB for staff, visitors, and residents; and
- (c) Ensure that personnel caring for a resident with active TB comply with the Washington Industrial Safety and Health Act standards for respiratory protection, chapter 296-842WAC.

(2) For a resident who requires respiratory isolation for TB refer to 2003 CDC Guidelines for Environmental Infection Control in Health-Care Facilities (<http://www.cdc.gov/MMWR/preview/MMWRhtml/rr5210a1.htm>), or as hereafter amended.

AdministrationNEW SECTION

WAC 388-107-0550 Contracted basic services. If the provider does not intend to provide basic services in-house, the provider must contract with an outside source to provide those services. The provider must ensure that the contracted services, at a minimum, meet applicable state, local, and licensing standards. Basic services include, but are not limited to:

- (1) Housekeeping services;
- (2) Food services; and
- (3) Laundry services.

NEW SECTION

WAC 388-107-0560 Resident records—Clinical records. (1) The enhanced services facility must:

(a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

- (i) Complete;
- (ii) Accurately documented;
- (iii) Readily accessible; and
- (iv) Systematically organized.

(b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and

(c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

- (i) Transfer to another health care institution;
- (ii) Law; or
- (iii) The resident.

(2) The enhanced services facility must ensure the clinical record of each resident includes at least the following:

(a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;

- (b) Medical information;
- (c) Physician's orders;
- (d) Assessments;
- (e) Individual treatment plans;
- (f) Services provided;
- (g) Progress notes;
- (h) Medications administered;
- (i) Consents, authorizations, releases;
- (j) Allergic responses;
- (k) Laboratory, X-ray, and other findings; and
- (l) Other records as appropriate.

(3) Maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including chapters 70.02 and 70.129 RCW.

NEW SECTION

WAC 388-107-0570 Resident records—System. (1) The enhanced services facility must:

(a) Designate an individual responsible for the record system who:

(i) Has appropriate training and experience in clinical record management; or

(ii) Receives consultation from a qualified clinical record practitioner, such as a registered health information administrator or registered health information technician.

(b) Make all records available for review by:

(i) Authorized representatives of the department;

(ii) Representatives of the long term care and mental health ombud's office with authorization or permission from the resident or resident's representative;

(iii) Representatives of Disability Rights Washington; and

(iv) Representatives of the Washington State Fire Marshal when conducting fire safety inspections.

(c) Maintain the following:

(i) A master resident index having a reference for each resident including the health record number, if applicable; full name; date of birth; admission dates; and discharge dates; and

(ii) A chronological census register, including all admissions, discharge, deaths and transfers, and noting the receiving facility. The enhanced services facility must ensure the register includes discharges and transfers to other treatment facilities in excess of twenty-four hours.

(2) The enhanced services facility must ensure the clinical record of each resident:

(a) Is documented and authenticated accurately, promptly and legibly by individuals giving the order, making the observation, performing the examination, assessment, treatment or providing the care and services. "**Authenticated**" means the authorization of a written entry in a record by signature, including the first initial and last name and title, or a unique identifier allowing identification of the responsible individual; and

(i) Documents from other health care facilities that are clearly identified as being authenticated at that facility will be considered authenticated at the receiving facility; and

(ii) The original or a durable, legible, direct copy of each document will be accepted.

(b) Contains appropriate information for a deceased resident including:

(i) The time and date of death;

(ii) Apparent cause of death;

(iii) Notification of the physician and appropriate resident representative; and

(iv) The disposition of the body and personal effects.

NEW SECTION

WAC 388-107-0580 Resident records—Maintenance and retention. (1) In cases where the enhanced services facility maintains records by computer rather than hard copy, the facility must:

(a) Have in place safeguards to prevent unauthorized access; and

(b) Provide for reconstruction of information.

(2) The enhanced services facility must:

(a) Maintain all documentation filed in the resident record for five years after the date the resident leaves the enhanced services facility;

(b) In the event of a change of ownership, provide for the orderly transfer of clinical records to the new licensee;

(c) In the event an enhanced services facility ceases operation, make arrangements prior to cessation, as approved by the department, for preservation of the clinical records. The enhanced services facility licensee must provide a plan for preservation of clinical records to the department's designated local office no later than seven days after the date of notice of the facility closure unless an alternate date has been approved by the department; and

(d) Provide a resident access to all records pertaining to the resident as required.

(3) The enhanced services facility must assemble all records pertaining to a resident and make them available to a resident within twenty-four hours of the resident's or the resident's representative's request to review the resident's records.

(4) The enhanced services facility must provide to the resident or the resident's representative, photocopies of the records or any portions of the records pertaining to the resident, within two working days of the resident's or resident's representative's request for the records.

(a) For the purposes of this section, "working days" means Monday through Friday, except for legal holidays.

(b) The enhanced services facility may charge the resident or the resident's representative a fee not to exceed twenty-five cents per page for the cost of photocopying the resident's record.

Reporting Requirements

NEW SECTION

WAC 388-107-0590 Reporting abuse and neglect. (1)

The enhanced services facility must ensure that each staff person:

(a) Makes a report to the department's Aging and Long-Term Support Administration Complaint Resolution Unit hotline consistent with chapter 74.34 RCW in all cases where the staff person has reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred; and

(b) Makes an immediate report to the appropriate law enforcement agency and the department consistent with chapter 74.34 RCW of all incidents of suspected sexual abuse or physical abuse of a resident.

(2) The enhanced services facility must prominently post so it is readily visible to staff, residents and visitors, the department's toll-free telephone number for reporting resident abuse and neglect.

NEW SECTION

WAC 388-107-0600 Reporting significant change in a resident's condition. (1) The enhanced services facility must consult with the resident's representative, the resident's physician, the medicaid resident's department case manager, and other individuals designated by the resident as soon as possible but no later than 24 hours when:

(a) There is a significant change in the resident's condition;

(b) The resident is relocated to a hospital or other health care facility;

(c) The resident's condition improved and the resident no longer needs the care and services provided by the enhanced services facility; or

(d) The resident dies.

(2) Whenever any of the conditions in subsection (1) of this section occurs, the enhanced services facility must document in the resident's records:

(a) The date and time each individual was contacted; and

(b) The individual's relationship to the resident.

(3) In case of a resident's death, the enhanced services facility must notify the coroner if required by RCW 68.50.-010.

NEW SECTION

WAC 388-107-0610 Reporting fires and incidents.

The enhanced services facility must immediately report to the department:

(1) Any accidental or unintended fire, or any deliberately set but improper fire, such as arson, in the enhanced services facility;

(2) Any missing resident, once the initial search for the resident is completed and 911 is notified;

(3) Any unusual incident that requires implementation of the enhanced services facility's disaster plan, including any evacuation of all or part of the residents to another area of the enhanced services facility or to another address; and

(4) Circumstances which threaten the enhanced services facility's ability to ensure continuation of services to residents.

NEW SECTION

WAC 388-107-0620 Retaliation or discrimination prohibited.

(1) The enhanced services facility must not discriminate or retaliate in any manner against a resident or employee in its enhanced services facility who has initiated or participated in any action or proceeding authorized under enhanced services facility licensing law.

(2) For purposes of this chapter, "**retaliation**" or "**discrimination**" against a resident means an act including, but not limited to:

(a) Verbal or physical harassment or abuse;

(b) Any attempt to expel the resident from the facility;

(c) Non-medically indicated social, dietary, or mobility restrictions;

(d) Lessening of the level of care when not medically appropriate;

(e) Non-voluntary relocation within an enhanced services facility without appropriate medical, psychosocial, or nursing justification;

(f) Neglect or negligent treatment;

(g) Withholding privileges;

(h) Monitoring resident's phone, mail or visits without resident's permission;

(i) Withholding or threatening to withhold food or treatment unless authorized by a terminally ill resident or the resident's representative;

(j) Persistently delaying responses to resident's request for services or assistance; or

(k) Infringement on a resident's rights described in this chapter.

(3) For purposes of this chapter, "**retaliation**" or "**discrimination**" against an employee means an act including, but not limited to:

(a) Harassment;

(b) Unwarranted firing;

(c) Unwarranted demotion;

(d) Unjustified disciplinary action;

(e) Denial of adequate staff to perform duties;

(f) Frequent staff changes;

(g) Frequent and undesirable office changes;

(h) Refusal to assign meaningful work;

(i) Unwarranted and unsubstantiated report of misconduct under Title 18 RCW;

(j) Unsubstantiated letters of reprimand;

(k) Unsubstantiated unsatisfactory performance evaluations;

(l) Denial of employment;

(m) A supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower; or

(n) Workplace reprisal or retaliatory action as defined in RCW 74.34.180(3)(b).

(4) If, within one year of the complaint by or on behalf of a resident, the resident is involuntarily discharged from the enhanced services facility, or is subjected to any type of discriminatory treatment, there will be a presumption that the action was in retaliation for the filing of the complaint. Under these circumstances, the enhanced services facility will have the burden of establishing that the action was not retaliatory, in accordance with RCW 74.34.180(2).

Training Requirements

NEW SECTION

WAC 388-107-0630 Training and home care aide certification requirements. (1) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.

(2) Continuing education requirements are outlined in chapter 388-112 WAC; registered nurses and licensed practical nurses are exempt from the long-term care worker continuing education requirement.

(3) The enhanced services facility must ensure staff persons meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC, unless exempt under RCW 18.88B.041.

(4) The enhanced services facility must ensure all enhanced services facility administrators, or their designees, and caregivers who are not exempt under subsection (1) of this section meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic training;

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

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(5) The enhanced services facility must ensure that all staff receives appropriate training and orientation to perform their specific job duties and responsibilities.

(6) The enhanced services facility must ensure the following staff obtains home care aide certification, unless exempt under WAC 246-980-070:

(a) All long-term care workers, within two hundred days of hire;

(b) All enhanced services facility applicants, before licensure;

(c) All enhanced services facility administrators within two hundred days of hire, and

(d) Any other staff who will provide direct care and services to residents.

NEW SECTION

WAC 388-107-0640 Staff development trainings. (1) The enhanced services facility must have a staff development program that is under the direction of a designated registered nurse or licensed practical nurse or mental health professional.

(2) The enhanced services facility must:

(a) Ensure each employee receives initial orientation to the facility and its policies and is initially assigned only to duties for which the employee has demonstrated competence;

(b) Ensure all employees receive appropriate in-service and continuing education to maintain a level of knowledge appropriate to, and demonstrated competence in, the performance of ongoing job duties consistent with the principle of assisting the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being. To this end, the enhanced services facility must:

(i) Assess the specific training needs of each employee and address those needs;

(ii) Determine the special needs of the enhanced services facility's resident population which may require training emphasis; and

(iii) Ensure that each employee is trained on de-escalating challenging behaviors, including the use of a manual technique intended to interrupt or stop a behavior from occurring.

(c) Comply with other applicable training requirements, such as, but not limited to, the blood borne pathogen standard.

NEW SECTION

WAC 388-107-0650 Specialized training. (1) The enhanced services facility must ensure all staff who have any interaction with the residents successfully complete the mental health and dementia specialized trainings, consistent with chapter 388-112 WAC, prior to working in the enhanced services facility.

(2) The facility must ensure all staff who have interaction with the residents complete any other specialty trainings

to meet the needs of the residents being served, such as developmental disabilities.

NEW SECTION

WAC 388-107-0660 Continuing education requirements for the home care aide certified staff. All home care aides certified staff must have ten of their twelve hours of annual continuing education cover relevant education regarding the population served in the enhanced services facility.

NEW SECTION

WAC 388-107-0670 Continuing education requirements for nursing assistant certified staff. All nursing assistant certified staff must have ten of their twelve hours of annual continuing education cover relevant education regarding the population served in the enhanced services facility.

NEW SECTION

WAC 388-107-0680 Quarterly staff education requirements. In addition to the annual continuing education requirements for individual staff, the enhanced services facility must provide three hours of training per quarter relevant to the needs of the population being served.

NEW SECTION

WAC 388-107-0690 Facility-based trainers. If the enhanced services facility provides continuing education, in-service education or quarterly staff education, the educators must be approved by the department prior to educational intervention, in accordance with chapter 388-112 WAC.

Physical Plan Basic Requirements

NEW SECTION

WAC 388-107-0700 General. (1) The department of health construction review services will review the following general, code, program submittal and minimum requirements to ensure that the facility is in compliance with enhanced services facility physical plant basic requirements.

(2) The enhanced service facility building occupancy type will be consistent with resident admission practices and state adopted building codes for licensed (1) nursing homes, (2) assisted living facilities or (3) adult family homes. This determination will be based on the following categories:

(a) Enhanced service facility category 1: Admit resident(s) physically or cognitively incapable of self preservation (enhanced services facility-nursing home type);

(b) Enhanced service facility category 2: Admit resident(s) capable of self-preservation with physical assistance from another person (enhanced services facility-assisted living type); or

(c) Enhanced service facility category 3: Admit no more than six resident(s) capable of evacuating the facility within five minutes (enhanced services facility-adult family home type).

(3) Enhanced services facility building will be inspected and approved by the Washington state fire marshal to be licensed.

(4) For the purposes of the physical plant sections, the use of the term facility also means applicant where applicable.

(5) The department may not exempt any physical environment requirements established in law but may exempt the enhanced services facility from meeting other specific requirements related to the physical environment if the department determines the exemption will not:

(a) Jeopardize the health or safety of residents;

(b) Adversely affect the residents' quality of life; or

(c) Change the fundamental nature of the enhanced services facility operation into something other than an enhanced services facility.

(6) An enhanced services facility wishing to request an exemption must submit a written request to the department, including:

(a) A description of the requested exemption; and

(b) The specific WAC requirement for which the exemption is sought.

(7) If a physical plant requirement, such as an isolation or seclusion room, is not included or addressed in this chapter, it is not allowed.

NEW SECTION

WAC 388-107-0710 Conversion of a currently licensed facility to an enhanced services facility. (1) If the department licenses part or all of a currently licensed nursing home under chapter 18.51 RCW, assisted living facility under chapter 18.20 RCW, or adult family home under chapter 70.128 RCW, as an enhanced services facility, the facility is deemed to meet the applicable state and local rules, regulations, permits, and code requirements, with the exceptions of subsections (2), (3), (4) and (5) of this section.

(2) If the facility's previous construction has the potential to jeopardize resident health and safety, the department may require compliance with enhanced services facility physical plant new construction rules.

(3) If the facility does construct to meet enhanced services facility requirements, that construction has to be reviewed and approved by construction review services and applicable local and state building officials.

(4) The enhanced services facility must also meet specific new construction requirements related to the safety of any residents with complex needs that the facility is choosing to serve.

(6) All other facilities or new facilities must meet all enhanced services facility new construction requirements, including the applicable state and local rules, regulations, permits, and code requirements.

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

NEW SECTION

WAC 388-107-0720 Types of new construction. New construction includes but is not limited to:

- (1) New structures:
 - (a) A new building to be licensed as an enhanced services facility; or
 - (b) An addition to a building currently licensed as an enhanced services facility.
- (2) Existing buildings:
 - (a) Conversion of another building to an enhanced services facility;
 - (b) Change in the use of space for access by residents within an existing enhanced services facility; and
 - (c) Alterations, additions, or modifications of an existing facility including but not limited to:
 - (i) Physical structure;
 - (ii) Electrical fixtures or systems;
 - (iii) Mechanical equipment or systems;
 - (iv) Fire alarm fixtures or systems;
 - (v) Fire sprinkler fixtures or systems;
 - (vi) Wall coverings 1/28 thick or thicker;
 - (vii) Floor coverings; or
 - (viii) Kitchen or laundry equipment.
 - (d) A change in the department-approved use of an existing facility or portion of a facility; and
 - (e) An existing building or portion thereof to be converted for the approved use.

NEW SECTION

WAC 388-107-0730 Applicable codes—New construction. New construction of enhanced services facilities must:

- (1) Through its design, construction and necessary permits demonstrate compliance with this chapter, the following codes and local jurisdiction standards.
- (2) Obtain all local permits before construction and maintain on file at the facility.
- (3) Comply with the International Building Code, and International Building Code Standards, as published by the International Conference of Building Officials as amended and adopted by the Washington state building code council and published as chapter 51-50 WAC, or successor laws.
- (4) Identify the planned types of residents served at the point of initial licensure to determine occupancy consistent with nursing homes, enhanced services facilities, assisted living facilities or adult family homes;
- (5) Comply with the International Mechanical Code, including chapter 22, Fuel Gas Piping, Appendix B, as published by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials as amended and adopted by the Washington state building code council and published as chapter 51-52 WAC, or successor laws;
- (6) Comply with the International Fire Code, and International Fire Code Standards, as published by the International Conference of Building Officials and the Western Fire Chiefs Association as amended and adopted by the Washington state building code council and published as chapter 51-54 WAC, and RCW 70.397.210, or successor laws;

(7) Comply with the Uniform Plumbing Code, and Uniform Plumbing Code Standards, as published by the International Association of Plumbing and Mechanical Officials, as amended and adopted by the Washington state building code council and published as chapters 51-56 and 51-57 WAC, or successor laws;

(8) Ensure that all electrical wiring complies with state and local electrical codes including chapter 296-46B WAC and the National Electric Code of the National Fire Protection Association (NFPA-70) as adopted by the Washington state department of labor and industries.

(9) Ensure conformance to the approved plans during construction.

NEW SECTION

WAC 388-107-0740 Required review of building plans. (1) The facility must submit plans to construction review services as directed by the department of health construction review services for approval prior to beginning any construction or conversion of an existing facility or a portion of an existing facility. The approved plans must be conformed to during construction.

(2) The facility must notify construction review services of all planned new construction regarding the facility prior to beginning work on any of the following:

- (a) A new building or portion thereof to be used as a facility;
- (b) An addition of, or modification or alteration to an existing facility, including, but not limited to, the facility's:
 - (i) Physical structure;
 - (ii) Electrical fixtures or systems;
 - (iii) Mechanical equipment or systems;
 - (iv) Fire alarm fixtures or systems;
 - (v) Fire sprinkler fixtures or systems;
 - (vi) Wall coverings 1/28 thick or thicker;
 - (vii) Floor coverings; or
 - (viii) Kitchen or laundry equipment.
- (c) A change in the department-approved use of an existing facility or portion of a facility; and
- (d) An existing building or portion thereof to be converted for the approved use.

(3) The facility does not need to notify construction review services of the following:

- (a) Repair or maintenance of equipment, furnishings or fixtures;
- (b) Replacement of equipment, furnishings or fixtures with equivalent equipment, furnishings, or fixtures;
- (c) Repair or replacement of damaged construction if the repair or replacement is performed according to construction documents approved by construction review services within eight years preceding the current repair or replacement;
- (d) Painting; or
- (e) Cosmetic changes that do not affect resident activities, services, or care and are performed in accordance with the current edition of the building code.

NEW SECTION

WAC 388-107-0750 Document submittal requirements. The facility must:

- (1) Provide one copy of the functional program;
- (2) Provide an analysis of likely adverse impacts on current residents and plans to eliminate or mitigate such adverse impacts;
- (3) Provide for the health, safety, and comfort of residents during construction projects;
- (4) Ensure that construction documents include two copies of the following:
 - (a) Drawings prepared, stamped, and signed by an architect licensed by the state of Washington under chapter 18.08 RCW. The services of a consulting engineer licensed by the state of Washington may be used for the various branches of the work, if appropriate; and
 - (b) Drawings with coordinated architectural, mechanical, and electrical work drawn to scale showing complete details for construction, including:
 - (i) Site plan(s) showing streets, driveways, parking, vehicle and pedestrian circulation, utility line locations, and location of existing and new buildings;
 - (ii) Dimensioned floor plan(s) with the function of each room and fixed/required equipment designated;
 - (iii) Elevations, sections, and construction details;
 - (iv) Schedule of floor, wall, and ceiling finishes;
 - (v) Schedules of doors and windows – sizes and type, and door finish hardware;
 - (vi) Mechanical systems – plumbing and heating/venting/air conditioning; and
 - (vii) Electrical systems, including lighting, power, and communication/notification systems.
 - (c) Specifications that describe with specificity the workmanship and finishes;
 - (d) Shop drawings and related equipment specifications for:
 - (i) An automatic fire sprinkler system when required by other codes; and
 - (ii) An automatic fire alarm system when required by other codes.
- (5) Submit addenda, change orders, construction change directives or any other deviation from the approved plans prior to their installation; and
- (6) Provide a written construction project completion notice to the department of health construction review services indicating:
 - (a) The completion date; and
 - (b) The actual construction cost.

NEW SECTION

WAC 388-107-0760 Functional program. The facility must implement a functional program. The functional program must clearly define the level, type and scope of care provided. The functional program will cover, but is not limited to the following:

- (1) Scope of the project;
- (2) Type of residents to be admitted to the facility;
- (3) Services offered;
- (4) Activities provided;
- (5) Transportation;
- (6) Staffing;
- (7) Emergency and disaster planning;

- (8) Type of rooms;
- (9) Resident rooms;
- (10) Outdoor spaces;
- (11) Laundry services;
- (12) Janitorial services;
- (13) Food services;
- (14) Communication systems;
- (15) Security systems; and
- (16) Other components.

Common Elements

NEW SECTION

WAC 388-107-0770 Environment of care. The facility must ensure that:

- (1) The facility is designed to provide the level of security appropriate for the specific type of service or program provided as well as the age level, acuity, and risk of the residents served (e.g., geriatric, acute psychiatric, or forensic).
- (2) Facility spaces accessible to residents must be designed to minimize locations where residents are out of the line of sight of staff.
- (3) All rooms with lockable doors, including but not limited to resident sleeping rooms and bathrooms, have a readily accessible means of rapid access for all staff.
- (4) Perimeter security addresses elopement prevention, prevention of contraband smuggling, visitor access control, and exit process and procedures.
- (5) Openings in the perimeter security system (e.g., windows, doors, and gates) are controlled by locks (manual, electric, or magnetic) when required by the functional program.

NEW SECTION

WAC 388-107-0780 Electronic monitoring equipment—Audio monitoring and video monitoring. (1) Except as provided in this section or in WAC 388-107-0790, the facility must not use the following in the facility:

- (a) Audio monitoring equipment; or
- (b) Video monitoring equipment if it includes an audio component.
- (2) The facility may video monitor and video record activities in the facility, without an audio component, only in the following areas:
 - (a) Entrances and exits if the cameras are:
 - (i) Focused only on the entrance or exit doorways; and
 - (ii) Not focused on areas where residents gather.
 - (b) Outdoor areas not commonly used by residents; and
 - (c) Designated smoking areas, 25 feet away from the facility, subject to the following conditions:
 - (i) Residents are assessed as needing supervision for smoking;
 - (ii) A staff person watches the video monitor at any time the area is used by such residents;
 - (iii) The video camera is clearly visible;
 - (iv) The video monitor is not viewable by the general public; and
 - (v) The facility notifies all residents in writing of the video monitoring equipment.

(d) Areas used exclusively by staff persons such as, medication preparation and storage areas or food preparation areas, if residents do not go into these areas.

NEW SECTION

WAC 388-107-0790 Electronic monitoring equipment—Resident requested use. (1) The facility must not use audio or video monitoring equipment to monitor any resident unless:

(a) The resident has requested the monitoring; and
 (b) The monitoring is only used in the sleeping room of the resident who requested the monitoring.

(2) If the resident requests audio or video monitoring, before any electronic monitoring occurs the facility must ensure:

(a) That the electronic monitoring does not violate chapter 9.73 RCW;

(b) The resident has identified a threat to the resident's health, safety or personal property; and

(c) The resident and the facility have agreed upon a specific duration for the electronic monitoring documented in writing.

(3) The facility must:

(a) Reevaluate the need for the electronic monitoring with the resident at least quarterly; and

(b) Have each reevaluation in writing signed and dated by the resident.

(4) The facility must immediately stop electronic monitoring if the:

(a) Resident no longer wants electronic monitoring; or

(b) Resident becomes unable to give consent.

(5) For the purposes of consenting to video electronic monitoring, without an audio component, the term "resident" includes the resident's decision maker.

(6) For the purposes of consenting to audio electronic monitoring, the term "resident" includes only:

(a) The resident residing in the facility; or

(b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to audio electronic monitoring of the resident.

(7) If the resident's decision maker consents to audio electronic monitoring as specified in subsection (6) above, the facility must maintain a copy of the court order authorizing such consent in the resident's record.

NEW SECTION

WAC 388-107-0800 Equipment. (1) The enhanced services facility must have adequate equipment, supplies, and space to carry out all functions and responsibilities of the facility.

(2) Safe and sanitary areas for:

(a) Storage and handling of clean and sterile nursing equipment and supplies; and

(b) Cleaning and disinfecting of soiled nursing equipment.

NEW SECTION

WAC 388-107-0810 Resident room. The facility must ensure that each resident sleeping room:

(1) Meets the following standards:

(a) Maximum capacity of one resident.

(b) May be locked by the resident:

(i) Unless otherwise indicated by an identified need in the Individual Treatment Plan; and

(ii) All staff have a readily accessible means of unlocking the room when the door is locked.

(c) Minimum clear floor area of 100 square feet.

(d) Has one or more outside windows that:

(i) If used for ventilation, are easily opened;

(ii) Have break-away adjustable shades, blinds, or equivalent installed for visual privacy and are designed to meet the safety needs of the resident; and

(2) Is adjacent to bathing and toilet facilities;

(3) Is designed to offer visual privacy from casual observation by other residents and visitors. The design for privacy must not restrict resident access to the entrance, hand-washing station, or toilet.

(4) Is accessible, clean, and well-maintained with sufficient space, light, and comfortable furnishings for sleeping and personal activities including, but not limited to:

(a) A minimum of a three-foot clear access aisle from the entry door, along at least one side of the bed, and in front of all storage equipment;

(b) Enough room for medical equipment and for a resident to move about freely with mobility aides, such as wheelchairs; and

(c) Direct access to a hallway, living room, lounge, the outside, or other common use area without going through a laundry or utility area, a bath or toilet room, or another resident's bedroom.

(5) Is equipped with:

(a) One or more waste containers;

(b) Furniture appropriate for the age and physical condition of each resident, including but not necessarily limited to:

(i) A chair, which may be used in either the bedroom or a group room interchangeably;

(ii) A bed of appropriate length and size that is thirty-six or more inches wide with a mattress that fits the bed frame, is in good condition, and is at least four inches thick unless otherwise requested or necessary for resident health or safety; and

(iii) A lockable storage space accessible to each resident for storage of small personal items, upon request.

NEW SECTION

WAC 388-107-0820 Resident toilet room. The facility will ensure:

(1) Toilet room doors:

(a) Are equipped with keyed locks that allow staff to control access to the toilet room, where indicated by the resident safety risk assessment;

(b) Swing outward or be double-acting; and

(c) For accessible resident toilet rooms, provide space for facility caregivers to transfer residents to the toilet using portable mechanical lifting equipment.

(2) One toilet and hand-washing sink for every four residents, or fraction thereof, with:

(a) Provisions for privacy during toileting, bathing, showering, and dressing;

(b) Separate toilet rooms for each gender if the toilet room contains more than one toilet; and

(c) Separate bathrooms for each gender if the bathroom contains more than one bathing fixture.

(3) Toilet rooms and bathrooms are directly accessible from resident rooms or corridors, without passing through any kitchen, pantry, food preparation, food storage, or dish-washing area or from one bedroom through another bedroom.

(4) Grab bar(s) in non-accessible toilet rooms must be installed to prevent fall and injury based on resident specific needs.

(5) Grab bar(s) in accessible toilet rooms must be installed according to the state building code requirements for accessible toilets.

NEW SECTION

WAC 388-107-0830 Resident bathing facilities. The facility must provide access to a bathtub or shower for every resident. The facility will ensure that bathing facilities are designed and located for resident convenience and privacy. The facility must ensure:

(1) At least one bathing unit for every four residents, or fraction thereof, who are located in a resident room without an adjoining bathroom;

(2) Access to at least one bathing device for immersion;

(3) Access to at least one roll-in shower or equivalent on each resident care unit:

(a) Designed and equipped for unobstructed ease of shower chair entry and use;

(b) With a spray attachment equipped with a backflow prevention device;

(c) One-half inch or less threshold that may be a collapsible rubber water barrier; and

(d) A minimum nominal (rough-framed) size of thirty-six inches by forty-eight.

(4) Resident bathing equipment is smooth, cleanable, and able to be disinfected after each use.

(5) In each bathing unit containing more than one bathing facility:

(a) Each bathtub, shower, or equivalent, is located in a separate room or compartment with three solid walls;

(b) The entry wall may be a break-away "shower" type curtain or equivalent;

(c) The area for each bathtub and shower is sufficient to accommodate a shower chair, an attendant, and provide visual privacy for bathing, drying, and dressing;

(d) All shower and tub surfaces are slip-resistant; and

(e) All bathing areas are constructed of materials that are impervious to water and cleanable.

(6) Common bathing facilities must comply with the state building code requirements for accessible bathing facilities.

(7) Grab bar(s) must be installed to prevent fall and injury in bathing facilities in non-accessible resident rooms.

(8) Grab bar(s) in accessible bathing rooms must be installed according to the state building code requirements for accessible bathing rooms.

NEW SECTION

WAC 388-107-0840 Locks in toilet and bathing facilities. The facility must ensure:

(1) All staff have a readily available means of unlocking lockable toilet facilities and bathrooms from the outside; and

(2) Locks are operable from the inside with a single motion.

NEW SECTION

WAC 388-107-0850 Resident storage. The facility must ensure:

(1) Each resident has, within his or her room, a separate wardrobe (for hanging garments), locker, or closet for storing personal effects.

(2) Shelves for folded garments may be used instead of arrangements for hanging garments if acceptable to the resident.

(3) Adequate storage must be available for a seven-day supply of clothes.

NEW SECTION

WAC 388-107-0860 Resident support spaces. The facility must ensure:

(1) Private space:

(a) For the use of individual residents, family, and caregivers to discuss the specific resident's needs or private family matters;

(b) With a minimum clear floor area of 144 square feet; and

(c) Furnished with comfortable seating to accommodate several people.

(2) If a room for resident grooming is provided, the room will include:

(a) Spaces for hair-washing station(s), hair clipping and hair styling, and other grooming needs.

(b) A hand-washing station, mirror, work counter(s), storage shelving, and sitting area(s) for resident.

(3) Resident support spaces have access to a common-use toilet facility.

Common Areas

NEW SECTION

WAC 388-107-0870 Common areas. The facility must ensure that all residents have access to common areas throughout the facility including, but not limited to, dining rooms, day rooms, and activity areas.

NEW SECTION

WAC 388-107-0880 Dining, dayrooms, and resident activity areas. (1) The facility must provide one or more rooms designated for resident dining and activities that is:

- (a) Well lighted;
 - (b) Well ventilated;
 - (c) Adequately furnished;
 - (d) Large enough to accommodate all residents; and
 - (e) Large enough to accommodate all resident activities.
- (2) The facility must design space for dining rooms, day-rooms, and activity areas for resident convenience and comfort and to provide a homelike environment. The facility must:
- (a) Ensure these rooms or areas are exterior rooms with windows that have a maximum sill height of thirty-six inches;
 - (b) Provide space for dining, day use, and activities with a minimum of one hundred fifty square feet or combined total of thirty square feet for each licensed bed, whichever is greater;
 - (c) Design any multipurpose rooms to prevent program interference with each other; and
 - (d) Provide adjoining or adjacent storage spaces for all activity and recreational equipment and supplies.

NEW SECTION

WAC 388-107-0890 Outdoor recreation space and walkways. (1) A facility must provide a safe, protected outdoor area for resident use.

- (2) The facility must ensure the outdoor area:
 - (a) Has areas protected from direct sunshine and rain throughout the day;
 - (b) Is accessible from the floor or story the resident resides on and has walking surfaces which are firm, stable, and free from cracks and abrupt changes with a maximum of one inch between the sidewalk and adjoining landscape areas;
 - (c) Has sufficient space and outdoor furniture provided with flexibility in arrangement of the furniture to accommodate residents who use wheelchairs and mobility aids;
 - (d) Contains non-poisonous shrubs, natural foliage, and trees;
 - (e) Is surrounded by walls or fences at least seventy-two inches high; and
 - (f) If used as a resident courtyard, the outdoor area must not be used for public or service deliveries.

Support Services

NEW SECTION

WAC 388-107-0900 Laundry. The facility must provide laundry and linen services on the premises, or by contract with a commercial laundry. If laundry services are provided on-site, the facility must ensure that laundry facilities, equipment, handling and processes provide residents with linen and laundered items that are clean, in good repair and adequate to meet the needs of residents. The facility:

- (1) Must handle, clean, and store linen according to acceptable methods of infection control, and:
 - (a) Ensure all staff wear appropriate personal protective equipment and use appropriate infection control practices when handling laundry;

- (b) Ensure that damp textiles or fabrics are not left in machines for longer than twelve hours;
 - (c) Ensure that gross soil is removed before washing and proper washing and drying procedures are used; and
 - (d) Ensure that contaminated textiles and fabrics are handled with minimum agitation to avoid contamination of air, surfaces and persons.
- (2) Must equip the laundry area with:
- (a) A utility sink;
 - (b) A table or counter for folding clean laundry;
 - (c) At least one washing machine and one clothes dryer; and
 - (d) Mechanical ventilation to the exterior.
- (3) Must use and maintain laundry equipment according to manufacturer's instructions.
- (4) Must use washing machines that have a continuous supply of hot water with a temperature of one hundred forty degrees Fahrenheit, or that automatically dispense a chemical sanitizer and detergent or wash additives as specified by the manufacturer, whenever the licensee washes:

- (a) Enhanced services facility laundry;
 - (b) Enhanced services facility laundry combined with residents' laundry into a single load; or
 - (c) More than one resident's laundry combined into a single load.
- (5) May allow residents to wash their individual personal laundry, separate from other laundry, at temperatures below one hundred forty degrees Fahrenheit provided chemicals suitable for low temperature washing at proper use concentration and according to the cleaning instructions of the textile, fabric or clothing.
- (6) Must ventilate laundry rooms and areas to the exterior including areas or rooms where soiled laundry is held for processing by offsite commercial laundry services.
- (7) Must locate laundry equipment in rooms other than those used for open food storage, food preparation or food service.

NEW SECTION

WAC 388-107-0910 Janitors closets on resident care units. The facility must ensure:

- (1) There is a janitor's closet with a service sink and adequate storage space for housekeeping equipment, cleaning chemicals and supplies.
- (2) The janitor's closet meets the ventilation requirements in WAC 388-107-1000.
- (3) The janitor's closet must remain locked.

NEW SECTION

WAC 388-107-0920 Kitchen. The facility must provide food service on the premises or by contract with a commercial kitchen. If the facility provides food service on-site, the facility must ensure food service areas are in compliance with chapter 246-215 and 246-217 WAC, state board of health rules governing food service sanitation. The facility providing on-site food service must:

- (a) Ensure food service areas are provided for the purpose of preparing, serving, and storing food and drink;

(b) Ensure food service areas are located to facilitate receiving of food supplies, disposal of kitchen waste, and transportation of food to dining and resident care areas;

(c) Locate and arrange the kitchen to avoid contamination of food, to prevent heat and noise entering resident care areas, and to prevent through traffic;

(d) Conveniently locate a hand-washing sink near the food preparation and dishwashing area, and include a waste receptacle and dispensers stocked with soap and paper towels;

(e) Adequately ventilate, light, and equip the dishwashing room or area for sanitary processing of dishes;

(f) Locate the garbage storage area in a well-ventilated room or an outside area;

(g) Provide space for an office or a desk and files for food service management located central to deliveries and kitchen operations; and

(h) Include housekeeping facilities or a janitor's closet for the exclusive use of food service with a service sink and storage space for housekeeping equipment and supplies.

NEW SECTION

WAC 388-107-0922 Sewage and liquid waste disposal. The enhanced services facility must:

(1) Ensure that all sewage and waste water drain into a municipal sewage disposal system according to chapter 246-271 WAC, if available; or

(2) Provide on-site sewage disposal systems designed, constructed, and maintained as required by chapters 246-272 and 173-240 WAC, and local ordinances.

NEW SECTION

WAC 388-107-0924 Garbage and refuse disposal. The enhanced services facility must:

(1) Provide an adequate number of garbage containers to store refuse generated by the enhanced services facility:

(a) Located in a storage area convenient for resident and staff use;

(b) Constructed of nonabsorbent material; and

(c) Cleaned and maintained to prevent:

(i) Entrance of insects, rodents, birds, or other pests;

(ii) Odors; and

(iii) Other nuisances.

(2) Assure garbage and waste containers are emptied frequently to prevent hazards and nuisances; and

(3) Provide for safe and sanitary collection and disposal of:

(a) Garbage and refuse;

(b) Infectious waste; and

(c) Waste grease from the kitchen.

NEW SECTION

WAC 388-107-0930 Nursing and nutrition station.

(1) The enhanced services facility must have a kitchenette to give residents access to fluids and snacks, including those of nutritive value, to meet resident wants and needs. The kitchenette will include:

(a) A sink with hot and cold running water;

(b) A soap dispenser; and

(c) A refrigerator.

(2) The nursing station must:

(a) Have a work counter or table;

(b) Have locking storage;

(i) For clean and sterile nursing equipment and supplies; and

(ii) Medication.

Building Elements

NEW SECTION

WAC 388-107-0940 Resident safety and suicide prevention. The enhanced services facility must be designed to prevent injury and suicide prevention, with special design considerations to details, finishes, and equipment. The facility must ensure:

(1) Ceilings

(a) In resident bathrooms are secured to prevent resident access. Ceiling systems of a non-secured (non-clipped down) lay-in ceiling tile design are not permitted.

(b) In resident bedrooms and bathrooms, are designed to eliminate tie-off point(s) or at nine feet in height to prevent resident access.

(2) Doors and door hardware:

(a) Doorways are at least 36" wide;

(b) Door swings for private resident bathrooms or shower areas swing out to allow for staff emergency access.

(i) Door closers will not be used unless required by the building code. If required on the resident room door, the closer will be mounted on the public side of the door rather than the private resident's side of the door.

(3) Door hinges:

(a) Are designed to minimize points for hanging (i.e., cut hinge type); and

(b) Are consistent with the level of care for the resident.

(4) Door lever handles are specifically designed anti-ligature hardware.

(5) All hardware has tamper-resistant fasteners.

(6) Windows:

(a) Located in areas accessible to residents are designed to limit the opportunities for breakage;

(b) All glazing, both interior and exterior, and glass mirrors are fabricated with laminated safety glass or equal;

(c) Use of tempered glass for interior windows is permitted.

(d) Break-away window coverings for visual privacy; and

(e) The anchorage of windows and window assemblies, including frames, is designed to resist impact loads applied from the inside and must be tested in accordance with American national standards institute (ANSI) Z97.1. Where operable windows are used, the hinges and locking devices must also be tested.

(7) Bathroom hardware and accessories

(a) Special design considerations for injury and suicide prevention must be given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders.

(b) Grab bars:

(i) Where grab bars are provided in resident rooms, resident toilet rooms, resident bathing rooms or other non-public space, the space between the bar and the wall must be filled to prevent the grab bar from becoming a ligature point.

(8) An overall design for anti-ligature including, but not limited to, grab bars, towel hooks, levers, handles, sprinkler heads, and other protrusions.

(9) Towel bars and shower curtain rods are not permitted.

(10) In unsupervised resident areas, sprinkler heads must be recessed or of a design to minimize resident access.

(11) In resident bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other fixtures must be the tamper-resistant type.

NEW SECTION

WAC 388-107-0950 Safety—Handrails. The facility must:

(1) Provide handrails on each side of all corridors and stairwells accessible to residents and ensure that:

(a) Ends of handrails are returned to the walls;

(b) Handrails are mounted thirty to thirty-four inches above the floor; and

(c) Handrails terminate not more than six inches from a door.

(2) Equip stairways with more than one riser and ramps with slopes greater than one in twenty with handrails on both sides. Ensure that ends of handrails are designed in a manner that eliminates a hooking hazard.

(3) Must maintain nonskid surfaces on all stairways and ramps used by residents.

NEW SECTION

WAC 388-107-0960 Plumbing—Water supply. The facility must:

(1) Provide:

(a) Water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

(b) Hot and cold water under adequate pressure readily available throughout the enhanced services facility;

(c) Labels or color codes for nonpotable water supplies as "unsafe for domestic use."

(2) Provide faucet controls in lavatories and sinks with:

(a) Either anti-ligature fixtures or fixtures with at least four-inch wrist blades or single-levers based on a risk assessment made by the facility;

(b) Sufficient space for full open and closed operation; and

(c) Color-coding and labels to indicate "hot" and "cold".

(3) Ensure that all lavatories and sinks have gooseneck spouts, without aerators in areas requiring infection control. Locations determined by the facility's risk assessment must be permitted to have anti-ligature devices.

(4) Provide shower heads that are of the flash-mounted type.

NEW SECTION

WAC 388-107-0970 Sinks—Water temperature. The facility must provide all sinks in resident rooms, toilet rooms and bathrooms, and bathing fixtures used by residents with hot water between one hundred five degrees (105°) Fahrenheit and one hundred twenty degrees (120°) Fahrenheit at all times.

NEW SECTION

WAC 388-107-0980 Mechanical—Heating systems. The facility must ensure:

(1) The heating system is capable of maintaining a temperature of seventy-five degrees Fahrenheit for areas occupied by residents and seventy degrees Fahrenheit for non-resident areas.

(2) Resident rooms must have individual temperature control which may be covered, locked, or placed in an inconspicuous place.

(3) Electric resistant wall heat units and portable space heaters are prohibited.

(4) The heating system must be connected to an alternate source of power, or an alternate source of heating must be provided to maintain the temperature in resident rooms or in a room to which all residents can be moved.

NEW SECTION

WAC 388-107-0990 Mechanical—Cooling systems. The facility must have:

(1) A mechanical cooling system capable of maintaining a temperature of seventy-five degrees Fahrenheit for areas occupied by residents; and

(2) A cooling system that has mechanical refrigeration equipment to provide summer air conditioning to resident areas, food preparation areas, laundry, medication rooms, and therapy areas by either a central system with distribution ducts or piping, or packaged room or zonal air conditioners.

NEW SECTION

WAC 388-107-1000 Mechanical—Ventilation systems. The facility must ensure:

(1) Ventilation of all rooms is designed to prevent objectionable odors, condensation, and direct drafts on the residents;

(2) All habitable space is mechanically ventilated including air supply and air exhaust systems;

(3) Installation of air-handling duct systems according to the requirements of the International Mechanical Code and chapter 51-52 WAC;

(4) Installation of supply registers and return air grilles at least three inches above the floor;

(5) Installation of exhaust grilles on or near the ceiling; and

(6) Outdoor air intakes located a minimum of twenty-five feet from the exhaust from any ventilating system, com-

bustion equipment, or areas which may collect vehicular exhaust and other noxious fumes, and a minimum of ten feet from plumbing vents. The facility must locate the bottom of outdoor air intakes serving central systems a minimum of

three feet above the adjoining grade level or, if installed through the roof, three feet above the highest adjoining roof level.

(7) Minimum ventilation requirements meet the pressure relationship and ventilation rates per the following table:

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas ^{1,2}	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
RESIDENT CARE				
Resident room (holding room)	±			
Resident corridor	±			
Toilet room	N			
Resident gathering (dining, activity)	±	2	4	Optional
DIAGNOSTIC AND TREATMENT				
Examination room	±	Optional	10	Yes
Physical therapy ³	N	2	4	Optional
Occupational therapy ³	N			
Soiled workroom or soiled holding	N	2	6	Optional
Clean workroom or clean holding	P	2	6	Optional
STERILIZING AND SUPPLY				
Sterilizer exhaust room	N	2	10	Yes
Linen and trash chute room	N	2	4	Optional
Laundry, general ³	±			
Soiled linen sorting and storage	N	Optional	10	Yes
Clean linen storage	P	Optional	10	Yes
SERVICE				
Food preparation center ³	±	Optional	10	Yes
Warewashing room ³	N	Optional	2	Yes
Dietary day storage	±			
Janitor closet	N	2	10	Yes
Bathroom	N	Optional	10	Yes
Personal services (barber/salon)	N	Optional	2	Yes

¹P=Positive N=Negative ± = Continuous directional control not required.

²Whether positive or negative, pressure must be a minimum of seventy cubic feet per minute (CFM).

³The volume of air may be reduced up to fifty percent in these areas during periods of nonuse. The soiled holding area of the general laundry must maintain its full ventilation capacity at all times.

NEW SECTION

WAC 388-107-1001 Lighting (1) The enhanced services facility must maintain electric light fixtures and lighting necessary for the comfort and safety of residents and for the activities of residents and staff.

(2) The enhanced services facility must provide enough lighting in each resident's room to meet the resident's needs, preferences and choices.

(3) New enhanced services facility construction must, at a minimum, meet the illuminating engineering society of North America (IESNA) recommendations for lighting in common areas as established in the IESNA lighting handbook. The applicable handbook is the edition in effect on the date a construction review fee is paid to the department of health, construction review services, for new enhanced services facility construction.

(4) Existing enhanced services facility construction must maintain, at a minimum, the illuminating engineering society of North America (IESNA) recommendations for lighting in common areas as established in the IESNA lighting handbook. The applicable handbook is the edition in effect on the date a construction review fee was paid to the department of health, construction review services, for the enhanced services facility or that portion of the enhanced services facility that underwent construction review.

CommunicationNEW SECTION

WAC 388-107-1005 Call systems on resident care units. The facility must provide a system that meets the following standards:

(1) A wired or wireless communication system that notifies at the staff work station. The system must be equipped to receive resident calls from:

- (a) The bedside of each resident;
- (b) Every common area, dining and activity areas, common use toilet rooms, and other areas used by residents; and
- (c) Resident toilet, bath and shower rooms.

(2) The call system may be adapted to meet the resident needs.

(3) The call system may not utilize any cords.

(4) Provisions must be made for easy removal or covering of call buttons.

(5) All hardware must have tamper-resistant fasteners.

(6) Provide residents, families, and other visitors with a means to contact a staff person inside the building from outside the building after hours.

NEW SECTION

WAC 388-107-1010 Telephone on resident care units. The facility must provide twenty-four hour access to a telephone for resident use which:

- (1) Provides auditory privacy;
- (2) Is accessible to a resident with a disability and accommodates a resident with sensory impairment;
- (3) Is not located in a staff office or at a nurse's station;
- (4) Does not require payment for local calls; and

- (5) Does not utilize any cords.

Electrical - Special ProvisionsNEW SECTION

WAC 388-107-1020 General. In areas accessed by residents, the facility must have:

(1) Electrical receptacles that are tamper-resistant or equipped with ground fault circuit interrupters.

(2) Lights designed to prevent unauthorized access and tampering.

NEW SECTION

WAC 388-107-1030 Backup power. (1) The facility must have an alternate source of power and automatic transfer equipment to connect the alternate source within ten seconds of the failure of the normal source.

(2) The facility must ensure the alternate source is a generator:

(a) With on-site fuel supply;

(b) That is permanently fixed in place;

(3) The facility must ensure the backup power supply is coordinated with the facility's emergency plan. The system must provide a minimum of four hours of effective power for lighting for night lights, exit corridors, stairways, dining and recreation areas, work stations, medication preparation areas and boiler rooms.

(4) A facility must have alternate power supplied to:

(a) Communication systems and all alarm systems; and

(b) Electrical outlets located in medication preparation areas, pharmacy dispensing areas, staff work stations, dining areas, and resident corridors.

(5) The alternate power equipment must meet the:

(a) Earthquake standards for the facility's geographic locale; and

(b) Requirements in NFPA 110, Generators; and

(c) Requirements in NFPA 99.

LicensingNEW SECTION

WAC 388-107-1040 License and contract. An enhanced services facility must:

(1) Be licensed by the department;

(2) May be granted a contract by the department; and

(3) Admit and keep residents whose care is paid for under a department contract.

License Required/Unlicensed OperatorNEW SECTION

WAC 388-107-1050 Unlicensed operation—Application of Consumer Protection Act. Operation of a facility without a license in violation of this chapter and discrimination against medicaid recipients is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an enhanced

services facility without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION

WAC 388-107-1060 Unlicensed operation—Criminal penalty. A person operating or maintaining a facility without a license under this chapter is guilty of a misdemeanor and each day of a continuing violation after conviction must be considered a separate offense.

NEW SECTION

WAC 388-107-1070 Unlicensed operation—Injunction or other remedies. Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person to restrain or prevent the operation or maintenance of a facility without a license issued under this chapter.

NEW SECTION

WAC 388-107-1080 Licensing fees. The enhanced services facility must:

- (1) Submit an annual per bed license fee of \$1,040 based on the licensed bed capacity;
- (2) Submit an additional late fee in the amount of ten dollars per day from the license renewal date until the date of mailing the fee, as evidenced by the postmark; and
- (3) Submit to construction review services a fee for the review of the construction documents per the review fee schedule.

NEW SECTION

WAC 388-107-1090 License valid and not transferable. (1) The enhanced services facility is required to renew the license each year.

- (2) The license remains valid unless:
 - (a) The department takes enforcement action to suspend or revoke the license per law;
 - (b) The facility voluntarily surrenders the license and closes the facility;
 - (c) The facility relinquishes the license; or
 - (d) The facility fails to pay the annual licensing fee.
- (3) The facility license is:
 - (a) Not transferable; and
 - (b) Valid only for the provider and address listed on the license.

NEW SECTION

WAC 388-107-1100 Licensee's responsibilities. (1) The enhanced services facility licensee is responsible for:

- (a) The operation of the enhanced services facility;

(b) Complying at all times with the requirements of this chapter, chapter 70.97 RCW, and other applicable laws and rules; and

(c) The care and services provided to the enhanced services facility residents.

(2) The licensee must:

(a) Maintain the occupancy level at or below the licensed resident bed capacity of the enhanced services facility;

(b) Maintain and post in a size and format that is easily read, in a conspicuous place on the enhanced services facility premises:

(i) A current enhanced services facility license, including any related conditions on the license;

(ii) The name, address and telephone number of:

(A) The department;

(B) Appropriate resident advocacy groups; and

(C) The state and local long-term care ombuds with a brief description of ombuds services.

(iii) A copy of the report, including the cover letter, and plan of correction of the most recent full inspection conducted by the department.

(c) Ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance to the department.

(3) The licensee must not delegate to any person responsibilities that are so extensive that the licensee is relieved of responsibility for the daily operations and provisions of services in the enhanced services facility.

(4) The licensee must act in accord with any department-approved management agreement, if the licensee has entered into a management agreement.

(5) The licensee must appoint an enhanced services facility administrator.

NEW SECTION

WAC 388-107-1110 Liability insurance required. The enhanced services facility must:

(1) Obtain liability insurance upon licensure and maintain the insurance as required in WAC 388-107-1120 and 388-107-1130; and

(2) Have evidence of liability insurance coverage available if requested by the department.

NEW SECTION

WAC 388-107-1120 Liability insurance required—Commercial general liability insurance or business liability insurance—Coverage. The enhanced services facility must have commercial general liability insurance or business liability insurance that includes:

(1) Coverage for the acts and omissions of any employee and volunteer;

(2) Coverage for bodily injury, property damage, and contractual liability;

(3) Coverage for premises, operations, independent contractor, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract; and

- (4) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) General aggregate at two million dollars.

NEW SECTION

WAC 388-107-1130 Liability insurance required—Professional liability insurance coverage. The enhanced services facility must have professional liability insurance or error and omissions insurance if the enhanced services facility licensee has a professional license, or employs professionally licensed staff. The insurance must include:

- (1) Coverage for losses caused by errors and omissions of the enhanced services facility, its employees, and volunteers; and
- (2) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) Aggregate at two million dollars.

Initial License ApplicationNEW SECTION

WAC 388-107-1140 Licensee qualifications. The department must consider separately and jointly as applicants each person named in the application for an enhanced services facility license.

- (1) If the department finds any person unqualified as specified in WAC 388-107-1290, the department must deny, terminate, or not renew the license.
- (2) If the department finds any person unqualified as specified in WAC 388-107-1290, the department may deny, terminate, or not renew the license.

NEW SECTION

WAC 388-107-1150 Application process. (1) To apply for an enhanced services facility license, a person must:

- (a) Submit to the department a complete license application on forms designated by the department at least sixty days prior to the proposed effective date of the license;
- (b) Submit all relevant attachments specified in the application;
- (c) Submit department background authorization forms;
- (d) Sign the application;
- (e) Submit the license fee;
- (f) Submit verification that construction plans have been approved by construction review services and the state fire marshal;
- (g) Submit a revised application before the license is issued if any information has changed since the initial license application was submitted;
- (h) Submit a revised application containing current information about the proposed licensee or any other persons named in the application, if a license application is pending for more than one year; and
- (i) If the licensee's agent prepares an application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained in the application.

(2) A currently licensed facility converting to an enhanced services facility must:

- (a) Give up its current license before applying; and
- (b) Meet all requirements in subsection (1) above.
- (3) A currently licensed facility converting a wing, or portion of the facility, to an enhanced services facility must:
 - (a) Change the current license to reflect the new facility structure and capacity of the existing facility;
 - (b) Apply for an enhanced services facility license and meet all requirements in subsection (1) above;
 - (c) Create a new business entity separate from the existing business structure of the current licensee; and
 - (d) Provide the department with enough information to show that the enhanced services facility will be operated independently from the currently licensed entity, with no shared services, separate indoor and outdoor space, separate staffing, and separate administrative structure.
- (3) A license must be issued only to the person who applied for the license.
- (4) A license may not exceed twelve months in duration and expires on a date set by the department.

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

NEW SECTION

WAC 388-107-1160 Necessary information. In making a determination whether to issue an enhanced services facility license, in addition to the information for each person named in the application, the department may review other documents and information the department deems relevant, including inspection and complaint investigation findings for each facility with which the applicant or any partner, officer, director, managerial employee, or owner of five percent or more of the applicant has been affiliated.

NEW SECTION

WAC 388-107-1170 Department access. (1) The applicant must allow department staff to inspect the entire premises including all of the facility's rooms, buildings, grounds, and equipment and all pertinent records during the initial licensing of the facility.

(2) During inspections and complaint investigations, the enhanced services facility must give department staff access to:

- (a) The entire premises;
- (b) Examine all areas and articles in the facility that are used to provide care or support to residents, including the physical premises and residents' records and accounts;
- (c) All records related to the residents or operation of the facility; and
- (d) Interview anyone determined to have information pertinent to the inspection or investigation, including but not limited to the provider, staff, family members, individuals residing in the facility, and residents.

NEW SECTION

WAC 388-107-1180 Administrator qualifications—General. The licensee must appoint an administrator who:

- (1) Is at least twenty-one years old;

(2) Has a Bachelor's degree in social sciences, social services, human services, behavioral sciences, or an allied medical field;

(3) Meets the training requirements under chapter 388-112 WAC and has specialized training in the provision of the care and services required for vulnerable adults with dementia, mental health and behavioral issues;

(4) Has at least one year of full-time experience working with vulnerable populations with complex personal care and behavioral needs;

(5) Knows and understands how to apply Washington state statutes and administrative rules related to the operation of a long-term care facility; and

(6) Is qualified to perform the administrator's responsibilities specified in WAC 388-107-1190.

NEW SECTION

WAC 388-107-1190 Administrator responsibilities.

The licensee must ensure the administrator:

(1) Directs and supervises the overall twenty-four-hour-per-day operation of the enhanced services facility;

(2) Ensures residents receive the care and services identified in their individual treatment plan and assessment;

(3) Is readily accessible to meet with residents;

(4) Complies with the enhanced services facility's policies;

(5) When not available on the premises, either:

(a) Is available by telephone or electronic pager; or

(b) Designates a person approved by the licensee to act in place of the administrator. The designee must be:

(i) Qualified by experience to assume designated duties; and

(ii) Authorized to make necessary decisions and direct operations of the enhanced services facility during the administrator's absence.

NEW SECTION

WAC 388-107-1200 Notification of change in administrator The licensee must notify the department in writing within ten calendar days of the effective date of a change in the enhanced services facility administrator. The notice must include the full name and qualifications of the new administrator and the effective date of the change.

Criminal History Background Check

NEW SECTION

WAC 388-107-1205 Background checks—General.

(1) Background checks conducted by the department and required in this chapter include:

(a) Washington state name and date of birth background checks; and

(b) After January 7, 2012, a national fingerprint background check in accordance with RCW 74.39A.056.

(2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the enhanced services facility.

(3) In addition to chapter 70.97 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.051.

NEW SECTION

WAC 388-107-1210 Background checks—Who is required to have. (1) Applicants for an enhanced services facility license must have the following background checks before licensure:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(2) The enhanced services facility must ensure that the administrator and all caregivers employed directly or by contract after January 7, 2012, have the following background checks:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(3) The enhanced services facility must ensure that the following individuals have a Washington state name and date of birth background check:

(a) Volunteers who are not residents, and students who may have unsupervised access to residents;

(b) Staff persons who are not caregivers or administrators;

(c) Managers who do not provide direct care to residents; and

(d) Contractors other than the administrator and caregivers who may have unsupervised access to residents.

NEW SECTION

WAC 388-107-1215 Background checks—Process—Background authorization form. Before the enhanced services facility employs, directly or by contract, an administrator, staff person or caregiver, or accepts any volunteer, or student, the home must:

(1) Require the person to complete a DSHS background authorization form; and

(2) Submit to the department's background check central unit, including any additional documentation and information requested by the department.

NEW SECTION

WAC 388-107-1220 Background checks—Washington state name and date of birth background check. Unless the individual is eligible for an exception under WAC 388-113-0040, if the results of the Washington state name and date of birth background check indicate the person has a disqualifying criminal conviction or a pending charge for a disqualifying crime under chapter 388-113 WAC, or a disqualifying negative action under WAC 388-107-1290, then the enhanced services facility must:

(1) Not employ, directly or by contract, a caregiver, administrator, or staff person; and

(2) Not allow a volunteer or student to have unsupervised access to residents.

NEW SECTION

WAC 388-107-1230 Background checks—National fingerprint background check. (1) Administrators and all caregivers who are hired after January 7, 2012, and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the enhanced services facility must not employ, directly or by contract, an administrator or caregiver who has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or

(3) The enhanced services facility may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

NEW SECTION

WAC 388-107-1240 Background check—Results—Inform. (1) After receiving the results of the Washington state name and date of birth background check, the enhanced services facility must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290.

(2) After receiving the result letter for the national fingerprint background check, the enhanced services facility must inform the person:

(a) Of the national fingerprint background check result letter;

(b) That they may request a copy of the national fingerprint check result letter; and

(c) That any additional information requested can only be obtained from the department's background check central unit.

NEW SECTION

WAC 388-107-1250 Background checks—Washington state name and date of birth background check—Valid for two years—National fingerprint background check—Valid indefinitely. (1) A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The enhanced services facility must ensure:

(a) A new DSHS background authorization form is submitted to the department's background check central unit every two years for all administrators, caregivers, staff persons, volunteers and students; and

(b) There is a valid Washington state name and date of birth background check for all administrators, caregivers, staff persons, volunteers and students.

(2) A national fingerprint background check is valid for an indefinite period of time. The enhanced services facility must ensure there is a valid national fingerprint background check completed for all administrators and caregivers hired after January 7, 2012. To be considered valid, the national fingerprint background check must be initiated and completed through the department's background check central unit after January 7, 2012.

NEW SECTION

WAC 388-107-1252 Background check—Sharing by health care facilities In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. Results of the national fingerprint checks may not be shared. For the purposes of the section health care facility means a nursing home licensed under chapter 18.51 RCW, an assisted living facility license under chapter 18.20 RCW, an enhanced services facility license under chapter 70.97 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) The health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the individual was last employed at a licensed health care facility and the date of the individual's current employment application;

(c) The background check is no more than two years old; and

(d) The enhanced services facility has no reason to believe the individual has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, a negative action that is disqualifying under WAC 388-107-1290.

(2) The enhanced services facility may also establish, maintain and follow a written agreement with home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52 RCW in order to ensure that agency or pool staff meets the requirements of WAC 388-107-1290.

NEW SECTION

WAC 388-107-1260 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check. The enhanced services facility may conditionally hire an administrator, caregiver, or staff person directly or by contract, pending the result of the Washington state name and date of birth

background check, provided that the enhanced services facility:

- (1) Submits the background authorization form for the person to the department no later than one business day after he or she starts working;
- (2) Requires the person to sign a disclosure statement indicating if he or she has a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290;
- (3) Has received three positive references for the person;
- (4) Does not allow the person to have unsupervised access to any resident;
- (5) Ensures direct supervision of the administrator, all caregivers, and staff persons; and
- (6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks and meets the training requirements under chapter 388-112 WAC.

NEW SECTION

WAC 388-107-1270 Background checks—Employment—Provisional hire—Pending results of national fingerprint background check. The enhanced services facility may provisionally employ a caregiver and an administrator hired after January 7, 2012, for one hundred twenty-days and allow the caregiver or administrator to have unsupervised access to residents when:

- (1) The caregiver or administrator is not disqualified based on the results of the Washington state name and date of birth background check; and
- (2) The results of the national fingerprint background check are pending.

NEW SECTION

WAC 388-107-1280 Background check—Disclosure statement. (1) The enhanced services facility must require each administrator, caregiver, staff person, volunteer and student, prior to starting his or her duties, to make disclosures of any crimes or findings consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the person under penalty of perjury.

(2) The department may require the enhanced services facility or any administrator, caregiver, staff person, volunteer or student to complete additional disclosure statements or background authorization forms if the department has reason to believe that a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290 have occurred since completion of the previous disclosure statement or background check.

NEW SECTION

WAC 388-107-1290 Background check—Employment-disqualifying information—Disqualifying negative actions. (1) The enhanced services facility must not employ an administrator, caregiver, or staff person, to have unsupervised access to residents, as defined in RCW 43.43.830, the individual has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113

WAC, unless the individual is eligible for an exception under WAC 388-113-0040.

(2) The enhanced services facility must not employ an administrator, caregiver, or staff person, or allow an administrator, caregiver, or staff person to have unsupervised access to residents, as defined in RCW 43.43.830, if the individual has one or more of the following disqualifying negative actions:

- (a) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;
- (b) The individual is a registered sex offender;
- (c) The individual is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by Adult Protective Services prior to October 2003;
- (d) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;
- (e) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;
- (f) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;
- (g) The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or
- (h) The person has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial, exploitation or mistreatment of a child or vulnerable adult.

NEW SECTION

WAC 388-107-1300 Background checks—Employment—Non-disqualifying information. (1) If the background check results show that an employee or prospective employee has a criminal conviction or pending charge for a crime that is not a disqualifying crime under chapter 388-113 WAC, then the enhanced services facility must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the enhanced services facility.

NEW SECTION

WAC 388-107-1310 Background check—Confidentiality—Use restricted—Retention. The enhanced services facility must ensure that all disclosure statements, background authorization forms, background check results and related information are:

- (1) Maintained on-site in a confidential and secure manner;
- (2) Used for employment purposes only;

(3) Not disclosed to anyone except to the individual, authorized state and federal employees, the Washington state patrol auditor, persons or health care facilities authorized by chapter 43.43 RCW; and

(4) Retained and available for department review during the individual's employment or association with a facility and for at least two years after termination of the employment or association.

Annual Renewal of License/Change in Bed Capacity

NEW SECTION

WAC 388-107-1320 Annual renewal. To renew an enhanced services facility license, the enhanced services facility must:

- (1) Submit a completed license renewal application on forms designated by the department, at least thirty days prior to the license expiration date;
- (2) Sign the application;
- (3) Submit the annual license fee; and
- (4) If the licensee's agent prepares a renewal application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained on the renewal application.

NEW SECTION

WAC 388-107-1330 Changes in licensed bed capacity. To change the licensed bed capacity in an enhanced services facility, the enhanced services facility must:

- (1) Be sixteen beds or less;
- (2) Have met the applicable building requirements;
- (3) Submit a completed request for approval to the department at least one week before the intended change;
- (4) Submit the prorated fee for additional beds if applicable; and
- (5) Post an amended license obtained from the department, indicating the new bed capacity.

Change of Licensee/Ownership

NEW SECTION

WAC 388-107-1340 Change in licensee/change of ownership—When change in licensee is required. The licensee of an enhanced services facility must change whenever the following events occur:

- (1) The licensee's form of legal organization is changed (e.g., a sole proprietor forms a partnership or corporation);
- (2) The licensee transfers ownership of the enhanced services facility business enterprise to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the enhanced services facility is also transferred;
- (3) The licensee dissolves, consolidates or merges with another legal organization and the licensee's legal organization does not survive;
- (4) If, during any continuous twenty-four-month period, fifty percent or more of the "licensed entity is transferred, whether by a single transaction or multiple transactions, to:

(a) A different person (e.g., new or former shareholders or partners); or

(b) A person that had less than a five percent ownership interest in the enhanced services facility at the time of the first transaction.

(5) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the licensee's control of the enhanced services facility. As used in this section, "**control**" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the licensee or enhanced services facility, whether through ownership, voting control, by agreement, by contract or otherwise.

NEW SECTION

WAC 388-107-1350 Change in licensee/change of ownership—When change in licensee not required. The licensee is not required to change when only the following, without more, occur:

- (1) The licensee contracts with a party to manage the enhanced services facility enterprise for the licensee pursuant to an agreement as specified in WAC 388-107-1630; or
- (2) The real property or personal property assets of the enhanced services facility are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee or enhanced services facility.

NEW SECTION

WAC 388-107-1360 Change in licensee/change of ownership—Application. (1) The prospective licensee must complete, sign and submit to the department a change of ownership application prior to the proposed date of change in licensee.

(2) The annual enhanced services facility license fee, if a license fee is due, must accompany the change in ownership application.

(3) The prospective licensee must submit, along with the change of ownership application, the following information:

(a) Evidence of control of the real estate on which the enhanced services facility is located, such as a purchase and sales agreement, lease contract, or other appropriate document; and

(b) Any other information requested by the department.

(4) The prospective licensee must submit the completed application to the department within the applicable timeframes of WAC 388-107-1400 or 388-107-1410.

NEW SECTION

WAC 388-107-1370 Change in licensee/change of ownership—Revised application. The prospective licensee must submit a revised application to the department if:

(1) Any information included on the original application is no longer accurate; or

(2) Requested by the department.

NEW SECTION

WAC 388-107-1380 Change in licensee/change of ownership—Notice to department and residents. (1) In order to change the licensee of an enhanced services facility, the current licensee must notify the following in writing of the proposed change in licensee:

- (a) The department; and
- (b) All residents, or resident representatives (if any).

(2) The licensee must include the following information in the written notice:

- (a) Name of the present licensee and prospective licensee;
- (b) Name and address of the enhanced services facility for which the licensee is being changed; and
- (c) Date of proposed change.

NEW SECTION

WAC 388-107-1390 Change in licensee/change of ownership—Relinquishment of license. (1) On the effective date of the change in licensee, the current enhanced services facility licensee is required to relinquish their enhanced services facility license.

(2) To relinquish a license, the licensee must mail to the department the enhanced services facility license along with a letter, addressed to the department, stating licensee's intent to relinquish the enhanced services facility license to the department.

NEW SECTION

WAC 388-107-1400 Change in licensee/change of ownership—Ninety days' notice. The current enhanced services facility licensee must provide written notice to the department and residents, or resident representatives (if any), ninety calendar days prior to the date of the change of licensee, if the proposed change of enhanced services facility licensee is anticipated to result in the discharge or transfer of any resident.

NEW SECTION

WAC 388-107-1410 Change in licensee/change of ownership—Sixty days' notice. The current enhanced services facility licensee must provide written notice to the department and residents, or resident representatives (if any), at least sixty calendar days prior to the date of the change of licensee, if the proposed change of enhanced services facility licensee is not anticipated to result in the discharge or transfer of any resident.

NEW SECTION

WAC 388-107-1420 Inspections. (1) The department must make at least one inspection of each facility prior to licensure and an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Any duly authorized officer, employee, or agent of the department may enter and inspect any facility at any time to determine that the facility is in compliance with this chapter and applicable rules, and to enforce any provision of this chapter. Complaint inspections must be unannounced and conducted in such a manner as to ensure maximum effectiveness. No advance notice must be given of any inspection unless authorized or required by federal law.

(3) During inspections, the facility must give the department access to areas, materials, and equipment used to provide care or support to residents, including resident and staff records, accounts, and the physical premises, including the buildings, grounds, and equipment. The department has the authority to privately interview the provider, staff, residents, and other individuals familiar with resident care and treatment.

(4) Any public employee giving advance notice of an inspection in violation of this section must be suspended from all duties without pay for a period of not less than five nor more than fifteen days.

(5) The department must prepare a written report describing the violations found during an inspection, and must provide a copy of the inspection report to the facility.

(6) The facility must develop a written plan of correction for any violations identified by the department and provide a plan of correction to the department within ten working days from the receipt of the inspection report.

(7) The facility must ensure the administrator or the administrator's designee is available during any inspection or complaint investigation to respond to questions or issues identified by department staff.

NEW SECTION

WAC 388-107-1422 Denial, suspension, revocation, or nonrenewal of license statutorily required. (1) The department must deny, suspend, revoke, or refuse to renew an enhanced services facility license if any person described in subsection (2) of this section is found by the department to have:

(i) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;

(ii) The individual is a registered sex offender;

(iii) The individual is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;

(iv) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;

(v) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;

(vi) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;

(vii) The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(viii) The person has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

(2) This section applies to any enhanced services facility:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Owner of five percent or more of the applicant:

(i) Who is involved in the operation of the enhanced services facility; or

(ii) Who controls or supervises the provision of care or services to the enhanced services facility residents; or

(iii) Who exercises control over daily operations.

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

NEW SECTION

WAC 388-107-1430 Enforcement authority—Penalties and sanctions. (1) In any case in which the department finds that a licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, managing employee, any person who may have unsupervised access to residents or failed or refused to comply with the requirements of this chapter or the rules established under them, the department may take any or all of the following actions:

(a) Suspend, revoke, or refuse to issue or renew a license;

(b) Order stop placement; or

(c) Assess civil monetary penalties.

(2) The department may suspend, revoke, or refuse to renew a license, assess civil monetary penalties, or both, in any case in which it finds that the licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee:

(a) Operated a facility without a license or under a revoked or suspended license;

(b) Knowingly or with reason to know made a false statement of a material fact in the license application or any data attached thereto, or in any matter under investigation by the department;

(c) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the facility;

(d) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter;

(e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or of the rules adopted under it; or

(f) Failed to pay any civil monetary penalty assessed by the department under this chapter within ten days after the assessment becomes final.

(3)(a) Civil penalties collected under this chapter must be deposited into a special fund administered by the department.

(b) Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day the facility is or was out of compliance. Civil monetary penalties must not exceed three thousand dollars per day. Each day upon which the same or a substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(4) The department may use the civil penalty monetary fund for the protection of the health or property of residents of facilities found to be deficient including:

(a) Payment for the cost of relocation of residents to other facilities;

(b) Payment to maintain operation of a facility pending correction of deficiencies or closure; and

(c) Reimbursement of a resident for personal funds or property loss.

(5)(a) The department may issue a stop placement order on a facility, effective upon oral or written notice, when the department determines:

(i) The facility no longer substantially meets the requirements of this chapter; and

(ii) The deficiency or deficiencies in the facility:

(A) Jeopardizes the health and safety of the residents; or

(B) Seriously limits the facility's capacity to provide adequate care.

(b) When the department has ordered a stop placement, the department may approve a readmission to the facility from a hospital, residential treatment facility, or crisis intervention facility when the department determines the readmission would be in the best interest of the individual seeking readmission.

(6) If the department determines that an emergency exists and resident health and safety is immediately jeopardized as a result of a facility's failure or refusal to comply with this chapter, the department may summarily suspend the facility's license and order the immediate closure of the facility, or the immediate transfer of residents, or both.

(7) If the department determines that the health or safety of the residents is immediately jeopardized as a result of a facility's failure or refusal to comply with requirements of this chapter, the department may appoint temporary management to:

(a) Oversee the operation of the facility; and

(b) Ensure the health and safety of the facility's residents while:

(i) Orderly closure of the facility occurs; or

(ii) The deficiencies necessitating temporary management are corrected.

NEW SECTION

WAC 388-107-1432 Circumstances that may result in enforcement remedies. (1) The department is authorized to impose enforcement remedies described in WAC 388-107-

1440 if any person described in subsection (2) of this section is found by the department to have:

(a) A history of significant noncompliance with federal or state laws or regulations in providing care or services to frail elders, vulnerable adults or children, whether as a licensee, contractor, managerial employee or otherwise. Evidence of significant noncompliance may include, without limitation:

(i) Citations for violation of laws or regulations imposed by regulating entities;

(ii) Sanctions for violation of laws or regulations imposed by regulating entities;

(iii) Involuntary termination, cancellation, suspension, or nonrenewal of a Medicaid contract or Medicare provider agreement, or any other agreement with a public agency for the care or treatment of children, frail elders or vulnerable adults;

(iv) Been denied a license or contract relating to the care of frail elders, vulnerable adults or children; or

(v) Relinquished or failed to renew a license or contract relating to care of frail elders, vulnerable adults or children following written notification of the licensing agency's initiation of denial, suspension, cancellation or revocation of a license.

(b) Failed to provide appropriate care to frail elders, vulnerable adults or children under a contract, or having such contract terminated or not renewed by the contracting agency due to such failure;

(c) Failed or refused to comply with the requirements of chapter 18.20 RCW, applicable provisions of chapter 70.129 RCW or this chapter;

(d) Retaliated against a staff person, resident or other individual for:

(i) Reporting suspected abuse, neglect, financial exploitation, or other alleged improprieties;

(ii) Providing information to the department during the course of an inspection of the enhanced services facility; or

(iii) Providing information to the department during the course of a complaint investigation in the enhanced services facility.

(e) Operated a facility for the care of children or vulnerable adults without a current, valid license or under a defunct or revoked license;

(f) Attempted to obtain a contract or license from the department by fraudulent means or by misrepresentation;

(g) A conviction or pending charge for a crime that is not automatically disqualifying under chapter 388-113 WAC, but that:

(i) Was committed on an enhanced services facility premises; or knowingly permitted, aided or abetted an illegal act on an enhanced services facility premises;

(ii) Involved the illegal use of drugs or the excessive use of alcohol; or

(iii) Is reasonably related to the competency of the person to operate an enhanced services facility.

(h) Abused, neglected or exploited a vulnerable adult;

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

(j) Failed to report alleged abuse, neglect or exploitation of a vulnerable adult in violation of chapter 74.34 RCW;

(k) Failed to exercise fiscal accountability and responsibility involving a resident, the department, public agencies, or the business community; or to have insufficient financial resources or unencumbered income to sustain the operation of the enhanced services facility;

(l) Knowingly or with reason to know, made false statements of material fact in the application for the license or the renewal of the license or any data attached thereto, or in any matter under investigation by the department;

(m) Willfully prevented or interfered with or attempted to impede in any way any inspection or investigation by the department, or the work of any authorized representative of the department or the lawful enforcement of any provision of this chapter;

(n) Refused to allow department representatives or agents to examine any part of the licensed premises including the books, records and files required under this chapter;

(o) Moved all residents out of the enhanced services facility without the department's approval and appears to be no longer operating as an enhanced services facility; or

(p) Demonstrated any other factors that give evidence the applicant lacks the appropriate character, suitability and competence to provide care or services to vulnerable adults.

(2) This section applies to any enhanced services facility:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Majority owner of the applicant or licensee:

(i) Who is involved in the management or operation of the enhanced services facility;

(ii) Who may have direct access to enhanced services facility residents;

(iii) Who controls or supervises the provision of care or services to enhanced services facility residents; or

(iv) Who exercises control over daily operations of the enhanced services facility.

(3) For other circumstances resulting in discretionary enforcement remedies, see WAC 388-107-1430.

NEW SECTION

WAC 388-107-1440 Enforcement orders—Hearings.

(1) All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty must become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested.

(2) All orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or summary license suspension must be effective immediately upon notice, pending any hearing.

(3) Subject to the requirements of subsection (2) of this section, all hearings under this chapter and judicial review of such determinations must be in accordance with the administrative procedure act, chapter 34.05 RCW.

Resident Protection Program

NEW SECTION

WAC 388-107-1450 Resident protection program definition. As used in WAC 388-107-1460 through 388-107-1550, the term "**individual**," means anyone used by the enhanced services facility to provide services to residents who is alleged to have abandoned, abused, neglected, or misappropriated property of a resident or financially exploited a resident. "individual" includes, but is not limited to, employees, contractors, and volunteers.

NEW SECTION

WAC 388-107-1460 Investigation of mandated reports. (1) The department will review all allegations of resident abandonment, abuse, neglect, or financial exploitation, or misappropriation of resident property, as those terms are defined in chapter RCW 74.34.020.

(2) If, after the review of an allegation, the department concludes that there is reason to believe that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property, then the department will initiate an investigation.

(3) The department's investigation may include, but is not limited to:

- (a) The review of facility and state agency records;
- (b) Interviews with anyone who may have relevant information about the allegation; and
- (c) The collection of any evidence deemed necessary by the investigator.

NEW SECTION

WAC 388-107-1470 Preliminary finding. If, after review of the results of the investigation, the department determines that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property, the department will make a preliminary finding to that effect. However, a preliminary finding of neglect will not be made if the individual demonstrates that the neglect was caused by factors beyond the control of the individual.

NEW SECTION

WAC 388-107-1480 Notice to individual of preliminary findings. (1) The department will serve notice of the preliminary finding as provided in WAC 388-107-1560.

(2) The department may establish proof of service as provided in WAC 388-107-1570.

NEW SECTION

WAC 388-107-1490 Notice to others of preliminary findings. Consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may provide notification of a preliminary finding to:

- (1) Other divisions within the department;

(2) The agency, program or employer where the incident occurred;

(3) The employer or program that is currently associated with the individual;

(4) Law enforcement;

(5) Other entities as authorized by law including chapter 74.34 RCW and this chapter; and

(6) The appropriate licensing agency.

NEW SECTION

WAC 388-107-1500 Disputing a preliminary finding.

(1) The individual may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date of the notice of the preliminary finding, except under the circumstances described in subsection (4).

(4) If an individual requests a hearing within one hundred eighty days of the date of the notice of the preliminary finding and the individual can demonstrate good cause for failing to request a hearing within thirty days, the office of administrative hearings may grant the request. Under these circumstances, the finding against the individual will remain on the department's registry pending the outcome of the hearing.

NEW SECTION

WAC 388-107-1510 Hearing procedures to dispute preliminary finding. Upon receipt of a written request for a hearing from an individual, the office of administrative hearings will schedule a hearing, taking into account the following requirements:

(1) The hearing decision must be issued within one hundred twenty days of the date the office of administrative hearings receives a hearing request, except as provided in subsection (6);

(2) Neither the department nor the individual can waive the one hundred twenty day requirement;

(3) The hearing will be conducted at a reasonable time and at a place that is convenient for the individual;

(4) The hearing, and any subsequent appeals, will be governed by this chapter, chapter 34.05 RCW, and chapter 388-02 WAC, or its successor regulations;

(5) A continuance may be granted for good cause upon the request of any party, as long as the hearing decision can still be issued within one hundred twenty days of the date of the receipt of the appeal, except under the circumstances described in subsection 6;

(6) If the administrative law judge finds that extenuating circumstances exist that will make it impossible to render a decision within one hundred twenty days, the administrative law judge may extend the one hundred twenty day requirement by a maximum of sixty days; and

(7) To comply with the time limits described in this section, the individual must be available for the hearing and other preliminary matters. If the decision is not rendered

within the time limit described in subsection (1), or if appropriate under subsection (6), the administrative law judge must issue an order dismissing the appeal and the preliminary finding will become final.

NEW SECTION

WAC 388-107-1520 Finalizing the preliminary finding. (1) The preliminary finding becomes a final finding when:

(a) The department notifies the individual of a preliminary finding and the individual does not ask for an administrative hearing within the time frame provided under WAC 388-107-1510;

(b) The individual requested an administrative hearing to appeal the preliminary finding and the administrative law judge:

(i) Dismisses the appeal following withdrawal of the appeal or default;

(ii) Dismisses the appeal for failure to comply with the time limits under WAC 388-107-1510; or

(iii) Issues an initial order upholding the finding; or

(c) The board of appeals reverses an administrative law judge's initial order and issues a final order upholding the preliminary finding.

(2) A final finding is permanent, except under the circumstances described in (3).

(3) A final finding may be removed from the department's registry and, as appropriate, any other department lists under the following circumstances:

(a) The department determines the finding was made in error;

(b) The finding is rescinded following judicial review; or

(c) The department is notified of the individual's death.

NEW SECTION

WAC 388-107-1530 Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, financial exploitation of a resident, and misappropriation of resident property within ten working days to the following:

(1) The individual;

(2) The current administrator of the facility in which the incident occurred;

(3) The administrator of the facility that currently employs the individual, if known;

(4) The department's registry;

(5) The appropriate licensing authority; and

(6) Any other lists maintained by a state or federal agency as appropriate.

NEW SECTION

WAC 388-107-1540 Appeal of administrative law judge's initial order or finding. (1) If the individual or the department disagrees with the administrative law judge's decision, either party may appeal this decision by filing a petition for review with the department's board of appeals as provided under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the individual appeals the administrative law judge's decision, the finding will remain on the department's registry or other lists.

NEW SECTION

WAC 388-107-1550 Disclosure of investigative and finding information. (1) Information obtained during the investigation into allegations of abandonment, abuse, neglect, misappropriation of property, or financial exploitation of a resident, and any documents generated by the department will be maintained and disseminated with regard for the privacy of the resident and any reporting individuals and in accordance with laws and regulations regarding confidentiality and privacy.

(2) Confidential information about residents and mandated reporters provided to the individual by the department must be kept confidential and may only be used by the individual to challenge findings through the appeals process.

(3) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the residents will be redacted from the documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

General Notice Requirements

NEW SECTION

WAC 388-107-1560 Notice—Service complete. Service of the department notices is complete when:

(1) Personal service is made;

(2) The notice is addressed to the individual or facility at his or her last known address, and deposited in the United States mail;

(3) The notice is faxed and the department receives evidence of transmission;

(4) Notice is delivered to a commercial delivery service with charges prepaid; or

(5) Notice is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 388-107-1570 Notice—Proof of service. The department may establish proof of service by any of the following:

(1) A declaration of personal service;

(2) An affidavit or certificate of mailing to the enhanced services facility or to the individual to whom notice is directed;

(3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or

(4) Proof of fax transmission.

Policies

NEW SECTION

WAC 388-107-1580 Policies and procedures. (1) The enhanced services facility must develop and implement written policies and procedures for all treatment, care and services provided in the facility.

(2) The enhanced services facility must train staff persons on implementation of all the policies and procedures.

(3) The facility must ensure that the policies and procedures include, at a minimum the following:

- (a) Transitioning new residents;
- (b) Security precautions to meet the safety needs of the residents and the surrounding community;
- (c) Delayed egress, when used by the facility;
- (d) Crisis prevention and response protocol;
- (e) Discharge planning;
- (f) Compliance with resident rights, consistent with WAC 388-107-0190;
- (g) Suspected abandonment, abuse, neglect, exploitation, or financial exploitation of any resident;
- (h) Situations in which there is reason to believe a resident is not capable of making necessary decisions and no substitute decision maker is available;
- (i) Situations in which a substitute decision maker is no longer appropriate;
- (j) Situations in which a resident stops breathing or a resident's heart appears to stop beating, including, but not limited to, any action staff persons must take related to advance directives and emergency care;
- (k) Response to medical emergencies;
- (l) Urgent situations in the enhanced services facility requiring additional staff support;
- (m) Appropriate responses to residents engaging in aggressive or assaultive behavior, including, but not limited to:
 - (i) Preventive actions for a behavioral crisis or violent behavior to ensure the safety of residents and the community;
 - (ii) Actions to take to protect other residents;
 - (iii) When and how to seek outside intervention;
 - (iv) Training on de-escalation techniques for managing resident's challenging behavior before it reaches the stage of physical aggression or assault;
 - (v) Techniques for staff to use in response to aggressive behaviors when de-escalation techniques have not succeeded;
 - (vi) Evaluation of the safety of the physical environment;
 - (vii) Issues of respect and dignity of the client; and
 - (viii) Use of the least restrictive physical and behavioral interventions depending upon the situation, including use of holding techniques to physically restrain residents.
- (n) Preventing and limiting the spread of infections, including tuberculosis, consistent with WACs 388-107-0440;
- (o) Providing sub-acute detoxification services approved by an authorized health care provider and ensuring resident health and safety;
- (p) Prohibition of restraints, except when medically necessary;

(q) Use of medications, including marijuana, for staff or residents;

(r) Presence of firearms in the facility, including provisions for keeping firearms locked and accessible only to authorized persons;

(s) Safe transportation of residents and the qualifications of the drivers;

(t) Management of pets in the enhanced services facility;

(u) Medication process for resident outings; and

(v) Medications to include:

(i) Medication services;

(ii) Pharmacy services;

(iii) Storing, securing and accounting for medications;

(iv) Resident controlled medications; and

(v) Medication refusals.

(w) Are reviewed and updated annually.

(4) The enhanced services facility must make the policies and procedures specified in subsection (3) of this section available to staff persons at all times and must inform residents and residents' representatives of their availability and make them available upon request.

NEW SECTION

WAC 388-107-1590 Emergency response teams. (1)

The enhanced services facility must have a plan in place to address emergency responses to behavioral crisis in order to protect the residents, staff and community.

(2) The enhanced services facility must develop a policy of emergency response notification, including after-hours notification. Subjects of notification may include:

(a) Law enforcement;

(b) Chemical dependency or mental health professional;

(c) Emergency medical personnel;

(d) Program administrator and supervisor;

(e) Resident's case manager; and

(f) Facility treatment team.

NEW SECTION

WAC 388-107-1600 Emergency disaster plan. (1) The

enhanced services facility must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum, the enhanced services facility must ensure these plans provide for:

(a) Fire or smoke;

(b) Severe weather;

(c) Loss of power;

(d) Earthquake;

(e) Explosion;

(f) Missing resident, elopement;

(g) Loss of normal water supply;

(h) Bomb threats;

(i) Armed individuals;

(j) Gas leak, or loss of service;

(k) Loss of heat supply;

(l) Accounting for residents during a disaster; and

(m) Plans for evacuation of the facility.

(2) The enhanced services facility must train all employees in emergency procedures when they begin work in the enhanced services facility, periodically review emergency

procedures with existing staff, and carry out unannounced staff drills using those procedures.

(3) The enhanced services facility must ensure emergency plans:

(a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;

(b) Are reviewed annually;

(c) Include plans to continue to serve and meet the needs of the residents during the emergency; and

(d) Include evacuation routes prominently posted on each unit.

NEW SECTION

WAC 388-107-1610 Pets. (1) Each resident must have a reasonable opportunity to have regular contact with animals, if desired.

(2) The enhanced services facility must:

(a) Consider the recommendations of enhanced services facility residents and staff;

(b) Determine how to provide resident's access to animals;

(c) Determine the type and number of animals available in the facility, which the facility can safely manage. Such animals should include only those customarily considered domestic pets;

(d) Ensure that any resident's rights, preferences, and medical needs are not compromised by the presence of an animal; and

(e) Ensure any animal visiting or living on the premises has a suitable temperament, is healthy, and otherwise poses no significant health or safety risks to residents, staff, or visitors.

(3) Animals living on the enhanced services facility premises must:

(a) Have regular examinations and immunizations, appropriate for the species, by a veterinarian licensed in Washington state; and

(b) Be veterinarian certified to be free of diseases transmittable to humans.

(4) Pets must be restricted from:

(a) Central food preparation areas; and

(b) Residents who object to the presence of pets.

NEW SECTION

WAC 388-107-1620 Management agreements/sub-contracting staff. (1) If the proposed or current licensee uses a manager, the licensee must have a written management agreement approved by the department that is consistent with this chapter.

(2) The proposed or current licensee must notify the department of its use of a manager upon:

(a) Initial application for a license;

(b) Retention of a manager following initial application;

(c) Change of managers; and

(d) Modification of existing management agreement.

(3) The proposed or current licensee must provide a written management agreement, including an organizational chart showing the relationship between the proposed or cur-

rent licensee, management company, and all related organizations.

(4) The written management agreement must be submitted:

(a) Sixty days before:

(i) The initial licensure date;

(ii) The proposed change of ownership date; or

(iii) The effective date of the management agreement; or

(b) Thirty days before the effective date of any amendment to an existing management agreement.

(5) The proposed licensee or the current licensee must notify the residents and their representatives sixty days before entering into a management agreement.

NEW SECTION

WAC 388-107-1630 Management agreements—Licensee. (1) The licensee is responsible for:

(a) The daily operations and provisions of services in the enhanced services facility;

(b) Ensuring the enhanced services facility is operated in a manner consistent with all laws and rules applicable to enhanced services facilities;

(c) Ensuring the manager acts in conformance with a department approved management agreement; and

(d) Ensuring the manager does not represent itself as, or give the appearance that it is the licensee.

(2) The licensee must not give the manager responsibilities that are so extensive that the licensee is relieved of daily responsibility for the daily operations and provision of services in the enhanced services facility. If the licensee does so, then the department must determine that a change of ownership has occurred.

(3) The licensee and manager must act in accordance with the terms of the department-approved management agreements. If the department determines they are not, then the department may take licensing action.

(4) The licensee may enter into a management agreement only if the management agreement creates a principal/agent relationship between the licensee and manager.

NEW SECTION

WAC 388-107-1640 Management agreements—Terms of agreement. Management agreements, at a minimum must:

(1) Describe the responsibilities of the licensee and manager, including items, services, and activities to be provided;

(2) Require the licensee's governing body, board of directors, or similar authority to appoint the facility administrator;

(3) Provide for the maintenance and retention of all records in accordance with this chapter and other applicable laws;

(4) Allow unlimited access by the department to documentation and records according to applicable laws or regulations;

(5) Require the manager to immediately send copies of inspections and notices of noncompliance to the licensee;

(6) State that the licensee is responsible for reviewing, acknowledging and signing all enhanced services facility initial and renewal license applications;

(7) State that the manager and licensee will review the management agreement annually and notify the department of any change according to applicable regulations;

(8) Acknowledge that the licensee is the party responsible for complying with all laws and rules applicable to enhanced services facilities;

(9) Require the licensee to maintain ultimate responsibility over personnel issues relating to the operation of the enhanced services facility and care of the residents, including but not limited to, staffing plans, orientation and training;

(10) State the manager will not represent itself, or give the appearance it is the licensee; and

(11) State that a duly authorized manager may execute resident agreements on behalf of the licensee, but all such resident agreements must be between the licensee and the resident.

NEW SECTION

WAC 388-107-1650 Management agreements—Department review. Upon receipt of a proposed management agreement, the department may require:

- (1) The proposed or current licensee or manager to provide additional information or clarification;
- (2) Any changes necessary to:
 - (a) Bring the management agreement into compliance with this chapter; and
 - (b) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility.
- (3) The licensee to participate in monthly meetings and quarterly on-site visits to the enhanced services facility.

NEW SECTION

WAC 388-107-1660 Management agreements—Resident funds. (1) If the management agreement delegates day-to-day management of resident funds to the manager, the licensee:

- (a) Retains all fiduciary and custodial responsibility for funds that have been deposited with the enhanced services facility by the resident;
 - (b) Is directly accountable to the residents for such funds; and
 - (c) Must ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance.
- (2) If responsibilities for the day-to-day management of the resident funds are delegated to the manager, the manager must:
- (a) Provide the licensee with a monthly accounting of the resident funds; and
 - (b) Meet all legal requirements related to holding, and accounting for, resident funds.

WSR 14-14-014

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed June 23, 2014, 7:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-10-023.

Title of Rule and Other Identifying Information: Chapter 204-91A WAC, Towing businesses.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue, Olympia, WA 98504-2600, on August 5, 2014, at 10:30 a.m.

Date of Intended Adoption: August 6, 2014.

Submit Written Comments to: Sergeant John Buma, Motor Carrier Safety Division, Tow Coordinator, P.O. Box 42614, Olympia, WA 98504-2614, e-mail wsprules@wsp.wa.gov, fax (360) 596-3829, by July 30, 2014.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by August 2, 2014, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There is a need for updates to some of the tow standards. This includes but may not be limited to:

WAC 204-91A-050 to update/clarify the term timely.

WAC 204-91A-060 to update/clarify signature requirements.

WAC 204-91A-080 to clarify current language regarding the process for suspension or revocation of letter of appointment.

WAC 204-91A-140 to clarify certain fees charged by a registered tow truck operator.

WAC 204-91A-170 to update the language to reflect current terminology and standards used for tow trucks.

Reasons Supporting Proposal: The proposed changes would provide updated language and clean up to ensure that there are no conflicts with the existing law and to provide clarification with regard to the requirements.

Statutory Authority for Adoption: RCW 46.37.005, 46.55.050, and 46.55.115.

Statute Being Implemented: RCW 46.37.005, 46.55.050, and 46.55.115.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Sergeant John Buma, P.O. Box 42614, Olympia, WA 98504-2614, (360) 596-3804; and Enforcement: Commercial Vehicle Enforcement Bureau, P.O. Box 42614, Olympia, WA 98504-2614, (360) 596-3808.

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

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The Washington state patrol commercial vehicle enforcement bureau, motor carrier safety division is proposing amendments to chapter 204-91A WAC, Towing businesses.

The purpose of this chapter is to:

The proposed amendments to this chapter include:

- WAC 204-91A-050, clarifying the involvement of new employee's functions in "daily operations,[" while providing for employee training and includes a timeline for the patrol's approval/disapproval of the new employee.
- WAC 204-91A-060, makes clear the designation for "forms" and defines duties associated with section vs. district obligations in application reviews as the review relates to approval/denials.
- WAC 204-91A-080, cleans up language throughout the section and designates procurement of the letter of appointment the inspector's responsibility.
- WAC 204-91A-140, adds the necessity for approval and supporting documentation for additional equipment and/or labors requested by a tow operator at an incident location.
- WAC 204-91A-170, summarizes classes of tow trucks capable of recovery operations and expectations for their use during patrol requests for responses.
- Provides consistency amongst sections related to tow truck equipment and functions between the classes of trucks; adding options for equipment variations in keeping with modified industrial standards.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS)—DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

These proposed rules impact towing businesses. These businesses fall under code number 488410 of the North American Industry Classification System.

Preparation of an SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute outlines information that must be included in an SBEIS.

Commercial vehicle enforcement bureau has analyzed the proposed rule amendments and has determined that small businesses will potentially be impacted by these changes, with some costs considered "more than minor" and disproportionate to small businesses.

INVOLVEMENT OF SMALL BUSINESSES: The patrol through contact with a couple of tow businesses developed some basic estimates for the impact that the proposed rules may have on tow businesses. The impacts outlined below were developed based on these estimates and were shared with the tow businesses for their review and comment.

COST OF COMPLIANCE: Under chapter 19.85 RCW, commercial vehicle enforcement bureau, has considered annual costs to small businesses due to the language changes outlined below:

WAC 204-91A-050: Proposed changes include a change in the process for newly hired employees to clarify their allowable functions in "daily operations" prior to the patrol's suitability determination as to whether the employee is approved/disapproved per the rules outlined in chapter 204-91A WAC for tow businesses.

The patrol will notify the operator in a timely manner; however, there is a potential impact to the tow business when hiring a new employee due to the time it takes to conduct the

suitability determination. The patrol is mitigating this impact by indicating in the rules that the term timely is normally fifteen business days.

WAC 204-91A-140: Proposed changes add a requirement for tow business[es] to provide detailed billing to the public, documentation that indicates arrival time at the tow business or storage facility and language that limits offloading their tow equipment, unless additional charges are agreed to by the registered owner, legal owner or agent of the vehicle and the tow business and such agreement is documented.

Currently, a tow business is limited by contract to charging up to a specific maximum amount for each class of tow used in services provided by the tow company. The potential impacts are limited to the maximum amount chargeable per contract. These amounts vary depending on the class of tow required for the service and duration of the service. The impacts to the business include requirements to maintain this additional documentation if the tow business charges for any time or labor and associated costs.

For any tow company that currently charges for equipment/labor at the tow business or storage facility, the impact would be the difference in time currently charged which may vary among businesses. However, the proposed rules mitigate this impact by allowing a tow operator to articulate the necessity for additional charges with the registered owner or agent in regards to additional equipment and extended service times if it is anticipated that additional time, labor and associate[d] costs are necessary. Provided that this agreement is documented, the tow company may charge in addition to the net time for the tow.

Disproportionate Economic Impact Analysis: When proposed rule changes cause more than minor costs to small businesses, the Regulatory Fairness Act requires an analysis that compares these costs between small businesses and ten percent of the largest businesses.

The commercial vehicle enforcement bureau looked at the disproportionate economic impact of these businesses and determined that there is not disproportional impact because all businesses are under the same contract and limited to the same maximum rates.

Mitigating Costs: The commercial vehicle enforcement bureau has plans for mitigating impacts for small businesses by:

- Addressing limits placed [on] tow operators hiring new employees until a suitability determination is concluded by the patrol. The suitability determination (time period) is limited by WAC through changing "timely" to normally fifteen days.
- The proposed rules mitigate this impact of limiting charges at the tow business or storage facility by providing a method to articulate the charges with the registered or legal owner or agent of the vehicle if it is anticipated that additional time, labor and associate[d] costs would be necessary. Provided that this agreement is documented, the tow company may charge the additional costs agreeable to the owner or agent in addition to the net billing provided for in WAC.

Benefits for Proposed Rules: The benefits to the proposed changes are that the new language eliminates ambiguo-

ity, ensuring that all businesses are operating consistently statewide in the application of acceptable tow charges and billings generated for services performed and maintaining the appropriate supporting documentation. Additionally, limiting the allowable duties that can be performed by new employees adds protections both for the new employee and the public by disallowing potentially unqualified persons from acting in a capacity that they initially are not properly prepared for; yet, permitting the employment of a potential employee in a training environment suitable to his/her anticipated job function.

JOBS CREATED OR LOST: In collecting information, the commercial vehicle enforcement bureau does not anticipate that any jobs will be lost as a result of small businesses complying with these rules.

CONCLUSION: Commercial vehicle enforcement bureau has given careful consideration to the impact of proposed rules in chapter 204-91A WAC on small businesses. To comply with the Regulatory Fairness Act, chapter 19.85 RCW, commercial vehicle enforcement bureau has analyzed impacts on small businesses and proposed ways to mitigate potential costs considered more than minor and disproportionate.

Please contact Sergeant John Buma if you have any questions at (360) 596-3804.

A copy of the statement may be obtained by contacting Melissa Van Gorkom, Washington State Patrol, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail wsprules@wsp.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Melissa Van Gorkom, Washington State Patrol, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail wsprules@wsp.wa.gov.

June 16, 2014
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 09-09-118, filed 4/21/09, effective 5/22/09)

WAC 204-91A-050 Adding or removing ~~((drivers)) employees or vehicles.~~ (1) ~~((Drivers:~~

~~((a)))~~ If an operator becomes aware that the driving privileges of any tow truck driver no longer meet the minimum licensing requirements, the operator must prohibit that person from operating any tow truck.

~~((b)))~~ (2) If an operator employs a new ~~((driver)) employee:~~

~~((i)))~~ (a) The operator must notify the inspector in writing within three days of employing the new ~~((driver)) employee~~ using the form provided by the inspector. Until the inspector approves the new employee, the new employee must be:

(i) In the immediate presence of an employee already approved by the patrol;

(ii) Trained by an employee with experience in the same job functions.

(b) The inspector will notify the operator, in a timely manner, normally fifteen business days, if the new employee does not meet the minimum licensing requirements, or the requirements established by chapter 204-91A WAC.

~~((iii)))~~ (c) The operator must not use the check performed by the inspector as part of the preemployment screening processes for a new employee. ~~((The new employee must contact the inspector in writing to request a waiver.~~

~~((2)))~~ (3) Vehicles:

(a) If a tow truck is sold or transferred from the business, within three days, the operator must:

(i) Advise the inspector.

(ii) Send the issued cab card permit to the inspector via U.S. mail or another method agreed upon by the parties.

(iii) Remove any decals indicating truck class, company name, district, and tow zone. Once notification is made, the inspector will notify the department and the patrol.

(b) If a tow truck is purchased or acquired, the operator must immediately notify the patrol and request an inspection. The patrol must complete an inspection and issue either a cab card permit, or decal or both before the new tow truck is used for impound calls.

(c) Tow trucks newly acquired or purchased must meet the current equipment criteria listed in chapter 204-91A WAC.

AMENDATORY SECTION (Amending WSR 13-18-065, filed 9/3/13, effective 10/4/13)

WAC 204-91A-060 Application and qualifications for letter of appointment. (1) An application must be approved and a letter of appointment issued by the patrol before an operator is authorized to provide towing services for the patrol pursuant to this chapter. However, nothing herein prohibits the patrol from calling a towing business upon the specific request of a person responsible for a vehicle or his/her agent.

(2) An application for letter of appointment must be completed by:

Type of business	Who must complete the application
Tow company	Owner/operator
Partnership	Each partner
Corporation	The patrol may require each of the present and subsequent officers, managers, and stakeholders holding 10% or more of the total issued stock to complete an application.

(3) To be issued a letter of appointment, the applicant(s) must:

(a) Complete the application form provided by the patrol; and

(b) Attach to the application a signed "letter of contractual agreement" listing the maximum tow rates to be charged for services resulting from state patrol originated calls; and

(c) Satisfy the requirements contained in WAC 204-91A-070; and

(d) Demonstrate through a letter included with the application that they have at least two years of experience within the towing industry, or be granted a waiver if the owner/operator does not have the required two years experience.

(i) The two years of experience must have been acquired within five years of the date of application. The two years of experience may be satisfied by demonstrating any of the following:

(A) He or she has been a registered tow truck operator for a minimum of two years prior to the date of application with at least one approved "A" or "B" class tow truck, additional trucks are optional, and has a working knowledge of the paperwork requirements for impounds; or

(B) He or she has worked as an employee of a tow company on the state patrol's rotational tow list and gained experience within the towing industry including, but not limited to, the operation of vehicles, complying with the state and federal standards and regulations, and processing of paperwork for auditing and other purposes; or

(C) He or she will keep in place the existing management team/employees for a minimum of one year upon purchasing the business.

(ii) If the owner/operator does not have the required two years experience, the owner/operator may be granted a waiver of this requirement. If the owner/operator is granted a waiver, the letter of appointment may be granted on a probationary basis for a period of one year from the date of the waiver.

(4) Upon receipt by the patrol of a completed application:

(a) The district office must:

(i) Complete the tow zone portion of the application form. The district commander or designee will enter "approved" or "disapproved" next to the zone designation and sign the application form; and

(ii) Forward the application (~~and letter of contractual agreement~~) form to the section.

(b) The section will (~~assign the application~~) review the application form to ensure the applicant(s) meet all the requirements as outlined under subsections (5) through (9) of this section. If the application is denied, a letter will be sent to the applicant(s) from the section articulating the reasons for the denial. If the application is approved it will be assigned a docket number which will be its permanent identification number for all matters relating to ((appointments, granted or denied, and any other correspondence with the patrol thereafter)) the application and letter of appointment.

(5) The patrol will refuse to issue or may revoke a letter of appointment or contract if the applicant, partner, corporate officer involved in daily operations, or any employee who operates a tow truck, assists in vehicle auctions, or is involved in daily operations:

(a) Has been convicted of any of the following:

(i) Any class A felony or any "sex offense" as defined in RCW 9.94A.030, regardless of the date of conviction; or

(ii) Any class B felony within the last ten years; or

(iii) Any class C felony within the last five years; or

(iv) A DUI, as defined in chapter 46.61 RCW, two or more times within the last five years; or

(v) Any gross misdemeanor within the last three years.

(b) Must register as a sex offender or kidnapping offender; or

(c) Has been granted a deferred prosecution under chapter 10.05 RCW for any gross misdemeanor within the last three years.

(6) The patrol may refuse to issue or may revoke a letter of appointment or contract if the applicant, partner, corporate officer involved in daily operations, or any employee who operates a tow truck, assists in vehicle auctions, or is involved in daily operations:

(a) Has been convicted of any misdemeanor within the last year; or

(b) Has been granted a deferred prosecution under chapter 10.05 RCW for any misdemeanor within the last year.

(7) The patrol may refuse to issue or may revoke a letter of appointment or contract if any applicant, partner or corporate officer involved in daily operations, or any employee who operates a tow truck or assists in vehicle auctions:

(a) Has demonstrated a willful disregard for complying with ordinances, statutes, administrative rules or court orders, whether at the local, state or federal level; or

(b) Fails to demonstrate character and general fitness sufficient to command the confidence of the patrol and warrant a belief that the business will be operated honestly, fairly and efficiently in the conduct of towing, impound, and vehicle auction activities. In determining character and general fitness, the patrol may consider:

(i) Prior contacts with law enforcement; and

(ii) Criminal record; and

(iii) Reputation in the community; and

(iv) Associations.

(8) A misrepresentation of fact found to have been made by an applicant during the application process or by a letter of appointment holder shall be deemed a lack of good faith and shall constitute good and sufficient cause for the denial of an application or the revocation or suspension of the letter of appointment.

(9) Only one application per year to tow on the patrol's rotational tow list will be accepted and considered for an applicant who has had their previous application denied or had their letter or contract of appointment revoked. The year will run from the date of application denial or the date of revocation of the letter of appointment.

(10) The term "conviction" as used in this section will have the same meaning as used in RCW 9.94A.030.

(11) Crimes referenced in this section are as defined in the criminal code as they existed at the time of the violation, as they now exist or may later be amended in the state of Washington. Out-of-state convictions for offenses will be classified according to the comparable offense definitions and sentences provided by Washington law.

AMENDATORY SECTION (Amending WSR 09-09-118, filed 4/21/09, effective 5/22/09)

WAC 204-91A-080 Suspension or revocation of letter of appointment. The patrol may deny, suspend, or revoke a letter of appointment:

(1) Upon receiving evidence that any appointee has failed to comply or no longer complies with any requirement

or provision of law or this chapter. The following process must be used:

(a) The patrol must give the appointee notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW, prior to denial, suspension, or revocation of the letter of appointment.

(b) Upon receiving notice of the action, the appointee may, within twenty days from the date of the notice of action, request in writing to the section commander a hearing on the denial, suspension or revocation of the letter of appointment. An adjudicative proceeding will be commenced within ninety days of the receipt of a hearing request. Failure to request a hearing, or failure to appear at a requested hearing, a prehearing conference, or any other stage of an adjudicative proceeding, will constitute default and may result in the entry of a final order under RCW 34.05.440.

(c) Upon receiving a hearing request, the section may, at the request of the appointee, or on its own initiative, schedule an informal settlement conference which will be without prejudice to the rights of the parties. The informal settlement conference will be held in the district where the company resides at a mutually agreed upon time and may result in a settlement agreement. If no agreement is reached, a hearing will be scheduled as outlined in chapter 34.05 RCW.

(2) Without prior notification if it finds that there is danger to the public health, safety, or welfare which requires immediate action. In every summary suspension of a letter of appointment, an order signed by the chief or designee must be entered, in compliance with the provisions of RCW 34.05.479. Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action shall be promptly instituted and determined. The patrol must give notice as is practicable to the appointee.

(3) Immediately if the department revokes or cancels the registered tow truck operator license or if the tow company's insurance certification bond is canceled.

(4) If the holder of a letter of appointment voluntarily relinquishes the letter, the inspector and the district commander will be advised in writing of this voluntary relinquishment. After receiving written notice, ~~((the district commander will instruct))~~ the inspector will attempt to obtain the ~~((original))~~ appointee's letter of appointment. If the owner/operator requests reissuance of a letter of appointment, the patrol may require a new application. Additionally, if applicable, all new equipment exempted under the previous letter of appointment must meet current requirements outlined in WAC and RCW.

(5) If violations of the terms and conditions of the letter of appointment that are subject to suspension for the first violation are categorized as major violations any subsequent or continuing major violation may be cause for termination unless the patrol imposes additional suspensions for longer periods, if deemed appropriate.

(a) When considering punitive action for a major violation of the letter of appointment, the ~~((district))~~ section commander may take into consideration all major and minor violations that occurred within thirty-six months prior to the date of the current violation.

(b) Terms of disciplinary action - Minor violations of the terms and conditions of the LOA may be cause for disciplinary action in the following manner:

(i) First violation within a twelve-month period - Letter of written reprimand;

(ii) Second violation within a twelve-month period - Thirty-day suspension;

(iii) Third violation within a twelve-month period - Sixty-ninety day suspension;

(iv) Fourth violation within a twelve-month period - Termination of the letter or appointment.

AMENDATORY SECTION (Amending WSR 13-18-065, filed 9/3/13, effective 10/4/13)

WAC 204-91A-140 Fees. (1) Towing fees must be based on a flat, hourly rate only and will apply without regard to the hour of day, day of the week or whether the service was performed on a Saturday, Sunday, or state recognized holiday. The hourly rate for each class of truck must be charged for services performed for initial tows and secondary tows performed during business hours. Charges for secondary tows performed during nonbusiness hours, on weekends or state recognized holidays, if different from the hourly rate, must be negotiated and agreed upon with the vehicle owner/agent before the tow is made.

The tow inspector will investigate allegations of overcharging. Intentional overcharging or a pattern of overcharging will be cause for suspension. The tow operator's failure to reimburse the aggrieved customer(s) may be cause for suspension, after a tow inspector has determined that overcharging occurred and may result in the suspension or revocation of the tow operators letter of appointment. The suspension will remain in effect until the tow operator has presented to the patrol sufficient proof that the aggrieved customer(s) has been fully reimbursed.

(2) The chief or designee will, prior to October 15th of each year, establish maximum hourly towing rates for each class of tow truck and maximum daily storage rates that tow operators may charge for services performed as a result of state patrol calls. The maximum rates will be determined after consultation with members of the towing industry, review of current private towing rates, and such other economic factors as the chief deems appropriate.

When signed by the chief or designee and the tow operator, a contractual agreement to charge no more than the maximum rates will become part of the operator's letter of appointment. The tow operator may, however, adopt a rate schedule charging less than the maximum rates established by the chief.

The hourly rate must:

(a) Apply when a call for a tow is made by the state patrol, except as outlined under subsection (5) of this section. This includes, but may not be limited to, collisions and impound requests.

(b) Include all ancillary activities including, but not limited to, removal of glass, debris, and vehicle fluids less than one gallon from the roadway and areas referred to as the "scene or incident location," necessary winching, dolly service, drive line removal, installation of chains on the tow

truck, installation of portable lights, vehicle hookup for towing or transporting, tire replacement and standby time. Before leaving any collision or incident location, the tow company must advise the department of transportation, the patrol, local law enforcement road department of all fluid spills greater than one gallon remaining.

(c) Include the labor of one person per truck. When responding with a class "C" or an S-1 rotator truck to a major collision or incident location; a second person is allowed at the hourly labor rate per contract for an extra ((RTO)) registered tow truck operator employee. Any charges for additional labor or ancillary vehicles, or both, or for removing debris, cargo, or other items at the collision or incident location must have prior authorization from the legal or registered owner/agent, or a member of the patrol at the scene, and must have documentation in the vehicle transaction file for inspection purposes.

(d) Be computed from the actual time the truck departs in response to a call until the truck returns to its tow zone, responds to another call, returns to the storage area, or returns to the place of business of the registered tow truck operator. Billing invoices must have the time of day a vehicle arrives at the storage area or place of business of the registered tow truck operator.

(i) If the vehicle's legal owner or registered owner consents to additional labor and associated equipment costs for offloading the vehicle at a storage area or registered tow truck operator's place of business, the registered tow truck operator may include these charges. The legal owner or registered owner's consent must be documented in the vehicle transaction file for inspection purposes.

(ii) The hourly rate must be applied to the resulting net time and, after the first hour, must be rounded to the nearest fifteen minutes. The operator may charge the hourly rate for the first hour or any fifteen minute portion thereof. ((After the first hour, no more than one quarter of the hourly rate may be charged for each fifteen minutes of tow or service work performed.))

(e) Be evenly divided between customer vehicles transported when class "E" trucks are used for multiple towing/recovery services (one on bed, one in tow) from the same service call or incident location.

(3) The basic storage fee:

(a) Must be calculated using bumper to bumper measurements for vehicles, and using tongue to bumper measurements for trailers; and

(b) Must be calculated on a twenty-four-hour basis and must be charged to the nearest half day from the time the vehicle arrives at the secure storage area. Vehicles stored over twelve hours on any given day within the twenty-four-hour period may be charged a full day's storage. Vehicles stored less than twelve hours on any given day, may only be charged for twelve hours of storage; and

(c) Must be the same for all three and four-wheel vehicles twenty feet or less in length; and

(d) For vehicles or combinations exceeding twenty feet, the storage fee must be computed by multiplying each twenty feet of vehicle length, or any portion thereof, by the basic storage fee; and

(e) For motorcycles, operators may charge the basic storage fee for vehicles.

(4) After hours release fee may be assessed if the tow operator or employee must be at the business location specifically for the purpose of releasing the vehicle and/or property on any weekday after 5 p.m. and before 8 a.m.; Saturday or Sunday; or on any state recognized holiday. After hour fees must:

(a) Be based on a flat, hourly rate;

(b) Be applied to the resulting net time and, after the first hour, must be rounded to the nearest fifteen minutes; and

(c) Be no more than one-half of the class "A" rate.

(5)(a) Any tow operator who charges the general public (i.e., private citizens) rates lower than those identified in the contractual agreement for the following services must charge the same lower rate for similar services performed as a result of patrol initiated calls:

(i) Roadside mechanical service(±) including, but are not limited to, fuel transfer, tire and belt changes;

(ii) Disabled vehicle tow/transportation;

(iii) Storage;

(iv) After hours release fees.

(b) The price requirement in subsection (a)(i) through (iii) of this section does not apply to unoccupied vehicle situations in which the owner/operator has had no prior contact with either the state patrol or the tow operator.

(6) Upon redemption of a vehicle, an additional charge may not be assessed for moving or relocating any stored vehicle from inside a tow operator's storage yard to the front of the business establishment.

(7) Tolls and ferry fares paid by the tow operator or employee as a result of charges attributed to services provided during travel to and from a service call while using the shortest reasonable route, may be added as a separate line item to the tow bill. Added charges must be evidenced by a receipt or highlighted (i.e., "Good to Go" or "Wave to Go") on the transaction document and kept in the vehicle transaction file for inspection purposes.

AMENDATORY SECTION (Amending WSR 13-18-065, filed 9/3/13, effective 10/4/13)

WAC 204-91A-170 Minimum tow truck equipment standards. (1) All tow/recovery trucks used by a registered tow truck operator for public or private impounds or in response to patrol requests must meet the minimum standards listed in this section. Classes "A," "B," "B-2," "C," and "S-1" are considered recovery trucks for patrol requests and must be used by the registered tow truck operator in response to these requests unless the patrol requests and accepts nonrecovery trucks or other equipment.

(2) **Minimum standards:**

(a) All equipment used in conjunction with the tow truck winching system must be used in such a way as not to exceed the equipment working load limit. All equipment must comply with the Washington safety and health administration (WSHA) regulation if applicable.

Industry standards set the working load limit of wire rope or equivalent material at one-fifth of the manufacturer's rated nominal or breaking strength.

(b) Each wire rope or equivalent material must be capable of being fully extended from and fully wound onto its drum. Each wire rope or equivalent material must meet the industry standards for specified type of use with equipment.

OSHA (1410.179 (h)(2)(iii)) requires **no less** than two wraps of rope remain on drum when rope is "fully extended." This is to ensure the full load **never** bears on the rope to drum connection.

(c) The wire rope on each recovery class truck must be equivalent to a 6 x 19 or 6 x 37 "extra improved plowed steel" (XIP) independent wire rope center (IWRC), and must meet all industry standards for working load limit.

(i) The operator must retain a receipt of purchase from the manufacturer indicating the type and WLL of wire rope, and document the type and date the wire rope was installed on each vehicle.

(ii) Class "A," "D," and "E" trucks may utilize either IWRC or fiber core wire rope.

(d) All wire rope must be in good working order. The following industry standards for **out-of-service** criteria will apply:

(i) No more than six randomly distributed broken wires in one rope lay, or more than three broken wires in one strand in one rope lay.

(ii) Excessive abrasion causing the loss of more than one-third the original diameter of an outside individual wire.

(iii) Evidence of rope deterioration from corrosion.

(iv) Kinking, crushing, or other damage that results in detrimental distortion of the rope structure.

(v) Any evidence of heat damage.

(vi) Any marked reduction in diameter either along the entire main length or in one section.

(vii) Unlaying or opening up of a tucked splice.

(viii) Core protrusion along the entire length.

(ix) End attachments that are cracked, deformed, worn, or loosened.

(x) Any indication of strand or wire slippage in end attachments.

(xi) More than one broken wire in the vicinity of fittings.

(e) Wire rope end connections shall be swaged or, if clamped, must have a minimum of three forged clamps spaced a minimum of six rope diameters apart and attached with the base or saddle of the clamp against the longer or "live" end of the cable. The "U" bolt will be placed over the short or "dead" end of the rope and will be of the proper size for the cable being clamped.

(i) Recovery or tow hooks must be installed, maintained, and used in the manner in which the manufacturer prescribes.

(ii) Recovery or tow hooks must be replaced if the throat opening has increased beyond the manufacturer recommendations, the load bearing point has been worn by ten percent, or the hook is twisted by more than ten degrees.

(iii) Wire rope clamps must be installed and torqued per manufacturer specifications.

(f) All wire rope related equipment, sheaves, etc., must conform to the diameter of the wire rope being used or to the original tow truck equipment manufacturer specifications.

(g) All winching equipment, booms, snatch blocks, etc., must have permanently affixed durable factory identification, stating the working load limit. If this identification has been

removed or is no longer readable, it is criteria for placing the item out-of-service. Equipment may be reinspected by a recognized recertification company. If the equipment is acceptable, it may be reidentified with a working load limit and a recertification company identifier. It will be deemed acceptable if the operator maintains a copy of the certification of winching equipment provided the serial number on the equipment corresponds with the certification provided by the manufacturer.

(h) Snatch block hooks that were manufactured with a retractable safety retention clip must have a functional clip installed.

(i) All block and tackle equipment used in the winching system which shows signs of permanent deformation, significant wear or damage is criteria for placing the item out-of-service.

(j) All "J" hook chain assemblies must be grade "7" chain or better.

(k) Safety chains must only be used for the securing of vehicles to the truck. Must be minimum grade "7" chain or meet the original manufacturer's recommendations. Safety chain hooks that were manufactured with retractable safety retention clips must have a functional clip installed.

(l) Comply with legal lighting, equipment, and license requirements.

(m) Portable tail, stop, and turn signal lights for vehicles being towed. When in use, the lights must be mounted on the same level and as widely spaced laterally as practicable.

(n) Have department of licensing registration and truck numbers painted or permanently affixed to both sides of the truck. Have firm's name, city of address, and phone number permanently affixed to both sides of the vehicle. Letters must be a minimum of three inches high with one-half inch strokes.

(o) Have a revolving, strobe, or intermittent red light with three hundred sixty degrees visibility. Trucks may also be equipped with flashing amber and/or white lights which may be used in conjunction with the red lamps. Additionally, trucks must also be equipped with a warning light visible from the driver seat which is energized when the red revolving light or flashing amber lights are activated.

(p) Have a broom, minimum twelve inches wide, with a handle at least four feet long.

(q) Have a scoop type shovel, minimum seven inches wide, overall length minimum three feet long and a minimum of a three-gallon hard or solid sided receptacle (trash bags of any type will not meet this requirement) able to contain debris typically found at collision scenes without breaking.

(r) Be maintained in a reasonably clean condition.

(s) Have at least one steel pinch bar four feet long, tapered on one end and flattened on the other with a minimum diameter of three-quarters of an inch.

(t) Have a two-way radio or mobile telephone capable of communicating with a base station. A citizen band radio does not suffice. The communication device must:

(i) Be in proper working order and function correctly throughout the assigned tow areas for all towing operations including on call drivers.

(ii) Be used in a lawful manner.

(u) Have one 20 BC rated or two 10 BC rated fire extinguishers accessible and secured on or in the tow truck.

(v) Axle weight must comply with the requirements of RCW 46.37.351.

(w) Carry two gallons of absorbent material designed to and capable of absorbing a one-gallon liquid spill from a motor vehicle. For the purposes of this chapter, vehicular liquids consist of motor oil, antifreeze, transmission fluid, and gear oil.

(3) **Class "A" tow trucks:** Trucks that are capable of towing and recovery of passenger cars, pickup trucks, small trailers, or equivalent vehicles. Class "A" tow trucks must meet the requirements of subsection (2)(a) through (w) of this section, and in addition must have:

(a) A fourteen thousand five hundred pound minimum manufacturer's gross vehicle weight rating (GVWR).

(b) Dual tires on the rear axle.

(c) A minimum of one hundred feet of three-eighths inch continuous length XIP wire rope on each drum, measured from the point of attachment at the drum to the hook.

(d) A minimum eight-ton boom rating with a single hydraulic boom. Dual winches to control a minimum of two service drums.

(e) A minimum of two snatch blocks rated at 4.0 tons each.

(f) A wheel lift, tow sling, or other comparable device made of material and used in such manner so as to protect vehicles being towed or recovered.

(g) A portable dolly or its equivalent for hauling vehicles not otherwise towable. The transported vehicle must be attached to the dolly or its equivalent with an adjustable tie-down, or as otherwise required by the equipment manufacturer.

(h) If equipped with a wheel lift system, it must have a fully extended working load rating of at least three thousand pounds and a seven thousand pound tow rated capacity. The transported vehicle must be attached to the wheel lift with an adjustable tiedown, or as otherwise required by the equipment manufacturer.

(i) A minimum of one ten-foot or two five-foot recovery chains used in the winching system and must be minimum grade "7" chain with matching fittings.

(j) Permanently affixed safety chains.

(4) **Class "B" tow trucks:** Trucks that are capable of towing and/or recovery of medium size trucks, trailers, motor homes, or equivalent vehicles. Class "B" tow trucks must meet the requirements of subsection (2)(a) through (w) of this section, and in addition must have:

(a) Eighteen thousand pounds minimum manufacturer's gross vehicle weight rating (GVWR).

(b) A minimum of one twelve-ton single hydraulic boom with two independent winches and drums.

(c) A minimum of one hundred feet of seven-sixteenths inch continuous length XIP IWRC wire rope on each drum, measured from points of attachment at the drum to the hook.

(d) A minimum of four standard release tools (caging stud assemblies).

(e) A minimum of two snatch blocks rated at 4.0 tons each.

(f) A wheel lift, tow sling, or other comparable device made of material and used in such manner so as to protect vehicles being towed or recovered.

(g) A portable dolly or its equivalent for hauling vehicles not otherwise towable when the class "B" tow truck is being used for class "A" tows. The transported vehicle must be attached to the dolly or its equivalent with an adjustable tie-down, or as otherwise required by the equipment manufacturer.

(h) If equipped with a wheel lift system, it must have a fully extended working load limit of at least six thousand pounds and a twenty thousand pound tow rated capacity. The transported vehicle must be attached to the wheel lift with an adjustable tiedown, or as otherwise required by the equipment manufacturer.

(i) A minimum of one ten-foot or two five-foot one-half inch diameter recovery chains used in the winching system and must be grade "8" chain with matching fittings.

(j) Permanently affixed safety chains.

(5) **Class "B-2" tow trucks:** Trucks that are capable of towing or recovery of medium size trucks, trailers, motor homes, or equivalent vehicles and are rated at over 30,000 GVWR with air brakes. Class "B-2" tow trucks must meet the requirements of subsection (2)(a) through (w) of this section, and in addition must have:

(a) A minimum of one hundred fifty feet of seven-sixteenths inch continuous length XIP IWRC wire rope on each drum, measured from points of attachment at the drum to the hook.

(b) A minimum of one fourteen-ton single hydraulic boom with two independent winches and drums.

(c) A minimum of two snatch blocks rated at 6.0 tons each.

(d) Air brakes and a system capable of supplying air to towed vehicles.

(e) Permanently affixed safety chains.

(f) Class "B-2" tow trucks must also meet the requirements of subsection (4)(d), (f), (g), (h), and (i) of this section.

(6) **Class "C" tow trucks and class "C" rotator trucks:** Trucks that are capable of towing and/or recovery of large trucks, trailers, buses, motor homes, or similar vehicles. Class "C" trucks must meet the requirements of subsection (2)(a) through (w) of this section, and in addition must have:

(a) A forty-six thousand pound manufacturer's gross vehicle weight rating (GVWR).

(b) Tandem rear axle truck chassis (both drive axles).

(c) A minimum of thirty-ton boom rating with a hydraulic boom. Dual winches to control a minimum of two service drums.

(d) A minimum of two hundred feet of five-eighths inch continuous length XIP IWRC wire rope on each drum measured from the point of attachment at the drum to the hook.

(e) Air brakes and a system capable of supplying air to towed vehicles.

(f) A minimum of four standard release tools (caging stud assemblies).

(g) A wheel lift or underlift system, it must have a fully extended working load limit of at least twelve thousand pounds. The transported vehicle must be attached to the

wheel lift or underlift with an adjustable tiedown, or as otherwise required by the equipment manufacturer.

(h) A minimum of one ten-foot or two five-foot five-eighths inch recovery chains used in the winching system and must be a minimum grade "8" chain with matching fittings.

(i) Permanently affixed safety chains.

(j) All chains must be a minimum of grade "7," except as otherwise specified in this section.

(k) A wheel lift, tow sling, or other comparable device used in such a manner as to protect the vehicle being towed or recovered.

(l) A minimum of two snatch blocks rated at 8.0 tons each.

(7) **Class "D" tow trucks:** Trucks that are equipped for and primarily used as "wheel lift" or nonrecovery trucks. Class "D" tow trucks must meet the requirements of subsection (2)(a) through (w) of this section, and in addition must have:

(a) A 10,000 thousand pound manufacturer's gross vehicle weight rating (GVWR).

(b) A portable dolly or its equivalent for hauling vehicles not otherwise towable. The transported vehicle must be attached to the dolly or its equivalent with an adjustable tiedown, or as otherwise required by the equipment manufacturer.

~~((b))~~ (c) A wheel lift assembly with a fully extended manufacturer's working load limit of three thousand pounds and a seven thousand pound tow rated capacity. The transported vehicle must be attached to the wheel lift with an adjustable tiedown, or as otherwise required by the equipment manufacturer.

~~((c))~~ (d) One winch and drum with one hundred feet of three-eighths inch XIP wire rope meeting class "A" requirements.

~~((d))~~ (e) One snatch block rated at 3.5 tons.

~~((e))~~ (f) A minimum of one five-foot recovery chain for use in the winching system and must be a minimum of grade "7" chain with matching fittings.

~~((f))~~ (g) Permanently affixed safety chains.

(8) **Class "E" tow trucks:** Trucks that are primarily designed and intended to transport other vehicles by loading and carrying the transported vehicle entirely on the truck. These vehicles may be a flatbed, slide back, tilt bed, or rail design truck. Class "E" trucks, unless specifically factory equipped with a side recovery system, are not designed for vehicle recovery and therefore must not be used as a replacement for a class "A" truck unless specifically requested by the patrol.

(a) Class "E" trucks must meet the requirements of subsection (2)(a) through (w) of this section, and in addition must have:

(i) Four tiedowns with a minimum working load limit of three thousand three hundred pounds. The tiedowns must be grade "7" or stronger chain, wire rope, nylon strap, or steel strap.

All four tiedowns must be used when securing a vehicle. The tiedowns must be affixed to the axle, tires, or frame of the transported vehicle both front and rear. All tiedown ends must be affixed to the truck bed or rail in a manner that will prevent movement of the transported vehicle. Factory style

"T" hook tiedowns may be used for front and rear securement.

(ii) One snatch block rated at 4.0 tons.

(iii) Dual tires on the rear axle.

(iv) Fourteen thousand five hundred pound gross vehicle weight rating (GVWR).

(v) Current licensing and tonnage equal to the maximum combination GVWR.

(vi) Four-ton winch rating.

(vii) Fifty feet three-eighths inch XIP fiber core or IWRC wire rope.

(viii) One five-foot grade "7" chain with matching fittings for use in winching.

(ix) Nineteen feet of usable bed capable of carrying vehicles.

(x) Portable lights when the truck is used in towing mode. When in use, the lights must be mounted on the same level and as widely spaced laterally as practicable.

(b) Class "E" tow trucks may be equipped with a sling, tow bar, and/or a wheel lift system.

(i) If equipped with a towing system:

(A) The system must have a manufacturer's rating appropriate to the vehicle being towed. If used in a towing mode (as opposed to carrying), a sling, tow bar, and/or wheel lift assembly can be used and must have a manufacturer's rating appropriate to the vehicle being towed.

(B) The tow truck must have permanently affixed safety chains.

(ii) If using a wheel lift system, the transported vehicle must be attached to the wheel lift with an adjustable tiedown, or as otherwise required by the equipment manufacturer.

(c) If factory equipped with a side vehicle recovery system, such system must meet all the winch and wire rope minimum requirements listed for a class "A" truck.

(9) **Class "S" tow/recovery trucks:** Tow/recovery trucks that cannot meet the requirements of class "A," "B," "C," "D," or "E" and are not eligible for appropriate waiver as outlined in WAC 204-91A-070(4), may be approved as class "S" (special).

(a) To be designated as a class "S" truck, the operator must submit a request for approval through the district commander to the section that must include:

(i) Why the truck is needed;

(ii) What the truck will be used for;

(iii) The vehicle size;

(iv) Purchased tonnage if required;

(v) Capability; and

(vi) The equipment carried or used with the truck.

(b) The gross vehicle weight rating of the class "S" truck will determine the appropriate equipment required.

(c) If the district commander approves the request, the request will be forwarded with recommendations for equipment and/or operation instructions or limitations to the section for review and final approval. If approval is granted, the equipment must be inspected as outlined in WAC 204-91A-040 with reports forwarded in the normal manner.

(10) **Class "S-1 rotator" trucks:** Trucks that are capable of recovery, towing, or both of large trucks, trailers, buses, motor homes, or similar vehicles. Class "S-1 rotator"

trucks must meet the requirements of subsection (2)(a) through (w) of this section, and in addition must have:

- (a) A fifty-two thousand pound manufacturer's GVWR.
- (b) Tandem or triple rear axle truck chassis with at least two drive axles.
- (c) A minimum of forty ton rotating boom rating with a single boom.
- (d) A minimum of two hundred feet of five-eighths inch continuous length XIP IWRC wire rope on two drums measured from the point of attachment at the drum to the hook.
- (e) Air brakes and a system capable of supplying air to towed vehicles.
- (f) A minimum of four standard release tools (caging stud assemblies).
- (g) A wheel lift system that has a fully extended working load limit of at least twelve thousand pounds. The transported vehicle must be attached to the wheel lift or underlift with an adjustable tiedown, or as otherwise required by the equipment manufacturer.
- (h) A minimum of one ten-foot or two five-foot five-eighths inch recovery chains used in the winching system and must be a minimum grade "8" chain with matching fittings.
- (i) All chains must be a minimum of grade "7," except as otherwise specified in this section.
- (j) A tow sling or other comparable device used in such a manner as to protect the vehicle being towed or recovered.
- (k) A minimum of two snatch blocks rated at eight tons each.
- (l) Permanently affixed safety chains.
- (11) Tow trucks rated as class "A," "B," "B-2," "C," or "E" that are currently in-service with operators holding a current letter of appointment issued by the patrol, not meeting the criteria for classification listed in this section will be allowed to remain on the rotation with those companies.
- (12) This section shall be effective on March 1, 2011.

WSR 14-14-015

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed June 23, 2014, 7:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-10-022.

Title of Rule and Other Identifying Information: Chapter 204-70 WAC, Standards for vehicle connecting devices and towing methods.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue, Olympia, WA 98504-2600, on August 5, 2014, at 9:30 a.m.

Date of Intended Adoption: August 6, 2014.

Submit Written Comments to: Melissa Van Gorkom, WSP Equipment and Standards Section, P.O. Box 42600, e-mail wsprules@wsp.wa.gov, fax (360) 596-4015, by August 4, 2014.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by August 1, 2014, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal

would adopt the Society of Automotive Engineers (SAE) J684 standard for this equipment and remove the language concerning the testing requirements currently outlined in the rule. In addition, the proposed language would clean up the remaining sections of the rules so that they meet the current writing standards and ensure that the language does not conflict with other portions of the law.

Reasons Supporting Proposal: The proposed language would clean up the rules so that they meet the current writing standards and ensure that the language does not conflict with other portions of the law.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.320.

Statute Being Implemented: RCW 46.37.005 and 46.37.-320.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Melissa Van Gorkom, GA Building, P.O. Box 42600, Olympia, WA 98504, (360) 596-4017; and Enforcement: Washington State Patrol, GA Building, P.O. Box 42600, Olympia, WA 98504, (360) 596-4000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This change will not impact a small business.

A cost-benefit analysis is not required under RCW 34.05.328. Not a significant rule as defined in the RCW.

June 16, 2014

John R. Batiste

Chief

AMENDATORY SECTION (Amending WSR 80-03-069, filed 2/28/80)

WAC 204-70-010 Promulgation. By authority of RCW 46.37.005 and 46.37.320, the state (~~(commission on equipment)~~) patrol hereby adopt the following regulations pertaining to vehicle connecting devices and towing methods.

AMENDATORY SECTION (Amending WSR 80-03-069, filed 2/28/80)

WAC 204-70-020 Purpose. The purpose of this regulation is to provide this state with a uniform minimum requirement for motor vehicle connecting devices and towing methods. (~~(It is designed to increase highway safety by reducing towing and hitch-related accidents.)~~) This regulation is not intended to cover the fifth wheel type of connecting device or towing method. Pintle hook type devices (~~(shall)~~) will also be excluded from this chapter, except that the safety chain requirements (~~(shall)~~) will apply.

AMENDATORY SECTION (Amending WSR 80-03-069, filed 2/28/80)

WAC 204-70-030 Scope. (1) The scope of this regulation is directed to the regulation of trailer hitches and towing devices, towing methods, testing methods, certification requirements, installation, compliance and other requirements as herein defined in these regulations((-

~~(2) After the effective date of this regulation, no primary connecting system)) used for drawing a trailer or semitrailer having a gross vehicle weight of 10,000 pounds or less upon the public highways of this state ((shall be sold, offered for sale, or installed for service unless it is a type approved by the commission. The safety chain requirements of this chapter shall apply to all primary coupling systems designed for towing trailers and semitrailers having a gross vehicle weight of 10,000 pounds or less regardless of the date of installation of such primary coupling system. Accordingly, the commission establishes this regulation relating to vehicle connecting arrangements used for drawing trailers by mechanical power on the public highways)).~~

(2) This regulation is not for those arrangements used for drawing another vehicle by means of a tow truck, semitrailer with a fifth wheel type hitch, or wrecker unless coupled by ball and coupler.

AMENDATORY SECTION (Amending WSR 80-03-069, filed 2/28/80)

WAC 204-70-040 Definitions. (1) ~~((The term "commission" as hereinafter referred to within this regulation shall mean the state commission on equipment.~~

~~(2) "Chain attaching means" means the bolt, hook, pin, hole, eye, clevis, bracket, bar, or any other device mounted on and used for anchoring or attaching safety chains to the towed or towing vehicle or hitch.~~

~~(3)) "Coupling" means that part of the primary connecting system normally mounted on the trailer, such as a socket, by which the connection is actually made and including the supporting attachment to the trailer frame.~~

~~((4) "Family of hitches" means a series of hitches produced by a single manufacturer which have similar traits and characteristics in common with each other. Each regulated manufacturer shall determine which hitches may be appropriately included in a particular family, subject to review by the commission. The necessary criteria which all hitches included within a family must exhibit are as follows:~~

- ~~(a) Similarity of design;~~
- ~~(b) Similar materials of construction;~~
- ~~(c) Similar means of attachment to the towing vehicle;~~
- ~~and~~
- ~~(d) Similar strength and performance of characteristics.~~

~~(5)) (2) "Gross vehicle weight rating (GVWR)" means the value specified by the vehicle manufacturer as the loaded weight of a single vehicle.~~

~~((6)) (3) "Hitch," defined for specific uses under (a) and (b) ((below, generally)) of this subsection, means that part of the primary connecting system normally mounted on the towing vehicle, including a ball-support platform and those components which are attached to the towing vehicle.~~

(a) "Weight distributing hitch" means a mechanical device that connects the trailer to the towing vehicle, and by means of a leverage applied on both trailer and ~~((ear)) vehicle structures ((or axles)), when properly adjusted, distributes the imposed vertical load at the hitch and coupling connection between the structures of axles of towing vehicle and trailer. ((The towing vehicle thus loaded tends to retain a level position with respect to the road.))~~

(b) "Weight carrying hitch" means a mechanical and/or structural device that connects the trailer to the towing vehicle, and that does not employ features designed to redistribute the load imposed at the hitch and coupling connection ~~((Weight carrying hitches may be designed for bolting or other attachment to the towing vehicle frame, unitized body, bumper structure, or to a combination of these or other points which meet the requirements of WAC 204-70-060(3) and Table 2)).~~

~~((7)) (4) "Maximum gross trailer weight (MGTW)" means the weight of the trailer plus the weight of all cargo, consumables, and equipment loaded on the trailer when in an actual underway towing condition.~~

~~((8)) (5) "Maximum vertical load on hitch (tongue weight)" means the vertical downward static force exerted on the hitch by the coupling at the point of connection of coupling and hitch, with weight distribution features or devices, if any, deactivated. Tongue weight is measured at the trailer coupling, with the trailer on a level surface (detached from the hitch), and with trailer consumables and cargo in maximum loaded conditions.~~

~~((9)) (6) "Patrol" means Washington state patrol as defined in chapter 43.43 RCW.~~

(7) "Primary connecting system" means the combination of devices and their attaching structures that are normally utilized to maintain the connection between towing vehicle and trailer during towing operations. This includes, but is not limited to, the ball-and-socket type of connection or draft means. Note: This does not include a safety chain, which is part of a secondary system normally utilized only upon failure of the primary connection, nor does it include weight distributing or sway control features or devices whose function is accessory to the maintenance of the towing vehicle-trailer connection.

~~((10)) (8) "Safety chains" means flexible tension members connected from the front portion of the towed vehicle to the rear portion of the towing vehicle for the purpose of retaining connection between towed and towing vehicle in the event of failure of the connection provided by the primary connecting system. The term "safety chains" includes not only chains, cable, or wire ropes, or equivalent flexible member meeting the strength requirements of ((Table 3 and approved by the commission)) SAE J684 revised July 2005, but also any splice, clamp, socket, snap, eye, ring, thimble, pin, or other fastening device or forming method which is part of the assembly of any such flexible tension member.~~

~~((11)) (9) "Responsible manufacturer" ((shall)) means that person who manufactures a hitch or hitch component either for resale or for sale where it is not actually installed by the manufacturer.~~

~~((12) "Responsible installer" shall mean a person who installs a pre-manufactured hitch where no custom fabricating is done.~~

(13) "Custom installer" shall mean that person who custom fabricates a hitch which is installed at the place of fabrication.

Nothing in this section is intended to preclude hitch installers from engaging in the activities covered in definitions (11), (12), and (13) above in any combination.

AMENDATORY SECTION (Amending WSR 80-03-069, filed 2/28/80)

WAC 204-70-050 ~~((Light service devices and systems.))~~ **Coupling classification and attachment.** ~~((These are for use with trailers not exceeding 10,000 pounds gross vehicle weight rating. This includes, but is not limited to, such types as the utility, boat, camping, travel and other trailers which are normally towed by the conventional passenger car, or similarly constructed vehicle or light-duty truck. This section is intended basically for the ball and socket type of primary connecting system, but is not necessarily limited to this type alone.~~

(1) Trailer classification

(a) Class 1—Trailers, with a gross weight (trailer weight including load) not exceeding 2,000 pounds.

(b) Class 2—Trailers, with a gross weight (trailer weight including load) over 2,000 pounds, but not exceeding 3,500 pounds.

(c) Class 3—Trailers, with a gross weight (trailer weight including load) over 3,500 pounds, but not exceeding 5,000 pounds.

(d) Class 4—Trailers, with a gross weight (trailer weight including load) over 5,000 pounds, but not exceeding 10,000 pounds.

(2) Couplings

(a) Coupling classification. There shall be four major strength classifications, or designations of couplings. The designation shall be based on the maximum gross trailer weight (MGTW) the coupling is qualified to tow. The No. 1 couplings shall be used for towing Class 1 trailers; No. 2 couplings for Class 2 or smaller trailers; No. 3 couplings for Class 3 or smaller trailers; and No. 4 couplings for Class 4 or smaller trailers. This is not intended to limit the number or variety of couplings in a given class or designation.

(b) Coupling ultimate strength. Each coupling and hitch ball, when subjected to static bench tests in a rigid, nonyielding test fixture, shall withstand the test loads specified in WAC 204-70-99001 Table 1 without incurring failure. For purposes of this regulation, failure occurs at the point at which the coupling or ball will accept no additional test load.

(c) Coupling and hitch ball test procedure. A new coupling or ball shall be used for each mode of load application. Each type of test load is to be applied individually to one component at a time, utilizing a nonyielding test fixture similar in design to the typical test fixture illustrated in Figure 1. When testing a coupling, a hardened ball shall be used; when testing a ball, a hardened coupling shall be used.

(d) Attachment of couplings. Each coupling is to be mounted to the trailer attaching member by bolting, welding or riveting in such manner that the towing loads are safely and adequately transferred to that member.

(e) Provisions for safety.

~~((i))~~ (1) Couplings must be classified, tested, attached and labeled by the manufacturer in accordance with SAE J684 revised July 2005.

(2) Each coupling, regardless of classification or designation, must be:

(a) Equipped with a manually operated mechanism so adapted as to prevent disengagement of the unit while in

~~operation. ((In addition to this positive locking mechanism, the coupling shall be so))~~

~~((b))~~ Designed so that the trailer can be disconnected from the towing vehicle regardless of the angle of the trailer to the towing vehicle.

~~((ii))~~ (3) Each hitch ball ~~((shall))~~ must be equipped and installed with a lock washer or equivalent device, and each replacement hitch ball ~~((shall))~~ must be marketed with a lock washer or equivalent device with instructions as to proper installation provided by the responsible manufacturer.

AMENDATORY SECTION (Amending WSR 80-03-069, filed 2/28/80)

WAC 204-70-060 Hitches. (1) ~~((Hitch rating.))~~ Hitches ((shall be rated by)) must be tested and labeled in accordance with SAE standard J684 revised July 2005 by its manufacturer to include the maximum gross trailer weight (MGTW) and the maximum vertical load on hitch (tongue weight) each is qualified to tow.

(2) ~~((Hitch strength requirements. Each hitch, when subjected to a static bench test, shall conform to the minimum strength requirements contained in Table 2.~~

(3) ~~Attachment of hitch. Each hitch shall be attached to the structural member or members of the towing vehicle in such a manner that the tension, compression, and transverse thrust loads shown in Table 2 are transferred to the towing vehicle without residual distortion or failure of either the attachment or the vehicle structure which would affect the safe towing of trailers as defined in Table 2.~~

~~((4) Maximum vertical load on hitch (tongue weight.))~~ The weight load carried by the hitch at its connection with the trailer coupling ~~((shall))~~ must not, when on a level surface, exceed the maximum tongue weight load recommended by the manufacturer for the hitch.

AMENDATORY SECTION (Amending WSR 80-03-069, filed 2/28/80)

WAC 204-70-070 Safety chains and attaching means required. (1) ~~((Strength requirements. Each safety chain and each attaching means shall meet strength requirements as shown in WAC 204-70-99004, Table 3, and defined in WAC 204-70-040))~~ Every towed vehicle must be coupled to the towing vehicle by means of two safety chains, cables, or wire ropes in addition to the regular drawbar, tongue, or other connection which is certified by its manufacturer as complying with SAE J684 revised July 2005.

(2) ~~((Installation and connections.))~~ The means of attachment of safety chains ~~((shall))~~ must:

(a) Be located equally distant from and on opposite sides of the longitudinal centerline of the towing vehicle and of the trailer. ((Each means of attachment shall))

(b) Not be common with or utilize fasteners common with a ball or coupling.

(3) No welding operation ((shall)) or repair, such as cold shuts, will be performed on a safety chain subsequent to its manufacture, including the direct welding of a safety chain link to the towed or towing vehicles.

(4) Safety chains ((shall)) must:

(a) Be so connected that the slack for each length of chain between trailer and towing vehicle is the same and is not more than necessary to permit the proper turning of the vehicles. ((When passing forward to the towing vehicle, safety chains must))

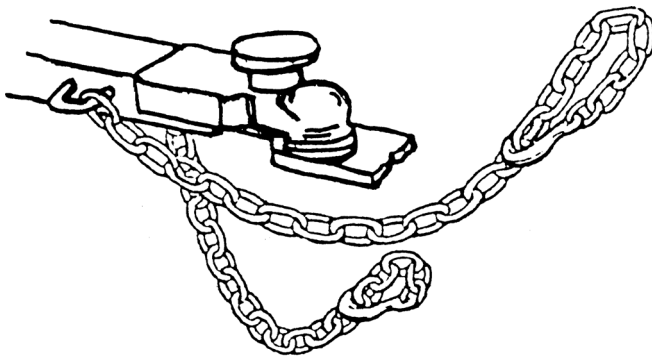
(b) Be crossed in such a manner as to prevent the tongue from dropping to the ground and to maintain connection in the event of failure of the primary connecting system. See Figure ((3. WAC 204-70-99005)) 1.

((a) Every towed vehicle shall be coupled to the towing vehicle by means of two safety chains, cables, or wire ropes in addition to the regular drawbar, tongue, or other connection. Safety chains, cables, or equivalent devices may be attached to permanently installed hitch components if the components meet the strength requirements of WAC 204-70-99004, Table 3.

(b) Safety chain connections shall)) (c) Be replaced immediately if they contain cut, cracked, or excessively worn links, or frayed, stranded, or otherwise defective wire rope.

(d) Not be ((made)) connected to the hitch ball or to a ball mount designed to be readily removable when not in use.

Figure 1 - Typical double safety chain installation.



REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 204-70-080 Identification.
- WAC 204-70-090 Identification, installation, maintenance, and compliance.
- WAC 204-70-100 Certification and/or testing.
- WAC 204-70-120 Effective date.
- WAC 204-70-99001 Table 1.
- WAC 204-70-99002 Figure 1—Typical coupler and ball test fixture arrangement.
- WAC 204-70-99003 Table 2—Hitch test forces.
- WAC 204-70-99004 Table 3.
- WAC 204-70-99005 Figure 3—Typical double safety chain installation.

**WSR 14-14-016
PROPOSED RULES
WASHINGTON STATE PATROL**

[Filed June 23, 2014, 7:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-10-021.

Title of Rule and Other Identifying Information: Chapter 204-08 WAC, Practice and procedure.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue, Olympia, WA 98504-2600, on August 5, 2014, at 8:30 a.m.

Date of Intended Adoption: August 6, 2014.

Submit Written Comments to: Melissa Van Gorkom, WSP Equipment and Standards Section, P.O. Box 42600, e-mail wsprules@wsp.wa.gov, fax (360) 596-4015, by August 4, 2014.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by August 1, 2014, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules were put in place in 1978 and last updated in 1987. Since then there have been many changes to the rule-making process. The changes over the years have placed the petition language into RCW for the entire state.

The proposal is to repeal this chapter.

Reasons Supporting Proposal: The language is out-of-date and redundant with language already outlined in statute.

Statutory Authority for Adoption: RCW 46.37.005.

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Melissa Van Gorkom, GA Building, P.O. Box 42600, Olympia, WA 98504, (360) 596-4017; and Implementation: Washington State Patrol, GA Building, P.O. Box 42600, Olympia, WA 98504, (360) 596-4017.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This change will not impact a small business.

A cost-benefit analysis is not required under RCW 34.05.328. Not a significant rule as defined in the RCW.

June 16, 2014
John R. Batiste
Chief

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 204-08-010 Definition.
- WAC 204-08-020 Petitions for rule-making amendment or repeal.
- WAC 204-08-030 Declaratory rulings.
- WAC 204-08-040 Forms for declaratory rulings.
- WAC 204-08-050 For promulgation, amendment, or repeal of commission regulations.

WAC 204-08-100 Procedure for obtaining approval of automotive equipment within the scope of RCW 46.37.005 and 46.37.320.

WSR 14-14-017
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed June 23, 2014, 7:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-10-024.

Title of Rule and Other Identifying Information: Chapter 446-75 WAC, DNA identification.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue, Olympia WA 98504-2600, on August 5, 2014, at 10:00 a.m.

Date of Intended Adoption: August 6, 2014.

Submit Written Comments to: Jean Johnston, WSP Crime Lab Division, 2203 Airport Way South, Suite 250, Seattle, WA 98134, e-mail wsprules@wsp.wa.gov, fax (206) 262-6091, by August 4, 2014.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by August 1, 2014, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There have been many revisions to the RCWs since the last update to these rules which occurred in 2003 which have caused the existing language to be out-of-date.

Reasons Supporting Proposal: The proposed changes would provide updated language and clean up to the entire chapter to ensure that there are no conflicts with the existing law.

Statutory Authority for Adoption: RCW 43.43.759.

Statute Being Implemented: RCW 43.43.759.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Jean Johnston, 2203 Airport Way South, Suite 250, Seattle, WA 98134, (206) 262-6054; and Enforcement: Washington State Patrol, 2203 Airport Way South, Suite 250, Seattle, WA 98134, (206) 262-6054.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This change will not impact a small business.

A cost-benefit analysis is not required under RCW 34.05.328. Not a significant rule as defined in the RCW.

June 16, 2014
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 03-08-053, filed 3/28/03, effective 4/28/03)

WAC 446-75-010 Definitions. ~~((1) "DNA" wherever used in this chapter shall mean deoxyribonucleic acid.~~

~~(2) "Convicted felon" wherever used in this chapter shall mean:~~

~~(a) Every individual convicted after July 1, 1990, of a felony defined as a sex or violent offense under RCW 9.94A.030;~~

~~(b) Every individual convicted on or before July 1, 1990, of a felony defined as a sex or violent offense under RCW 9.94A.030, who is still incarcerated on or after July 25, 1999;~~

~~(c) Every juvenile adjudicated guilty after July 1, 1994, of a felony defined as a sex or violent offense under RCW 9.94A.030 or an equivalent juvenile offense;~~

~~(d) Every juvenile adjudicated guilty on or before July 1, 1994, of a felony defined as a sex or violent offense under RCW 9.94A.030 or an equivalent juvenile offense, who is still incarcerated on or after July 25, 1999;~~

~~(e) Every adult or juvenile convicted of a felony, stalking under RCW 9A.46.100, harassment under RCW 9A.46.020, or communicating with a minor for immoral purposes under RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense, on or after July 1, 2002;~~

~~(f) Every adult or juvenile convicted of a felony, stalking under RCW 9A.46.100, harassment under RCW 9A.46.020, or communicating with a minor for immoral purposes under RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense, before July 1, 2002, who is still incarcerated on or after July 1, 2002.~~

~~(3) "DNA identification" wherever used in this chapter shall mean the identification of a particular individual from the chemical structure of the DNA contained in cells of the human body.~~

~~(4) "Biological sample" wherever used in this chapter means a buccal swab (a swabbing of the inside of the mouth between the cheek and gum). The Washington state patrol crime laboratory division will supply a buccal swab collection kit to any agency responsible for collecting convicted felon samples for DNA typing. If there is a reason that a buccal swab cannot be obtained, a bloodstain collected by a finger stick may be taken from the individual.) (1) "Applicant" means a person requesting the patrol to expunge his or her DNA record retained in the patrol's DNA identification system.~~

~~(2) "Biological sample" means a buccal swab (a swabbing of the inside of the mouth between the cheek and gum) using a buccal swab collection kit provided by the patrol. When a buccal swab cannot be obtained from the convicted offender, a bloodstain collected by a finger stick may be taken from the convicted offender as a biological sample under this chapter.~~

~~(3) "DNA" means deoxyribonucleic acid.~~

~~(4) "DNA identification" means a DNA profile developed from cells of the human body that identifies a person.~~

~~(5) "DNA record" means the convicted offender's DNA profile, the originating agency identifier, the specimen identification number, and the identification of the patrol's personnel associated with the DNA profile analysis.~~

~~(6) "Convicted offender" means a person who is required to submit a biological sample pursuant to RCW 43.43.754.~~

~~(7) "DNA identification system" means a data base containing the DNA records from individuals convicted of fel-~~

ony offenses and other crimes as specified in RCW 43.43.754.

(8) "Patrol" means the chief of the Washington state patrol or his or her designee.

AMENDATORY SECTION (Amending WSR 03-08-053, filed 3/28/03, effective 4/28/03)

WAC 446-75-020 Purpose. The purpose of this chapter is to provide procedures for the operation of DNA identification systems as required by RCW 43.43.752 through 43.43.758, ~~((and to prohibit the improper use of DNA identification data as required by RCW 43.43.759))~~ identify appropriate sources and collection methods for biological samples needed for purposes of DNA identification analysis, and prohibit the use of DNA identification data obtained pursuant to this chapter for any research or other purpose that is not related to a criminal investigation, to the identification of human remains or to missing persons or to improve the operation of the DNA identification system.

AMENDATORY SECTION (Amending WSR 03-08-053, filed 3/28/03, effective 4/28/03)

WAC 446-75-030 Purposes of DNA identification. DNA identification systems as authorized by chapter 43.43 RCW ~~((shall))~~ will be used only for three purposes:

(1) Identification of possible suspects in criminal investigations;

(2) Retention of convicted ((felon)) offender DNA identification ((databanking)) as required by RCW 43.43.754; and

(3) Identification of human remains or missing persons. Nothing in this section prohibits the submission of results derived from the biological samples to the Federal Bureau of Investigation combined DNA index system.

AMENDATORY SECTION (Amending WSR 91-11-046, filed 5/14/91, effective 6/14/91)

WAC 446-75-040 DNA identification system established. The DNA identification system established by the ~~((chief of the Washington state))~~ patrol ~~((shall))~~ must be compatible with the method(s) used by the Federal Bureau of Investigation. DNA identification systems established by ((other)) local law enforcement agencies ((shall)) must be compatible ((to the current Washington state patrol)) with the patrol's DNA identification system.

AMENDATORY SECTION (Amending WSR 91-11-046, filed 5/14/91, effective 6/14/91)

WAC 446-75-050 DNA identification system analytical procedures. Law enforcement agencies establishing a DNA identification system ~~((shall))~~ must maintain written analytical procedures necessary to complete the analyses. A copy of the analytical procedures ~~((shall be forwarded))~~ must be submitted to the ~~((chief of the Washington state))~~ patrol to ensure compatibility with the ~~((Washington state patrol system. The chief shall approve or disapprove the procedures utilizing the standards set forth for DNA identification by the~~

~~Federal Bureau of Investigation prior to any implementation by the submitting agency. The appeal process for any disapproval shall be))~~ patrol's DNA identification system. Before the law enforcement agency implements a DNA identification system, the patrol must approve that agency's analytical procedures. The patrol will use Federal Bureau of Investigation's standards for DNA identification to approve or deny the law enforcement agency's analytical procedures. If the patrol denies the law enforcement agency's analytical procedures, the agency may not implement the DNA identification system. The law enforcement agency may appeal the patrol's denial in accordance with the provisions of the Administrative Procedure Act (chapter 34.05 RCW).

AMENDATORY SECTION (Amending WSR 03-08-053, filed 3/28/03, effective 4/28/03)

WAC 446-75-060 Collection of biological sample for the DNA ((databank)) identification system—Procedures—Time frame. (1) The collection, preservation, and shipment of ~~((blood))~~ biological samples obtained from convicted ~~((felons))~~ offenders pursuant to RCW 43.43.754 for the ~~((convicted felon databank program shall))~~ patrol's DNA identification system must be in conformance with ~~((the "Protocol for the Collection of Biological Sample for the Convicted Felon DNA Program" as prepared))~~ protocols established by the ~~((Washington state))~~ patrol ~~((crime laboratory division))~~. Copies of the current protocol may be obtained from the Washington State Patrol Crime Laboratory Division, ~~((Olympia, WA-~~

~~(a) If the convicted felon does not serve a term of confinement in a facility operated by the department of corrections or the department of social and health services, and does serve a term of confinement in a city or county jail facility, officials at the city or county jail facility shall be responsible for obtaining the biological sample either as part of the intake process if the person is convicted on or after July 1, 2002, or within a reasonable time after July 1, 2002, but prior to the person's release, if the person was incarcerated before July 1, 2002.~~

~~(b) If the convicted felon serves a term of confinement in a facility operated by the department of corrections or the department of social and health services, officials at the facility shall be responsible for obtaining the biological sample either as part of the intake process if the person is convicted on or after July 1, 2002, or within a reasonable time after July 1, 2002, but prior to the person's release, if the person was incarcerated before July 1, 2002.~~

~~(c) If the convicted felon is sentenced on or after July 1, 2002, and does not serve a term of confinement in a city, county or state facility, the local police department or sheriff's office shall be responsible for obtaining the biological sample after sentencing))~~ 2203 Airport Way S., Suite 250, Seattle, WA 98134.

(2) ~~((Results from DNA identifications made from blood samples obtained from convicted felons under RCW 43.43.754 shall be submitted to the chief of the Washington state patrol and entered into the Washington state patrol DNA databank. Such results shall reside in the databank))~~ The DNA profile resulting from the convicted offender's biologi-

cal sample will be entered into the patrol's DNA identification system. The patrol will retain the convicted offender's DNA record in its DNA identification system until expungement pursuant to WAC 446-75-070 or the patrol determines that the DNA record no longer qualifies to be retained in the DNA identification system.

AMENDATORY SECTION (Amending WSR 03-08-053, filed 3/28/03, effective 4/28/03)

WAC 446-75-070 Expungement of DNA data. ~~((1) A person desiring the destruction of his DNA identification data from a DNA databank shall make his request therefor on a form furnished by the chief of the Washington state patrol. The request shall))~~ An applicant may request the patrol to expunge his or her DNA record from the patrol's DNA identification system. The request must comply with this subsection and be mailed or delivered to the Washington State Patrol Crime Laboratory Division((, Olympia)) Headquarters, 2203 Airport Way S., Suite 250, Seattle, WA 98134.

~~((2) The request shall be completed, signed by the person whose record is sought to be expunged. The signature shall be notarized. It shall include the address of the applicant, the printed name and the address of the witness to the applicant's signature and such other information requested on the application as identifies the applicant and the offense for which the request of expungement is made.~~

~~(3) The request shall include proof that the person making the request for expungement is the same person whose DNA data is sought to be expunged. Such proof shall include a sworn statement of identity. When requested by the patrol, fingerprints and a blood sample shall also be required from the applicant.~~

~~(4) The request shall include proof that the person making the request has no record as a convicted felon under RCW 43.43.754 or has other lawful grounds for expungement. Such proof shall include a sworn statement from the applicant, and not guilty or released without conviction documentation from such criminal charges. Where the finding or release is based on an order of a court, the applicant shall furnish a certified true copy of the court order.~~

~~(5) The Washington state patrol crime laboratory has discretion to deny the request for expungement.)~~ (1) An applicant's expungement request must:

(a) Be in writing and include the applicant's printed name, signature, address, and thumbprints; and

(b) Include certified copies of final court orders vacating a conviction that required the applicant to submit a biological sample under RCW 43.43.754. The order vacating the conviction must be based on a reversal of the conviction. The patrol will not expunge a sample based on a dismissal entered after a period of probation, suspension, or deferral of sentence.

(2) The patrol may require the applicant to provide additional information that is necessary to determine or verify that the applicant qualifies for expungement.

(3) After the patrol determines that the applicant qualifies for expungement, the patrol will:

(a) Destroy the applicant's biological sample and expunge the DNA record from the patrol's DNA identifica-

tion system unless the patrol determines that the applicant is required to submit a DNA sample pursuant to RCW 43.43.754.

(b) Remove the applicant's identifying information from the laboratory's case management system.

(4) The patrol is not required to destroy an item of physical evidence obtained from a sample if documentation relating to another person would thereby be destroyed.

(5) Any identification, warrant, probable cause to arrest, or arrest based upon a match from the DNA identification system is not invalidated due to a failure to expunge or a delay in expunging records.

AMENDATORY SECTION (Amending WSR 03-08-053, filed 3/28/03, effective 4/28/03)

WAC 446-75-080 DNA identification data—Prohibitions. The use of any data obtained from DNA identification procedures conducted pursuant to this chapter is prohibited for any research or other purpose not related to a criminal investigation, to identification of human remains or missing persons, or to improving the operation of the DNA identification system established by the ~~((Washington state))~~ patrol and authorized by RCW 43.43.752 through 43.43.759.

WSR 14-14-018

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed June 23, 2014, 7:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-10-020.

Title of Rule and Other Identifying Information: Chapter 204-21 WAC, Lighting requirements.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue, Olympia, WA 98504-2600, on August 5, 2014, at 9:00 a.m.

Date of Intended Adoption: August 6, 2014.

Submit Written Comments to: Melissa Van Gorkom, WSP Equipment and Standards Section, P.O. Box 42600, e-mail wsprules@wsp.wa.gov, fax (360) 596-4015, by August 4, 2014.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by August 1, 2014, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes would amend the definition for construction and maintenance vehicles to capture the public construction vehicles being used by entities such as the Washington state department of transportation so that they may use amber emergency lights as outlined under this section. The proposed changes may also include clean up to the lighting requirements for school buses and provide other clean up to the language in the chapter.

Reasons Supporting Proposal: Provide clarification regarding definitions and requirements for certain vehicle lighting.

Statutory Authority for Adoption: RCW 46.37.005.

Statute Being Implemented: RCW 46.37.005.

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

Name of Proponent: Office of superintendent of public instruction and Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Melissa Van Gorkom, GA Building, P.O. Box 42600, Olympia, WA 98504, (360) 596-4017; and Enforcement: Washington State Patrol, GA Building, P.O. Box 42600, Olympia, WA 98504, (360) 596-4000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This change will not impact a small business.

A cost-benefit analysis is not required under RCW 34.05.328. Not a significant rule as defined in the RCW.

June 16, 2014
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 10-19-074, filed 9/16/10, effective 10/17/10)

WAC 204-21-020 Definitions. (1) "Agricultural equipment" means any farm vehicle required by RCW 46.37.160 to have hazard warning lamps.

(2) "Animal control vehicle" means any vehicle, either publicly or privately owned, which is used primarily for transportation of animals to or from animal shelters, humane society facilities, or veterinary medicine facilities.

(3) "Authorized emergency vehicle" (~~means any vehicle of any fire department, police department, sheriff's office, coroner, prosecuting attorney, Washington state patrol, ambulance service, public or private, licensed by the department of social and health services or operated by any of the agencies named above, or any other vehicle authorized in writing by the state patrol~~) will have the same meaning as RCW 46.04.040 except that any vehicle of any federal law enforcement entity will also be considered as an authorized emergency vehicle that need not be classified, registered, or authorized by the patrol.

(4) "C.F.R." means the Code of Federal Regulations.

(5) "Deceleration warning light," excluding stop lamps, means a device that indicates to a following driver the deceleration of the vehicle ahead.

(6) "Electronic light modulation" means the periodic change in intensity of light, controlled by an all electric modulating device in the electrical circuit of the lighting system.

(7) "Electronic modulation" means using one hundred percent electronic circuitry instead of mechanical metallic switches.

(8) "Emergency tow truck" means a motor vehicle that is especially designed and constructed principally for the purpose of recovery and/or towing of disabled, abandoned or damaged vehicles and not otherwise generally used in transporting goods or persons.

(9) "Flashing" means any lamp which emits a beam of light which is broken intermittently and regularly by use of an electronic or electric switch, a rotating reflector, a rotating lamp, or a strobe lamp; or a lamp which emits a steady beam

of light which is intermittently and regularly directed away from any viewer by means of a rotating or oscillating reflector or lamp assembly. Flashing lamps are not to be confused with modulated lamps which intermittently and regularly decrease the power to the lamp filament so as to dim the light output but do not cause a total break in the light beam.

(10) "FMVSS" means the Federal Motor Vehicle Safety Standards 49 Code of Federal Regulations (C.F.R.) Part 571.

(11) "Hazardous materials response team vehicle" means any vehicle either publicly or privately owned which is used for responding to hazardous materials incidents.

(12) "Headlamp flashing system" means an automatic method for controlling the high beams from the headlamps so that they can be alternately flashed in sequence on opposite sides of the front of the vehicle as a warning signal.

(13) "Industrial equipment" means any vehicle which is authorized to use amber lamps under WAC 204-21-130 for the purpose of landscaping, construction services, loading, digging, grounds keeping, and highway maintenance.

(14) "Law enforcement agency" means any municipal, port district or tribal police department, county police department or sheriff's office, the Washington state patrol, or any other state or federal agency which is publicly authorized to carry out law enforcement duties which include the authority to stop and detain motor vehicles on the public highways of this state.

(15) "Law enforcement vehicle" means a publicly owned or leased vehicle operated by a law enforcement agency and which is used for the law enforcement functions of the agency.

(16) "Other construction and maintenance vehicle" means any vehicle owned or operated by a public agency or private company which is in the process of providing highway construction or maintenance services or is working in conjunction with any public utility.

(17) "Oversize unit" means any vehicle towing a load that exceeds legal dimensions which may be equipped with flashing amber lights in addition to any other lights required by law.

(18) "Percent modulation" equals time-weighted power input with modulation to headlamp divided by time-weighted power input without modulation to headlamp times one hundred.

(19) "Pilot car" means any vehicle which is used to provide escort for overlegal size loads upon the roadways of this state.

(20) "Private carrier bus" means every motor vehicle designed for the purpose of carrying passengers (having a seating capacity for eleven or more persons) used regularly to transport persons in furtherance of any organized agricultural, religious or charitable purpose. Such term does not include buses operated by common carriers under a franchise granted by any city or town or the Washington public utilities commission.

(21) "Public utilities vehicle" means any vehicle used for construction, operations, and maintenance, and which is owned or operated by a public or private utility, including, but not limited to, companies providing water, electricity, natural gas, telephone, television cable services, and railroads.

(22) "Rural newspaper carrier vehicle" means any vehicle driven on rural roads by carriers delivering newspapers on their route.

(23) "SAE" means the Society of Automotive Engineers. Copies of SAE Standards are available for review at the Washington State Patrol, P.O. Box 42600, Olympia, WA 98504-2600, and may also be ordered from the Society of Automotive Engineers International, 400 Commonwealth Drive, Warrendale, PA 15096-0001.

(24) "Search and rescue team vehicle" means any vehicle either publicly or privately owned which is used for responding to search and rescue situations.

(25) "Signal lamps" means red lamps mounted on the vehicle to be used in conjunction with the "stop signal" when the bus is loading or unloading passengers under certain conditions.

(26) "Tow truck" means any vehicle engaged in removing disabled or abandoned vehicles from the roadway and which is used primarily for that purpose.

AMENDATORY SECTION (Amending WSR 12-03-084, filed 1/13/12, effective 2/13/12)

WAC 204-21-210 Bus hazard warning strobe lamp.

All bus hazard warning strobe lamps must meet the Class 2 requirements of SAE Standard J1318, and may only be used as follows:

(1) School buses may be equipped with a single additional hazard strobe lamp in addition to the eight lamp warning system. Such lamps must:

(a) Be mounted on the centerline of the roof in the rear one-half of the bus.

(b) Be clear and less than eight inches in height.

(c) Not be mounted any closer than six feet from the rear of the bus measured from a vertical plane tangent to the rear-most point of the bus body. However,

(if the bus is equipped with a roof hatch falling within the above mentioned measurements) six feet of the rear of the bus, the strobe lamp may be located directly behind the roof hatch.

~~(ii) If the bus has a clear lens strobe lamp, less than eight inches in height, it may be mounted on the centerline of the roof in the rear one-half of the bus.~~

~~(b))~~ (d) Be activated by a switch independent of all other lamp switches. This switch must be plainly labeled and have a pilot lamp that must indicate when the lamp is in operation.

~~((e))~~ (e) Only be used when the bus is occupied with school children and one or more of the following conditions exists:

(i) The bus is in motion in inclement, sight obscuring conditions, including but not limited to rain, fog, snow, and smoke;

(ii) There is a need to improve the visibility of the bus when stopping, standing, or starting onto a highway;

(iii) There is limited visibility caused by geographic hazards such as winding roadways, hills, trees, buildings, etc.

The strobe lamp ~~(shall)~~ must not be activated solely because of darkness.

(2) Municipal transit vehicles (as defined in RCW 46.04.355) may be equipped with a single additional hazard strobe lamp. Such lamps:

(a) May be mounted on the centerline of the roof in the rear one-half of the bus so long as the lamp is clear and less than eight inches in height.

(b) Be activated by a switch independent of all other lamp switches. The hazard strobe lamp switch must be plainly labeled and have a pilot lamp that must indicate when the lamp is in operation.

(c) Only be used when the bus is occupied with passengers and one or more of the following conditions exists:

(i) The bus is in motion in inclement, sight obscuring conditions, including but not limited to rain, fog, snow, and smoke;

(ii) There is a need to improve the visibility of the bus when stopping, standing, or starting onto a highway;

(iii) There is limited visibility caused by geographic hazards, such as winding roadways, hills, trees, etc.

The strobe lamp must not be activated solely because of darkness.

WSR 14-14-020

PROPOSED RULES

CRIMINAL JUSTICE

TRAINING COMMISSION

[Filed June 23, 2014, 9:21 a.m.]

Continuance of WSR 14-01-017.

Preproposal statement of inquiry was filed as WSR 13-21-065.

Title of Rule and Other Identifying Information: WAC 139-05-810 Basic training requirement for reserve officers.

Hearing Location(s): Washington State Criminal Justice Training Commission (WSCJTC), Room E-154, 19010 1st Avenue South, Burien, WA 98148, on September 10, 2014, at 10 a.m.

Date of Intended Adoption: September 10, 2014.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail shirsch@cjtc.state.wa.us, fax (206) 835-7928, by September 1, 2014.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, Rules Coordinator, by September 8, 2014, TTY (206) 835-7300 or (206) 835-7372.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to WAC 139-05-810 will require agencies that hire a reserve officer to notify the WSCJTC of hire. The addition of this requirement will assist the WSCJTC in ensuring all reserve officers are receiving the required basic training.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Tisha Jones, Burien, Washington, (206) 835-7332; Imple-

mentation and Enforcement: Dave Bales, Burien, Washington, (206) 835-7289.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328. The changes are not new, as they simply mirror the language of RCW 43.101.220.

June 23, 2014
Sonja Hirsch
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

WAC 139-05-810 Basic training requirement for reserve officers. (1) ~~((For the purposes herein:~~

~~(a)) A peace officer or tribal police officer whose certification, commission, and/or licensing has been revoked, sanctioned, suspended, or is under review by this state or any other state or territory is not eligible for a basic reserve law enforcement academy certificate, regardless of the officer's prior years of law enforcement service.~~

~~(2) Beginning October 13, 2014, as a condition of continuing employment, volunteering, or otherwise representing a law enforcement agency, all reserve peace officers must be reported to the commission. A reserve peace officer who is not on record as maintained by the commission by December 1, 2014, is prohibited from working, volunteering, or otherwise representing a law enforcement agency.~~

~~(3) "Reserve peace officer" ((includes any law enforcement)) for the purposes of this chapter, means any officer ((who does not serve as a law enforcement officer of this state on a full-time basis, but)) whether compensated or not, specially commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of this state, who does not qualify as a general authority Washington peace officer for that commissioning agency and who, when called ((by such agency)) into active service, by that appointing agency, is fully commissioned on the same basis as full-time officers to enforce the criminal laws of this state((; and~~

~~(b) "Field assignment" includes any period of active service wherein the assigned officer is expected to take routine and/or special enforcement actions, independently or otherwise, in the same manner and capacity as a full-time officer with such assignment.~~

~~(2)) (4) Eligibility for participation in the basic reserve academy process is limited to:~~

~~(a) Specially commissioned reserve peace officers of the state of Washington;~~

~~(b) Commissioned Washington state tribal peace officers;~~

~~(c) Persons employed by a limited authority Washington law enforcement agency as defined under RCW 10.93.020;~~

~~(d) Persons employed as security by public colleges and universities as defined under RCW 28B.10.016; or~~

~~(e) Persons employed as security in the K-12 Washington state public school system as defined under RCW 28A.150.010.~~

~~(5) For the purposes of the Washington Mutual Aid Peace Officers Powers Act, chapter 10.93 RCW, every individual who is commissioned as a specially commissioned reserve peace officer in this state will obtain a basic reserve certificate as a precondition of the exercise of authority pursuant to such act((; provided that, any individual possessing a basic reserve certificate issued by the commission prior to January 1, 1989, will be deemed to have met this requirement.~~

~~(3) Upon approval of an applicant's eligibility to participate in the reserve process, the applicant's employing agency must submit to the commission all requested records, information and proof of background check as a precondition of participation within such process.~~

~~(4) Each applicant that has been offered a conditional offer of employment as a reserve officer must take and successfully pass a psychological and a polygraph test or similar assessment procedure, administered pursuant to RCW 43.101.105 (2)(a)(i) and (ii)).~~

~~(6) Upon appointment of a reserve peace officer, the appointing law enforcement agency shall immediately notify the commission on a personnel action report form provided by the commission.~~

~~(7) Upon termination of a reserve peace officer for any reason, including resignation, the agency of termination shall, within fifteen days of the termination, notify the commission on a personnel action report form provided by the commission.~~

~~(8) As a precondition of participating in the reserve basic law enforcement academy, it is the responsibility of each applying agency to conduct a complete criminal records check to include a search of state and national criminal history records information regarding its applicant through the submission of the applicant's fingerprints to an appropriate agency or agencies. No individual will be granted reserve academy admission or allowed continued participation if the individual has been convicted of a felony offense, or any misdemeanor or gross misdemeanor crime of dishonesty within the meaning of Evidence Rule 609(a), or domestic violence.~~

~~Each application for academy attendance must be accompanied by a written attestation by the applying agency that (a) the criminal records check has been completed, and (b) There are no disqualifying convictions. Upon approval of an applicant's eligibility to participate in the reserve process, the applicant's employing agency must submit to the commission all requested records, information and proof of background check as a precondition of participation within such process. The decision to request an officer's participation in the basic reserve law enforcement academy shall be approved by the head of the officer's employing agency.~~

~~((5)) (9) A basic reserve certificate will be issued by the commission to any ((individual)) specially commissioned reserve peace officer who successfully completes ((#)) the requirements set forth in RCW 43.101.080(19) and the basic reserve law enforcement academy course of instruction ((for reserve officers)) as prescribed and required by the commission.~~

~~((6) Requirements of subsection (5) of this section may be waived in whole or in part. A request for waiver must be~~

made under WAC 139-03-030. In reviewing such request, the commission will consider the following:

(a) An evaluation of an applicant's experience and training accomplishments;

(b) The fact that an individual is a regular full-time commissioned law enforcement officer who leaves full-time employment; or

(c) The fact that an officer has been certified in accordance with the requirements of subsection (2) of this section, and thereafter has engaged in regular and commissioned law enforcement employment without break or interruption in excess of twelve months duration.)

(10) A certificate of attendance may be issued to those who successfully complete the basic reserve law enforcement academy, but who are not appointed as a reserve peace officer by a general authority Washington law enforcement agency as defined under RCW 10.93.020(1).

(11) Reserve officers are not eligible to apply for peace officer or tribal police officer certification, furthermore, appointment as a reserve peace officer is not considered continuous employment for the purposes set forth in RCW 43.101.095 and 43.101.157.

WSR 14-14-021
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed June 23, 2014, 9:26 a.m.]

Continuance of WSR 14-01-018.

Preproposal statement of inquiry was filed as WSR 13-21-064.

Title of Rule and Other Identifying Information: WAC 139-05-825 Basic reserve law enforcement academy certificate of equivalency.

Hearing Location(s): Washington State Criminal Justice Training Commission (WSCJTC), Room E-154, 19010 1st Avenue South, Burien, WA 98148, on September 10, 2014, at 10 a.m.

Date of Intended Adoption: September 10, 2014.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail shirsch@cjtc.state.wa.us, fax (206) 835-7928, by September 1, 2014.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, Rules Coordinator, by September 8, 2014, TTY (206) 835-7300 or (206) 835-7372.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to WAC 139-05-810 establish a process for certified peace officers to become reserve officers by complying with the rules established in this WAC.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Tisha Jones, Burien, Washington, (206) 835-7332; Imple-

mentation and Enforcement: Dave Bales, Burien, Washington, (206) 835-7289.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328. The changes are not new, as they simply mirror the language of RCW 43.101.220.

June 23, 2014
Sonja Hirsch
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-032, filed 9/9/09, effective 10/10/09)

WAC 139-05-825 Basic reserve law enforcement academy certificate of equivalency. (1) A peace officer or tribal peace officer whose certification, commission, and/or licensing has been revoked, sanctioned, suspended, or is under review by this state or any other state or territory is not eligible for a basic reserve law enforcement academy certificate of equivalency, regardless of the officer's prior years of law enforcement service.

(2) A certificate of equivalency for the basic reserve law enforcement academy shall be issued only to applicants who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" shall include all documentation and prerequisites set forth in subsection ~~((6))~~ (8) of this section and successful completion of all knowledge and skills requirements within the basic reserve law enforcement equivalency academy. A certificate of completion of equivalent reserve law enforcement training is recognized in the same manner as the certificate of completion of the basic reserve law enforcement academy.

~~((2))~~ (3) Eligibility for participation in the basic reserve law enforcement equivalency process shall be limited to ~~((fully commissioned reserve law enforcement))~~:

(a) Reserve peace officers ~~((and))~~ who have previously attained a basic reserve certificate through completion of a basic reserve law enforcement academy or program in Washington state and who has incurred a break in service of:

(i) More than twelve but less than twenty-four months must successfully complete the requirements of RCW 43.101.080(19) and the comprehensive reserve final test proctored by the commission; or

(ii) More than twenty-four months break in service requires the person to attend the basic reserve law enforcement academy.

(b) Fully commissioned general authority peace officers or tribal police officers of this state who have attained ~~((base))~~ peace officer certification through completion of ~~((a))~~ an approved basic training program ~~((or a basic reserve law enforcement academy/program))~~ in this or another state ~~((and have incurred a break in service of more than twelve months but less than thirty-six months.))~~ who has incurred a break in service of:

(i) Less than twenty-four months must submit an application to be recognized as a reserve officer to the commission and successfully complete the requirements of RCW 43.101.-080(19); or

(ii) More than twenty-four months and less than sixty months requires the applicant to successfully complete the requirements of RCW 43.101.080(19) and the comprehensive reserve final test proctored by the commission; or

(iii) More than sixty month break in service requires the applicant to attend the basic reserve law enforcement academy.

(c) Fully commissioned peace officers of another state who have incurred a break in service of:

Less than sixty months requires the applicant to successfully complete the requirements of RCW 43.101.080(19) and the comprehensive reserve final test proctored by the commission.

(d) For this purpose, the term "basic training program" does not include any military or any federal training program not otherwise approved by the commission.

((3) Requirements for a person to achieve a certificate of equivalency as a reserve law enforcement officer who has incurred a break in service of:

(a) More than twelve but less than twenty-four months must successfully complete the requirements of RCW 43.101.080(19) and the comprehensive reserve final test proctored by the commission.

(b) More than twenty-four but less than thirty-six months must successfully pass the psychological and polygraph tests, complete the criminal history and background check, and successfully pass the comprehensive reserve final test proctored by the commission.

(c) More than thirty-six months break in service requires the person to attend the basic reserve law enforcement academy.

(4) It shall be the responsibility of the applicant's agency to ensure that all necessary forms and documentation are completed and submitted to the commission in a timely manner and as necessary to ensure that the participation provided by this section is affected.

((5)) (4) The decision to request an officer's participation within the equivalency process shall be discretionary with the head of the officer's employing agency((, who shall advise the commission of the decision by appropriate notification upon the hiring of the officer. Upon receipt of such notification, the commission shall provide to such agency head all necessary forms and information required for the processing of a request for a certificate of equivalency)). It shall be the responsibility of the applicant's agency to ensure that all necessary forms and documentation are completed and submitted to the commission in a timely manner.

((6)) (5) Upon appointment of a reserve peace officer, the appointing law enforcement agency shall immediately notify the commission on a personnel action report form provided by the commission.

(6) Upon termination of a reserve peace officer for any reason, including resignation, the agency of termination shall, within fifteen days of the termination, notify the commission on a personnel action report form provided by the commission.

(7) For the purposes of the Washington Mutual Aid Peace Officers Powers Act, chapter 10.93 RCW, every individual who is commissioned as a specially commissioned reserve peace officer in this state will obtain a basic reserve

certificate as a precondition of the exercise of authority pursuant to such act.

(8) Upon approval of an applicant's eligibility to participate in the equivalency process, the applicant's employing agency must submit to the commission the following documentation as a precondition of participation within such process:

(a) A copy of the applicant's certificate of successful completion of an approved basic ((~~or~~) reserve academy(~~/~~) or program ((as outlined in subsection (1) of this section-)) and/or a copy of the applicant's peace officer certification certificate;

(b) Proof ((that a search of state and national criminal history records has been conducted by the employing agency regarding applicant through appropriate submission of the applicant's fingerprints and such search indicated the absence of any conviction of applicant for a felony offense, a misdemeanor, or gross misdemeanor offense involving moral turpitude.

(c) The candidate has successfully completed a psychological examination and a polygraph.

(d) A copy of the applicant's current and valid driver's license.

((e)) the applicant has successfully completed the requirements set forth in RCW 43.101.080(19);

(c) A record ((of the applicant's firearms qualification. (f)) showing the applicant has met the firearms training as set forth by the commission;

(d) A record ((that)) showing the applicant ((is current in)) has met the defensive tactics training as set forth by the commission; and

(e) A record showing the applicant has met the emergency vehicle operations training as set forth by the commission.

((7)) (9) Upon completion of the equivalency process and review and evaluation of the applicant's performance, the commission will issue a certificate of completion of equivalent basic reserve law enforcement training.

(10) Reserve officers are not eligible to apply for peace officer or tribal police officer certification, furthermore, employment as a specially commissioned peace officer/reserve officer is not considered continuous full-time employment for the purposes set forth in RCW 43.101.095 and 43.101.157.

WSR 14-14-035

PROPOSED RULES

SECRETARY OF STATE

[Filed June 24, 2014, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-043.

Title of Rule and Other Identifying Information: The Charitable Solicitations Act and the Charitable Trusts Act.

Hearing Location(s): Corporations and Charities Division, 801 Capitol Way South, Olympia, WA, (360) 725-0378, on August 5, 2014, at 11:00 a.m.

Date of Intended Adoption: August 6, 2014.

Submit Written Comments to: Rebecca Sherrell, P.O. Box 40234, Olympia, WA 98504-0234, e-mail rebecca.sherrell@sos.wa.gov, fax (360) 586-4989, by August 5, 2014.

Assistance for Persons with Disabilities: Contact Rebecca Sherrell by August 4, 2014, (360) 725-0380.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule changes streamline the WACs for charitable organizations, commercial fundraisers, and charitable trusts.

Reasons Supporting Proposal: The proposed rule changes consolidate multiple existing WACs into fewer WACs, and repeal the duplicative WACs.

Statutory Authority for Adoption: Chapters 11.110, 19.09, and 43.07 RCW.

Statute Being Implemented: Chapters 11.110, 19.09, and 43.07 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rebecca Sherrell, P.O. Box 40234, Olympia, WA 98504-0234, (360) 725-0380.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. The proposed rule changes do not meet the criteria of imposing "more than minor costs on businesses in an industry."

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

June 24, 2014

Ken Raske

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

WAC 434-120-010 Authority and purpose. (1) These rules are adopted under authority of chapter 19.09 RCW, the Charitable Solicitations Act, (~~hereafter referred to as "the solicitations act,"~~) chapter 11.110 RCW, the Charitable Trust Act, (~~hereafter referred to as "the trust act,"~~) and chapter 43.07 RCW to provide for the efficient administration of these acts.

(2) The filing or refusal to file a record does not:

(a) Affect the validity or invalidity of the record in whole or in part;

(b) Relate to the correctness or incorrectness of information contained in the record; or

(c) Create a presumption that the record is valid or that information contained in the record is correct or incorrect.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-025 Definitions. (1) (~~"Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including but not limited to recreational, environmental, humanitarian, patri-~~

~~otic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency-)~~ "Accounting year" means a twelve-month period used by an entity to record and report financial activity for accounting and tax purposes.

(2) "Charitable trust" means any real or personal property right held by an entity or person that is intended to be used for a charitable purpose(s). The trust may be created by will, deed, articles of incorporation, or other governing instrument. It may be express or constructive.

(3) "Charities program" means the division of the office of the secretary of state responsible for administration of the Charitable Solicitations Act, chapter 19.09 RCW, and the Charitable Trust Act, chapter 11.110 RCW.

(4) "Compensation(=)" ((means salaries, wages, fees, commissions, or any other remuneration or valuable consideration. Compensation)) is defined in RCW 19.09.020 and shall not include reimbursement for documented expenses incurred ((and documented), or noncash awards or prizes(=) valued at one hundred dollars or less(=) and given no more than annually to each volunteer.

~~((4))~~ (5) "Entity" means an organization, individual or institution with its own existence for legal and/or federal tax purposes. It has the capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and to be held responsible for its actions. Entity may include, but is not limited to, ~~((an individual, organization,))~~ a corporation, association, limited liability company, trust, group, partnership, proprietorship, company, estate, agency or unit of state government, person as defined in RCW 1.16.080, or any combination thereof.

For purposes of complying with registration requirements under Washington's Charitable Solicitations Act, "entity" does not include a branch, chapter, unit, affiliate or similar subordinate of another entity if said subordinate:

(a) Is under the direct supervision and control of the related entity;

(b) Does not have its own separate existence from the related entity for legal and/or federal tax purposes; and

(c) The related entity maintains registration under chapter 19.09 RCW.

Regardless of whether or not a subordinate is required to register under the act, it shall comply with the conditions set forth under RCW 19.09.100.

~~((5))~~ (6) "Income-producing assets" means assets of any kind that are purchased with the ~~((prospect))~~ objective that the assets will generate income or appreciate and be sold at a higher price in the future ~~((In finance, an investment is a monetary asset purchased with the idea that the asset will pro-~~

wide income in the future or appreciate and be sold at a higher price; these investments would include)) including, but ~~((are))~~ not limited to stocks, bonds or real property.

~~((6))~~ (7) "Investment real property" means real property either:

(a) Held exclusively with the objective that it will generate income or appreciate and be sold at a higher price in the future; or

(b) Used in whole or in part for any purpose other than to provide physical space for directly performing the charitable function for which it is held in trust.

(8) "Renewal date" ~~((means:~~

(a) ~~For charitable organizations, the last day of the eleventh month after the close of the organization's accounting year; and~~

(b) ~~For commercial fund-raisers, the fifteenth day of the fifth month following the close of the organization's accounting year.~~

~~((7))~~ (7) "Secretary" means the secretary of state or the secretary's designee, or authorized representative)) for charitable organizations, commercial fund-raisers, and charitable trusts means the last business day of the eleventh month after the close of the organization's accounting year.

~~((8))~~ (9) "Solicitation" is defined in RCW 19.09.020 ~~((19))~~ and includes:

(a) A commercial fund-raiser soliciting or receiving contributions directly from the public ~~((directly))~~ if contributions are solicited or received by the fund-raiser or by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members.

(b) A commercial fund-raiser soliciting or receiving contributions ~~((are considered to be solicited or received))~~ indirectly ~~((if they))~~ from the public if the contributions are solicited or received by:

(i) Any organization owned or controlled by the commercial fund-raiser or owned or controlled by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members; or

(ii) Any person or organization, other than the charitable organization for which funds are solicited, with which the commercial fund-raiser ~~((as))~~ has a contractual relationship governing the solicitation or receipt of contributions.

(c) "Solicitation" as defined in RCW 19.09.020(19), does not include any of the following:

(i) An application or request for ~~((application for))~~ a grant, contract, or similar funding from any foundation, corporation, governmental agency or similar entity which has an established application and review procedure for reviewing such requests;

(ii) The attempt to sell ~~((a service or good which))~~ goods or services that constitute~~((s))~~ the basis of the charitable organization's activities under which the federal income tax exemption was granted, or is the primary purpose for the existence of the charitable organization. ~~((This includes, but is not limited to))~~ For example, admission to a theatrical or other performance presented by a charitable organization ~~((that is a))~~ focused on drama, ~~((musical, dance, or similar group and fees for services such as a hospital provides or use of the charitable organization's facilities))~~ music, or dance.

(10) "Volunteer" means a person who is not paid or compensated to perform a service.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-040 Public information derived from registration. (1) Registration forms~~((s))~~ and attachments, filed by charitable organizations and commercial fund-raisers pursuant to WAC 434-120-105 and 434-120-215, are available for public inspection or copying. However, Social Security numbers and financial account numbers are not public information. For purposes of public reports derived from ~~((that))~~ the registration information, the ~~((secretary))~~ charities program shall calculate~~((s))~~ and make available to the public, the following information:

~~((2))~~ (a) For charitable organizations, the percentage of total expenditures in a reporting year allocated to charitable program services. This shall be calculated by dividing the amount reported as expended for charitable purposes by the amount reported as total expenses, and multiplying by 100.

~~((3))~~ (b) For commercial fund-raisers the percentage of the proceeds of charitable solicitations which are paid to or retained by charitable organizations. This shall be calculated by dividing the amount reported as received or retained by the charitable organization(s) after all fund-raising expenses have been deducted, by the amount reported as raised, regardless of who has possession of funds and multiplying by 100.

~~((4))~~ (2) Registrations of charitable trusts with several or mixed purposes shall not be made public under RCW 11.110.040 and 11.110.075.

NEW SECTION

WAC 434-120-042 Fees. (1) Charitable organizations, commercial fund-raisers, and charitable trusts registering under chapter 11.110 or 19.09 RCW are subject to the following fees:

(a) Amendment of current registration: No fee.

(b) Replacement of confirmation letter: \$5.00.

(c) Service of process: \$50.00.

(d) Late fee, failure to renew by due date: \$50.00.

(e) Specialized reports (electronic or paper): \$20.00.

(f) Expedited service fee (paper, per entity): \$50.00.

(g) Expedited service fee (online, per entity): \$20.00.

(h) Emergency services outside regular business hours: \$150 per hour.

(2) Charitable organizations registering under chapter 19.09 RCW are subject to the following fees:

(a) Initial registration (RCW 19.09.062): \$60.00.

(b) Annual renewal (RCW 19.09.062): \$40.00.

(c) Reregistration: \$60.00.

(d) Optional registration, initial or update: No fee.

(e) Electronic or paper copy of a charitable organization file: \$5.00.

(f) Registration of a fund-raising service contract (RCW 19.09.062): \$20.00.

(g) Electronic or paper copy of a fund-raising service contract registration: \$10.00.

(3) Commercial fund-raisers registering under chapter 19.09 RCW are subject to the following fees:

- (a) Initial registration (RCW 19.09.062): \$300.00.
- (b) Annual renewal (RCW 19.09.062): \$225.00.
- (4) Charitable trusts registering under chapter 11.110

RCW are subject to the following fees:

- (a) Initial registration: \$25.00.
- (b) Annual renewal: \$25.00.
- (c) Electronic or paper copy of a trust registration: \$5.00.
- (d) Electronic copy of IRS Form 990EZ (up to fifty pages): \$5.00.
- (e) Electronic or paper copy of IRS Form 990/990PF (up to one hundred pages): \$10.00.
- (f) Electronic or paper copy of IRS Form 990/990PF (more than one hundred pages): \$13.00 for each additional fifty pages.
- (g) Charitable trust directory: No fee.
- (5) Filing fees are nonrefundable.

NEW SECTION

WAC 434-120-043 Mergers. A charitable organization or commercial fund-raiser registered under chapter 19.09 RCW that acquires or merges with another entity shall notify the charities program in writing by completing the form available from the charities program. The form may be requested by phone or e-mail, or accessed online. There is no filing fee.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-045 Change in information or status, notification. ~~((An))~~ (1) Any entity required to register under chapter 11.110 or 19.09 RCW shall notify the charities program ~~((in writing))~~, within thirty days of any changes to ~~((its))~~ previously submitted registration or financial information reported under RCW 19.09.075, 19.09.079, or WAC 434-120-310.

(2) The ~~((organization may))~~ entity shall submit the changes in writing or by using the amendment form that is available from the charities program ~~((and request it))~~. The form may be requested by phone, e-mail, or ((access it)) accessed online. There is no ~~((filing))~~ fee to submit changes of information.

(3) Any registered charitable organization or commercial fund-raiser may voluntarily close its registration and shall report the closure to the charities program in writing. The notice shall include the organization's name on record, charities program registration number, and the reason and effective date of the closure. Following the voluntary closure of a registration, the charitable organization or commercial fund-raiser shall submit a final solicitation report for the current accounting year.

(a) The solicitation report for a charitable organization shall contain the information described in RCW 19.09.075.

(b) The solicitation report for a commercial fund-raiser shall contain the information described in RCW 19.09.079.

(4) A charitable trust that voluntarily closes its registration shall submit a copy of its most recently completed IRS Form 990, 990PF, 990EZ or final financial report, whichever applies, for the completed accounting year, and a written statement regarding the closure, including effective date.

NEW SECTION

WAC 434-120-047 Failure to renew, involuntary closure. (1) Any entity registered under RCW 11.110.060, 19.09.075, or 19.09.079 that fails to renew its registration by the renewal date specified by these rules is delinquent and subject to a late fee as provided in WAC 434-120-042.

(a) The charities program shall send by postal or electronic mail a delinquency notice within sixty days of the entity's delinquent status to the entity's address on record. The delinquency notice shall request the entity to provide the required items within thirty days of the date of the notice in order to renew its registration. The entity's failure to receive the notice does not alter its delinquent status or relieve it of the requirement to renew. If the notice is returned as undeliverable, the entity's status shall change to "failure to register/renew."

(b) An entity that fails to submit the required items within thirty days of the date of the notice shall be involuntarily closed, and the entity's status shall change to "failure to register/renew."

(2) If a registration or renewal is incomplete, the charities program shall contact the entity by postal or electronic mail and request the entity to submit the required items within thirty days of the date of the notice. If the requested items are not received within thirty days, the registration or renewal shall not be filed. If the entity's renewal date has lapsed, or if the notice is returned as undeliverable, the organization shall be involuntarily closed. Filing fees are nonrefundable.

NEW SECTION

WAC 434-120-048 Fees for late registration or renewal. (1) Any entity that fails to renew its registration by its renewal date shall pay the late fee identified in WAC 434-120-042 and an additional late fee for each year delinquent, including the current year it was not registered.

(2) The fees for late registration or renewal are in addition to any other filing fees and any other remedies that may be required or imposed by law, including penalties for not being registered or for soliciting without being registered.

(3) The fees for late registration or renewal of a charitable trust registered under chapter 11.110 RCW may be cumulative. If the trust registration status is closed, the entity must reregister as a new trust and pay any late fees, which are cumulative.

(4) Any entity registered in accordance with chapter 11.110 or 19.09 RCW may request the secretary to waive the late fees. The request shall include a description of the circumstances that justify a waiver of the late fees. Under special circumstances, the secretary may waive late fees that are required by these regulations.

NEW SECTION

WAC 434-120-049 Reactivation. A previously registered entity may reactivate its registration by submitting a registration form, the filing fee, and the late fee described in WAC 434-120-042, if applicable. An entity may retain its

original registration number assigned by the charities program.

NEW SECTION

WAC 434-120-090 Records retention. (1) Record retention requirements for charitable organizations and commercial fund-raisers are established in RCW 19.09.200. Charitable trusts shall retain their annual financial information and the supporting documents including books, ledgers, prepared statements, compilations, reviews, or audit reports, or any other records on which they were based, for a three-year period.

(2) Any entity registered under chapter 11.110 or 19.09 RCW shall make solicitation reports, financial statements, supporting documentation upon which they were based, and any other records available to the secretary of state, attorney general, or county prosecutor upon request.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-100 (~~Who shall register—Exemptions~~) Entities exempt from registration. (1) Any entity that conducts charitable solicitations or will solicit or collect contributions from the general public for charitable purposes shall register with the charities program under the Charitable Solicitations Act, chapter 19.09 RCW.

(2) Entities and solicitations exempt from registration include the following:

(a) Any political organization as defined in RCW 19.09.-020(15);

(b) Any entity (~~which~~) that raises less than fifty thousand dollars in revenue in any accounting year, if all its activities, including fund-raising, are conducted by volunteers, and no officers or members receive assets, or compensation from the organization;

(c) (~~A bona fide officer or other employee of the charitable organization for which the funds are solicited~~) Churches and their integrated auxiliaries; and

(d) Any request for a contribution on behalf of a specific individual or family unit named in the solicitation, but only if all of the proceeds are given to or expended for the direct benefit of that individual or family unit. This does not include organizations that conduct solicitations for one or more individuals on a repeated or ongoing basis.

~~((3) Any entity that is exempt from registration by these regulations shall comply with the conditions for solicitations as described in RCW 19.09.100.~~

(4) Interpretive note: The secretary of state does not interpret RCW 19.09.065 as requiring a registration by an employee of an educational institution who, as part of his or her employment with the institution, solicits contributions on behalf of a nonprofit charitable foundation affiliated with that institution, if the foundation is registered and the educational institution is either:

(a) A public school, college, or university operated by the state of Washington, one of its school districts, or a comparable public institution of another state or nation; or

(b) A private entity that is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction

comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts.)

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-105 Charitable organization registration(~~—Form and requirements~~). (1) Charitable organizations registering under this act shall (~~submit the registration form described in WAC 434-120-103~~) comply with the registration requirements of this chapter by filing with the charities program, at the times and in the manner established by these rules, the state registration form described in RCW 19.09.075.

(2) The state registration form is available online at the charities program web page or by contacting the charities program. The (~~secretary's~~) charities program's failure to (~~affirmatively reject or~~) return an incomplete registration or other filing that does not fully comply with these rules or chapter 19.09 RCW shall not excuse the failure to comply.

~~((2))~~ (3) In addition to the requirements under RCW 19.09.075, a registration is not complete, and will not be accepted for filing, unless it includes(~~:~~

(a) ~~Both the mailing address and any physical address if different, federal taxpayer identification number, and any electronic mail or internet addresses used by the organization. Private mail boxes must be identified through use of the designation "PMB" followed by the box number;~~

(b) ~~All of the names under which the organization will solicit contributions, including, but not limited to, acronyms, abbreviations, DBAs and program names used in charitable solicitations reflected in the registration;~~

(c) ~~If the organization is registered in Washington, the unified business identifier, and if the organization is incorporated outside the state of Washington, the state of incorporation;~~

(d) ~~The beginning and ending dates of its most recently completed accounting year;~~

(e) ~~The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or for action currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or record-keeping, whether such action has been instituted by a public agency or a private person or entity;~~

(f) ~~A list of all states where the organization is registered for charitable solicitations;~~

(g) ~~The officers or persons required under RCW 19.09.075 (1)(c) may include:~~

(i) ~~Members of the board of directors or any committee or group serving the function of a board of directors, regardless of the name of the committee or group; and~~

(ii) ~~Officers of the charitable organization, or the persons serving the function of officers, regardless of the title of the position.~~

~~(h) In addition to the financial information in RCW 19.09.075 (1)(h), a solicitation report of the charitable organization for the preceding accounting year includes, but is not limited to:~~

~~(i) All addresses, physical or mailing, used to solicit or collect contributions;~~

~~(ii) The total dollar value of contributions received from solicitations, special events, sale of inventory, and amounts collected on behalf of the charitable organization by a commercial fund-raiser;~~

~~(iii) The total dollar value of revenue from all other sources;~~

~~(iv) Gross receipts, including amounts collected on behalf of the charitable organization by a commercial fund-raiser or commercial coventurer regardless of custody of funds. "Gross receipts" include, but are not limited to, contributions, gross revenue from special events, sales of inventory, goods or services (including tickets to events), and all other revenue from solicitations;~~

~~(v) The amount of total expenditures used directly for charitable program services, including payments to affiliates if costs involved are not connected with the administrative or fund-raising functions of the reporting organization;~~

~~(vi) Total expenditures, including, but not limited to, amounts paid to or retained by a commercial fund-raiser, or fund-raising counsel, amounts expended for charitable program services, administrative expenses, fees for services, and fund-raising costs incurred by the charitable organization.~~

~~(vii) Beginning assets; and~~

~~(viii) Ending assets.~~

~~(ix) The charitable organization may provide additional information which the organization believes would be of assistance in understanding other reported information, or to provide context for reported information.~~

~~(3) The) all information requested on the registration form.~~

~~(a) Charitable organizations shall report actual figures(;) and ((shall)) not use estimates(;) when completing ((a)) the solicitation report.~~

~~((4) All charitable organization registrations shall be signed and dated by the president, treasurer, or comparable officer of the organization or, in the absence of officers, person responsible for the organization.)) (b) A newly formed charitable organization that has not yet completed its first year of activity shall provide the end date of its first accounting year.~~

~~(c) A charitable organization may provide additional information that the organization believes would be of assistance in understanding other reported information, or to provide context for reported information.~~

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-107 Audited financial report—Tiered reporting requirements. (1) If ~~((an))~~ a charitable organization has been in existence for less than three years, the organization ~~((must))~~ shall calculate its average gross revenue based on the number of years the organization has been in

existence to determine which tier, per RCW 19.09.541, is applicable.

(2) For purposes of these regulations, the ~~((secretary))~~ charities program may waive the requirement to obtain an audited financial statement prepared by an independent certified public accountant for organizations with more than three million dollars in gross revenue averaged over the last three accounting years that meet one of the following:

(a) Directly or indirectly receives five hundred thousand dollars or less in cash averaged over the last three accounting years. Organizations with five hundred thousand dollars or less in cash averaged over the last three accounting years must meet tier two reporting requirements in RCW 19.09.541 (2). For purposes of meeting the financial requirements in this section, "cash" includes currency, checks, credit card payments, donor advised funds, and electronic fund transfers received from all sources including, but not limited to, solicitations, investment income and tuition. "Cash" does not include gifts of tangible, real, or personal property or in-kind services; or

(b) Organizations ~~((who))~~ that can demonstrate that they have reached a three-year average of more than three million dollars in gross revenue through unusual or nonrecurring revenue received in a single year without which they would not have met the three-year annual gross average threshold.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-110 ~~((Organizations exempt from filing requirements—))Optional registration for exempt organizations.~~ (1) Charitable organizations exempt from the ~~((filing))~~ registration requirements ~~((of this chapter))~~ under RCW 19.09.081 and WAC 434-120-100(2) may file an optional registration with the charities program.

(2) Charitable organizations choosing to file an optional registration under this section may register by completing the registration form specified by the ~~((secretary))~~ charities program.

(3) Charitable organizations registered under this section may ~~((change or update))~~ amend their registration by filing the updated information with the charities program.

(4) The charities program may periodically send by postal or electronic mail a request to update the optional registration. An organization's status may become unregistered if the charity program's request is returned as undeliverable.

(5) Expedited processing under WAC 434-112-080 is available for optional registrations and updates under this section.

AMENDATORY SECTION (Amending WSR 10-22-048, filed 10/28/10, effective 11/28/10)

WAC 434-120-115 Treatment of appropriated funds. A government subdivision or publicly supported educational facility that is also a charitable organization ~~((must))~~ shall report government appropriated funds only to the extent such funds are directly expended to support fund raising efforts or to defray costs of administering the organization's fund-raising programs.

AMENDATORY SECTION (Amending WSR 10-22-048, filed 10/28/10, effective 11/28/10)

WAC 434-120-130 Financial standards. Upon the request of the attorney general, secretary or the county prosecutor, a charitable organization ~~((must))~~ shall submit a financial statement containing, but not limited to, the following information within thirty days from date of request~~((:))~~:

(1) The gross amount of the contributions pledged and the gross amount collected~~((:))~~;

(2) The amount thereof~~((:))~~ given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required~~((:))~~;

(3) The aggregate amount paid and to be paid for the expenses of such solicitation~~((:))~~;

(4) The amounts paid ~~((to))~~ and to be paid to commercial fund-raisers or charitable organizations~~((:))~~; and

(5) Copies of any annual or periodic reports furnished by the charitable organization, of its activities during or for the same accounting period.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-135 Contributor lists. ~~(1)~~ All charitable organizations registered under this act ~~((must))~~ shall keep records of all contributors to the organization for three years. If a commercial fund-raiser manages a campaign for a charitable organization, either the commercial fund-raiser or the charitable organization must be the entity responsible for maintaining the contributor records for that campaign. These records ~~((must))~~ shall include the names of the following contributors:

~~((+))~~ (a) Each contributing entity that collects individual donations from an employee or member group or a business, turning them over to the charitable organization as a single sum, such as the United Way;

~~((2))~~ (b) Each corporation that contributed; and

~~((3))~~ (c) Each individual who contributed more than twenty-five dollars.

(2) The records ~~((must))~~ shall be compiled and retrievable for a period of three years and ~~((must))~~ shall be turned over within ten working days upon written request of the attorney general or the county prosecutor, although the organization is not required to keep the names in a standard list format at all times.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-140 How and when to register. (1) Initial registration: An entity required to register as a charitable organization ~~((must))~~ shall complete the form described in RCW 19.09.075 and WAC ~~((434-120-103))~~ 434-120-105 and submit it with the fee in RCW ~~((19.09.162))~~ 19.09.062(1) prior to conducting any solicitation.

(2) Annual renewal:

(a) ~~((An entity must))~~ A charitable organization shall renew its ~~((charitable))~~ registration by submitting a renewal form and ~~((the))~~ fee described in RCW 19.09.062(2) ~~((so they are))~~. The completed form and fee shall be received ~~((by))~~ no

later than the last business day of the eleventh month after the end of ~~((its))~~ the organization's accounting year.

(b) The renewal ~~((must))~~ shall include the same information required for registration as described in RCW 19.09.075 and WAC 434-120-105 except that a determination letter from the Internal Revenue Service need not be attached if it was previously filed. The solicitation report ~~((will))~~ must be based on the most recent filing with the Internal Revenue Service, ~~((the solicitation report will be based on))~~ the most recently completed accounting year. No organization may submit the same financial information for two consecutive years.

(c) A change in an entity's accounting year ~~((will))~~ may not cause the due date of a renewal to be more than one year after the previous registration or renewal.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-175 Voluntary verification information. Each ~~((organization))~~ entity registering with the ~~((secretary))~~ charities program may submit additional information, not required by law, if the information is intended to inform the public about its programs and activities and to verify its existence.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-185 Charitable advisory council. ~~((The purpose of the charitable advisory council is to advise the secretary in the following areas:~~

(1) Training and education needs of charitable organizations within the state;

(2) Model policies related to governance and administration of charitable organizations in accordance with fiduciary principles;

(3) Emerging issues and trends affecting charitable organizations; and

~~((4) Other related issues at the request of the secretary.))~~

(1) The charitable advisory council ~~((will))~~ shall consist of ~~((thirteen))~~ at least eleven members ~~((chosen))~~ appointed by the secretary ~~((to represent a broad range of charities by size, purpose, geographic regions of the state, and general expertise in management and leadership of charitable organizations.))~~ of state and an ex officio member ~~((will be))~~ appointed by the attorney general.

~~((Members serve at the pleasure of the secretary.))~~ (2) Council members' terms are staggered, with the original board drawing lots for two-and three-year terms. All following terms are three years but all terms expire no later than when the appointing secretary leaves office. Vacancies may be filled by the secretary upon notice of a vacancy from the member.

~~((The council will elect a chairperson from its members annually. The frequency of))~~ (3) Meetings ~~((will))~~ shall be at least twice a year, ~~((but))~~ and additional meetings may be called by the secretary or the council. ~~((Council members are not compensated for their service, but may be reimbursed for expenses incurred in the conduct of their official duties.))~~

Reimbursement ~~((is))~~ for expenses shall be at current state rates for travel, and all reimbursement requests ~~((must))~~ shall be received within thirty days of incurring the expense.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-200 Required filings. (1) A commercial fund-raiser complies with the registration requirements of this chapter by filing the following documents with the ~~((see secretary of state))~~ charities program at the times, and in the manner, prescribed by these rules and RCW 19.09.079:

(a) The commercial fund-raiser registration form, which is available online at the charities program web page or by contacting the charities program. This form is used as an initial registration form, as well as ~~((an))~~ the annual renewal form. ~~((The purpose of this report is to provide basic information about the organization, as described in RCW 19.09.079;~~

~~(b) Solicitation report. These reports are filed annually by all commercial fund-raisers, except those exempted by these rules. The purpose of this report is to provide financial information during the reporting period, of an informational nature to the public; and~~

~~(e))~~ (b) All surety bonds required by WAC 434-120-260.

(2) ~~((The financial statement required by WAC 434-120-255 does not need to be filed with the office of the secretary of state. The purpose of this statement is to verify and support the information filed in the solicitation report. This statement must be available upon request as provided in this chapter.~~

~~((3))~~ This section is intended to be explanatory of other rules in this chapter, and not to modify or diminish the requirements of those rules.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-210 Who shall register. (1) Every commercial fund-raiser, as described in RCW 19.09.020(5), shall register each year, ~~((pursuant to))~~ in accordance with WAC 434-120-200 by completing the form described in RCW 19.09.079 and WAC 434-120-215 and submitting it with the fee in RCW 19.09.062(3) prior to conducting any solicitation.

(2) Contract employees, independent contractors, and other individuals who are not bona fide officers or employees of a commercial fund-raiser that solicit or receive charitable contributions, if compensated, are required to register independently as commercial fund-raisers in accordance with RCW 19.09.079 and maintain a surety bond as required in RCW 19.09.191, unless exempt.

(3) Entities exempt from registration include the following:

(a) Fund-raising counsel as defined in RCW 19.09.020 (10);

(b) Commercial coventurers as defined in 19.09.020(4); and

(c) Suppliers of goods and services to charitable organizations for fund-raising purposes ~~((are exempt from registration, if))~~ as long as they are not otherwise engaged in the business of charitable fund-raising.

~~((3) If a commercial fund-raiser does business under more than one name, each name used by that entity must be registered and bonded separately.))~~

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-215 Commercial fund-raiser registration~~((Form and requirements))~~. (1) Commercial fund-raisers registering under this act shall use the commercial fund-raiser registration form described in WAC 434-120-200. The ~~((secretary's))~~ charities program's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 19.09 RCW, shall not excuse the failure to comply. The ~~((secretary's))~~ charities program's acceptance of a registration or other filing which violates these rules or chapter 19.09 RCW shall not excuse the violation.

(2) In addition to the requirements ~~((under))~~ of RCW 19.09.079, a registration is not complete, and will not be accepted for filing, unless it includes~~((:~~

~~(a) Both the mailing address and physical address (if different), and any electronic mail or internet addresses, as well as any physical or mailing addresses, used by the commercial fund-raiser to solicit or receive contributions. Private mail boxes must be identified through use of the designation "PMB" followed by the box number;~~

~~(b) The type of organization, federal taxpayer identification number, the unified business identifier if the organization is registered in Washington and if the organization is incorporated, the state of incorporation;~~

~~(c) The beginning and ending dates of its preceding completed accounting year;~~

~~(d) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or for action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or record-keeping, whether such action has been instituted by a public agency or a private person or entity;~~

~~(e) A list of all states where the organization is registered for charitable solicitations;~~

~~(f) In addition to the financial information in RCW 19.09.079(6), a solicitation report is required of the fund-raising activities of the entity for the preceding accounting year and includes, but is not limited to:~~

~~(i) Contributions received, either by the commercial fund-raiser or the charities with which the commercial fund-raiser contracts, as a result of services provided by the commercial fund-raiser during the year shown above. (This is the total amount of money raised, regardless of who has possession of funds.)~~

~~(ii) Funds either retained by, or paid to, the charities with whom the commercial fund-raiser contracts, after fees and any expenses have been subtracted. (This is the portion of money raised that the charities receive or keep after all fund-raising expenses have been deducted.)~~

~~(3))~~ all the information requested on the form.

(a) The commercial fund-raiser may provide additional information which the commercial fund-raiser believes would be of assistance in understanding other reported information, or to provide context for reported information.

~~((4))~~ (b) The commercial fund-raiser ~~((must))~~ shall report actual figures and shall not use estimates when completing a solicitation report.

~~((5) All commercial fund-raiser registrations shall be signed by an officer or owner of the commercial fund-raiser.)~~ (c) A newly formed commercial fund-raiser that has not yet completed its first year shall provide the full projected beginning and ending dates of its first accounting year.

AMENDATORY SECTION (Amending WSR 95-11-135, filed 5/24/95, effective 6/24/95)

WAC 434-120-218 Solicitation reports by commercial fund-raisers ~~((who))~~ that subcontract. (1) A commercial fund-raiser ~~((who))~~ that engages another ~~((registered))~~ commercial fund-raiser to solicit funds or conduct a solicitation on behalf of a charitable organization is responsible for reporting and shall include the total contributions and the total expenses related to that campaign in its solicitations report and financial statement.

(2) If a reporting commercial fund-raiser's contributions and expenses for a campaign are also included in another commercial fund-raiser's solicitations report, the reporting fund-raiser shall list in its report the name of that fund-raiser, the name of the charitable organization, the dates of the campaign, and the total contributions and expenses for which it was responsible.

(3) Regardless of whether a commercial fund-raiser which acts as a contractor reports the contributions and expenses of its subcontractor(s), each subcontracting commercial fund-raiser, ~~((must))~~ shall independently register, post bond, report its own contributions and expenses, and comply with all other provisions of these rules and chapter 19.09 RCW as they apply to commercial fund-raisers.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-225 Annual renewal. (1) Each commercial fund-raiser shall renew annually by submitting a renewal form and the filing fee in RCW 19.09.062 so they are received by no later than the ~~((fifteenth))~~ last business day of the ~~((fifth))~~ eleventh month after the end of its accounting year.

The renewal ~~((must))~~ shall include the same information required for registration as described in RCW 19.09.079 and WAC 434-120-215. The solicitation report ~~((will))~~ must be based on the most recently completed accounting year. No organization may submit the same financial information for two consecutive years.

(2) No change in a fund-raiser's accounting year ~~((will))~~ may cause the due date of a renewal to be more than one year after the previous registration or renewal.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-240 Contract between a commercial fund-raiser and a charitable organization. (1) A commercial fund-raiser and charitable organization entering into a contract shall register the contract by completing the contract registration form, attaching a signed copy of the written contract, and filing the form and contract with the ~~((secretary))~~ charities program. The contract shall be registered before the commencement of the campaign.

~~((2))~~ (a) The charitable organization is responsible for ~~((registering))~~ the registration of the signed contract~~(s)~~ and contract registration form, and ~~((paying))~~ for the ~~((appropriate))~~ registration fee ~~((per))~~ described in RCW 19.09.062(5).

~~((3))~~ (b) In addition to the ~~((statutory))~~ requirements of RCW 19.09.097, the terms of the contract shall specify who will maintain the donor list.

(c) A contract registration may not be accepted for filing unless it includes all the information requested on the registration form. The charitable organization must be notified in accordance with 19.09.097(5) in the event the charities program determines that it is incomplete.

(2) The charitable organization shall notify the charities program in writing of any addenda, extensions, cancellations, or other changes to the contract within thirty days.

AMENDATORY SECTION (Amending WSR 97-16-035, filed 7/30/97, effective 8/30/97)

WAC 434-120-255 Financial standards. Upon the request of the attorney general, secretary of state, or ~~((the))~~ county prosecutor, a commercial fund-raiser shall submit a financial statement containing, but not limited to, the following information within thirty days from date of request~~(-)~~:

(1) The gross amount of the contributions pledged and the gross amount collected~~(-)~~;

(2) The amount thereof~~(s)~~ retained by the charitable organization, given or to be given to charitable organizations represented together with details as to the manner of distribution as may be required~~(-)~~;

(3) The aggregate amount paid and to be paid for the expenses of such solicitation~~(-)~~;

(4) The amounts paid to and to be paid to charitable organizations~~(-)~~; and

(5) Copies of any annual or periodic reports furnished by the fund-raising organization, of its activities during or for the same ~~((fiscal))~~ accounting period, to its parent organization, subsidiaries, or affiliates, if any.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-260 Surety bonds. (1) A commercial fund-raiser~~(s-must))~~ shall provide proof of bonding if the commercial fund-raiser engages, or plans to engage, in one or more of the practices identified in RCW 19.09.191 (1)(a) through (d).

(2) The registering commercial fund-raiser shall submit proof of execution of a surety bond with one or more sureties

whose liability in the aggregate (~~with~~) equals at least twenty-five thousand dollars.

(3) A commercial fund-raiser must provide and maintain a bond without interruption so long as it engages in one or more practices in RCW 19.09.191 (1)(a) through (d). Upon notification that the bond is canceled, the charities program must require proof of a replacement bond, in full amount, within thirty days or by the effective date of bond cancellation, whichever is later.

(4) Failure to provide a replacement surety bond whose liability equals at least twenty-five thousand dollars shall result in the involuntary closure of the registration of the commercial fund-raiser.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-270 Impairment of surety bond. In the event that a final judgment shall impair the liability of a surety bond and the full amount required is not in effect, the (~~secretary~~) charities program shall (~~suspend~~) close the registration of such commercial fund-raiser. The commercial fund-raiser may (~~request reinstatement~~) reregister when it has restored the full amount of the required bond liability and satisfied all judgment claims.

AMENDATORY SECTION (Amending WSR 94-01-004, filed 12/1/93, effective 1/1/94)

WAC 434-120-280 Signing off on the surety bond. A commercial fund-raiser bonded in accordance with chapter 19.09 RCW and these regulations(~~is~~) shall retain the protection of the bond until all claims against it can be filed in accordance with the statute of limitations (~~as~~) listed in chapter 4.16 RCW. The (~~secretary of state has not been granted~~) charities program does not have authority to sign off on a surety bond signifying that all outstanding claims have been filed prior to the expiration of the statute of limitations.

AMENDATORY SECTION (Amending WSR 98-18-034, filed 8/26/98, effective 9/26/98)

WAC 434-120-300 Jurisdiction. A trust is subject to Washington jurisdiction if:

(1) It is created pursuant to a trust instrument that specifies that it is subject to the jurisdiction of the state of Washington or that its terms are to be construed pursuant to the laws of the state of Washington;

(2) It is a testamentary trust, and the will was probated or recorded, or letters testamentary (~~and~~) or of administration were granted, in the state of Washington;

(3) The trust was created pursuant to order of a Washington court or by operation of Washington law;

(4) The trust was created by or pursuant to the articles of incorporation of a Washington corporation; or

(5) No state, territory, or nation may assert a superior claim of jurisdiction, and:

(a) The trust was created pursuant to (~~an inter vivos~~) a trust agreement or document executed or recorded within the

state of Washington but which does not expressly vest jurisdiction in another state, territory, or nation; or

(b) The trust corpus consists predominantly of property located in or administered from Washington; or

(c) A basis exists upon which to assert or concede jurisdiction in the state of Washington.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-305 Who shall register. The registration and reporting requirements of chapter 11.110 RCW apply to every trustee, as defined by RCW 11.110.020, who is required to register by RCW 11.110.051. The (~~secretary of state~~) charities program has determined, pursuant to RCW 11.110.051 (1)(a), that (~~no~~) a trustee shall be required to register or report (~~unless~~) if, as to a particular charitable trust, the trustee holds assets, invested for income-producing purposes, exceeding a value of two hundred fifty thousand dollars, and otherwise meets the description of RCW 11.110.-051.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-307 Required filings. (1) Initial registration: Every trustee required to register by RCW 11.110.-051 shall do so(~~is~~) in the time and in the manner described (~~by~~) in RCW 11.110.060. Trustees shall use the registration form described (~~by~~) in WAC 434-120-310, and file all other documents required by RCW 11.110.060.

(2) Periodic reporting: Every trustee required to register by RCW 11.110.051 shall report annually as required by RCW 11.110.070. The annual reporting requirement is satisfied by filing the renewal form described (~~by~~) in WAC 434-120-310(3) and filing a complete copy of the trust's federal (~~informational tax~~) information return 990, 990PF, 990EZ or financial report, which ever applies, with the (~~secretary of state~~) charities program no later than the (~~fifteenth~~) last business day of the (~~fifth~~) eleventh month after the end of (~~its fiscal or~~) the organization's accounting year.

AMENDATORY SECTION (Amending WSR 12-14-114, filed 7/5/12, effective 8/5/12)

WAC 434-120-310 Charitable trust registration(~~— Form and requirements~~). (1) Trustees registering under chapter 11.110 RCW shall use the registration form available (~~in~~) from the (~~office of the secretary of state~~) charities program. The (~~secretary's~~) charities program's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 11.110 RCW shall not excuse the failure to comply.

(2) (~~An initial~~) In addition to the requirements of chapter 11.110 RCW, a registration form is not complete, and will not be accepted for filing, unless it includes(~~is~~

(a) The trustee's name;

(b) The trustee's mailing address, and physical address if different;

(c) The name of the trust, its Federal Employer Identification Number, if any, or other identifying information sufficient to distinguish the trust from other registered trusts;

(d) A brief description of the charitable purposes of the trust, which may, at the trustee's option, include the names and addresses of any charitable organizations benefited by the trust;

(e) The market value of all trust assets invested for incoming producing purposes as of the date on which the trustee received possession or control of the trust corpus;

(f) A copy of the governing instrument creating the trust;

(g) A statement indicating whether the trust is exempt from federal income tax, and, if exempt, the section of the Internal Revenue Code under which the trust is exempt from federal income tax;

(h) A copy of the letter by which the Internal Revenue Service granted the trust tax exempt status if the Internal Revenue Service has granted the trust such status;

(i) The end date of its current fiscal or accounting year;

(j) A financial report of the trust for the preceding fiscal or accounting year, including, but not limited to:

(i) Beginning assets;

(ii) Total revenue;

(iii) Grants, contributions, and the amount of expenditures used directly for program services;

(iv) Compensation of officers, directors, trustees, etc.;

(v) Total expenses; and

(vi) Ending assets.

(k) A copy of the trust's federal informational tax return (Form 990, 990PF, 990T, or 990EZ) reflecting the fiscal or accounting year contained in this report;

(l) The name and telephone number of the preparer of the trust registration, if different from trustee.

(3) The renewal registration form required by this rule shall be the same as the form described in WAC 434-120-310 except that the information required by WAC 434-120-310 (2)(d), (e), (f), (g) and (h) is not required.

(4)) all the information requested on the registration form.

(3) The trust shall report actual figures, and shall not use estimates, when completing a financial report.

((5)) (4) All charitable trust registrations shall be signed and dated by:

(a) The trustee(~~, person or entity legally responsible for the trust~~); (~~or~~)

(b) If the trustee is a corporation, the corporate officer or employee responsible for the (~~trustee~~) trust; or

(c) The legal entity or individual legally representing the trust.

((6)) (5) A copy of the governing instrument creating the trust (~~shall~~) or any federal form is not (~~be deemed~~) sufficient to meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 10-15-036, filed 7/13/10, effective 8/13/10)

WAC 434-120-355 Change in status, notification. A charitable trust (~~must~~) shall notify the charities program in writing of a change in trust instrument, trustee, principal officer, federal tax status, fiscal year, or any other information

filed under RCW 11.110.060 (~~or WAC 434-120-310~~) within four months after the change at no charge.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-360 Dissolution of trust, procedure and notification. (1) A charitable trust shall submit written notification of its intent to dissolve to the charities program thirty days prior to dissolution.

(2) Upon dissolution, the trust shall provide written information regarding the disposition of its assets, including, but not limited to, the amount and type of assets, and the name and address of the entity in receipt of such assets(:

(3) ~~Upon dissolution, the charitable trust shall provide the information specified in subsection (2) of this section)~~ to:

(a) The charities program (~~in the office of the secretary of state~~) if the dissolution is in accordance with the specific terms of the trust; or

(b) Both the charities program (~~in the office of the secretary of state~~) and the office of the attorney general if the dissolution is the result of:

(i) A merger;

(ii) A voluntary dissolution outside the specific terms of the trust;

(iii) A change in the state of domicile of the trust; or

(iv) Any other change in the trust giving rise to the obligation to notify the attorney general under RCW 11.110.120.

((4)) (3) Notice to the charities program under subsection ((3)) (2)(b) of this section is not required for those trusts that are not required to register with the charities program (~~in the office of the secretary of state~~).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-120-046 Record retention.

WAC 434-120-103 Required forms and filings.

WAC 434-120-145 Fees.

WAC 434-120-160 Fees for late registration.

WAC 434-120-165 Failure to renew, registration closure and reactivating registration—Charitable organizations.

WAC 434-120-245 Failure to renew, registration closure and reactivating registration—Commercial fund-raisers.

WAC 434-120-250 Fees.

WAC 434-120-330 Annual fees.

WAC 434-120-345 Late registration fees.

WSR 14-14-042
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 24, 2014, 5:02 p.m.]

June 24, 2014
 Randy Dorn
 State Superintendent
 of Public Instruction

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-066.

Title of Rule and Other Identifying Information: WAC 392-139-310 Finance—Levies—Excess levy base.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, Wanamaker Conference Room, P.O. Box 47200, Olympia, WA, on August 5, 2014, at 10:00 a.m.

Date of Intended Adoption: August 6, 2014.

Submit Written Comments to: Steve Shish, P.O. Box 47200, Olympia, WA 98504-7200, e-mail steve.shish@k12.wa.us, fax (360) 664-3683, by August 5, 2014.

Assistance for Persons with Disabilities: Contact Wanda Griffin by August 1, 2014, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule revisions add new revenues to the levy base.

The rule revisions add the new special education infants and toddlers accounts 4122, 4322, 6125, 6225, and 6325 to the levy base.

The rule revisions delete obsolete revenue codes 310004, 4134, 4163, 4166, and 4175 from the levy base.

The rule revisions include charter school allocations in the school district's levy base only if the charter school is eligible to receive levy moneys from that levy.

Reasons Supporting Proposal: Revisions are required to add new revenues to the levy base.

The special education infants and toddlers revenue accounts are new accounts for the district's special education allocation.

Charter schools are eligible to receive school district's levy moneys, so the charter schools allocations need to be included in the school district's levy base.

Statutory Authority for Adoption: RCW 28A.150.290 and 84.52.0531.

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

Name of Proponent: [Office of superintendent of public instruction (OSPI)], governmental.

Name of Agency Personnel Responsible for Drafting: Steve Shish, OSPI, (360) [725-]6307; Implementation: T. J. Kelly, OSPI, (360) [725-]6301; and Enforcement: JoLynn Berge, OSPI, (360) [725-]6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(1). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

AMENDATORY SECTION (Amending WSR 13-05-050, filed 2/13/13, effective 3/16/13)

WAC 392-139-310 Determination of excess levy base.

The superintendent of public instruction shall calculate each school district's excess levy base as provided in this section.

(1) Sum the following state and federal allocations from the prior school year(s) as determined in subsections (4) and (5) of this section:

(a) The basic education allocation as defined in WAC 392-139-115 and as reported on the August Report 1191;

(b) The state and federal categorical allocations for the following:

(i) Pupil transportation. Allocations for pupil transportation include allocations for the following accounts:

4199 Transportation - Operations;

4399 Transportation - Operations;

4499 Transportation - Depreciation;

6199 Transportation - Operations;

6299 Transportation - Operations; and

6399 Transportation - Operations.

(ii) Special education. Allocations for special education include allocations for the following accounts:

4121 Special education;

4122 Special education - Infants and toddlers - State;

4321 Special education;

4322 Special education - Infants and toddlers - State;

6114 Federal Stimulus - IDEA;

6124 Special education supplemental;

6125 Special education - Infants and toddlers - Federal;

6214 Federal Stimulus - IDEA;

6224 Special education supplemental;

6225 Special education - Infants and toddlers - Federal;

6314 Federal Stimulus - IDEA; ~~((and))~~

6324 Special education supplemental; and

6325 Special education - Infants and toddlers - Federal.

(iii) Education of highly capable students. Allocations for education of highly capable students include allocations identified by account 4174 Highly capable.

(iv) Compensatory education. Allocations for compensatory education include allocations identified by the following accounts:

3100 Barrier reduction;

4155 Learning assistance;

4165 Transitional bilingual;

~~((4163 Promoting academic success;~~

~~4166 Student achievement;))~~

4365 Transitional bilingual;

6111 Federal Stimulus - Title 1;

6151 Disadvantaged;

6153 Migrant;

6164 Limited English proficiency;

6211 Federal Stimulus - Title 1;

6251 Disadvantaged;

6253 Migrant;

6264 Limited English proficiency;
 6267 Indian education - JOB;
 6268 Indian education - ED;
 6311 Federal Stimulus - Title 1;
 6351 Disadvantaged;
 6353 Migrant;
 6364 Limited English proficiency;
 6367 Indian education - JOM; and
 6368 Indian education - ED.

(v) Food services. Allocations for food services include allocations identified by the following accounts:

4198 School food services (state);
 4398 School food services;
 6198 School food services (federal);
 6298 School food services;
 6398 School food services; and
 6998 USDA commodities.

(vi) Statewide block grant programs. Allocations for statewide block grant programs include allocations identified by the following accounts:

~~(310004 Full-day kindergarten;
 4134 Middle school vocational;
 4175 Professional development;))~~
 6113 Federal Stimulus - State Fiscal Stabilization Fund;
 6176 Targeted assistance;
 6213 Federal Stimulus - State Fiscal Stabilization Fund;
 6276 Targeted assistance;
 6313 Federal Stimulus - State Fiscal Stabilization Fund;

and

6376 Targeted assistance.

(c) General federal programs. Allocations for general federal programs identified by the following accounts:

5200 General purpose direct federal grants - Unassigned;

6100 Special purpose - OSPI - Unassigned;
 6112 Federal Stimulus - School Improvement;
 6118 Federal Stimulus - Competitive Grants;
 6119 Federal Stimulus - Other;
 6121 Special education - Medicaid reimbursement;
 6138 Secondary vocational education;
 6146 Skills center;
 6152 School improvement;
 6154 Reading first;
 6162 Math and science - Professional development;
 6200 Direct special purpose grants;
 6212 Federal Stimulus - School Improvement;
 6218 Federal Stimulus - Competitive Grants;
 6219 Federal Stimulus - Other;
 6221 Special education - Medicaid reimbursement;
 6238 Secondary vocational education;
 6246 Skills center;
 6252 School improvement;
 6254 Reading first;
 6262 Math and science - Professional development;
 6300 Federal grants through other agencies - Unassigned;

signed;

6310 Medicaid administrative match;
 6312 Federal Stimulus - School Improvement;
 6318 Federal Stimulus - Competitive Grants;
 6319 Federal Stimulus - Other;

6321 Special education - Medicaid reimbursement;
 6338 Secondary vocational education;
 6346 Skills center;
 6352 School improvement;
 6354 Reading first; and
 6362 Math and science - Professional development.

(2) Increase the result obtained in subsection (1) of this section by the percentage increase per full-time equivalent student in the state basic education appropriation between the prior school year and the current school year as stated in the state Operating Appropriations Act divided by 0.55.

(3) Revenue accounts referenced in this section are defined in the accounting manual for public school districts in the state of Washington.

(4) The dollar amount of revenues for state and federal categorical allocations identified in this section shall come from the following sources:

(a) The following state and federal categorical allocations are taken from the Report 1197 Column A (Annual Allotment Due):

3100 Barrier reduction;
~~((310004 Full-day kindergarten;))~~
 4121 Special education;
~~((4134 Middle school vocational;))~~
4122 Special education - Infants and toddlers - State;
 4155 Learning assistance;
~~((4163 Promoting academic success;))~~
 4165 Transitional bilingual;
~~((4166 Student achievement;))~~
 4174 Highly capable;
~~((4175 Professional development;))~~
 4198 School food services (state);
 4199 Transportation - Operations;
 4499 Transportation - Depreciation;
 6111 Federal Stimulus - Title 1;
 6112 Federal Stimulus - School Improvement;
 6113 Federal Stimulus - State Fiscal Stabilization Fund;
 6114 Federal Stimulus - IDEA, one-half the August 2010 amount will be used in the 2011 calculation, and one-half in the 2012;
 6118 Federal Stimulus - Competitive Grants;
 6119 Federal Stimulus - Other;
 6121 Special education - Medicaid reimbursements;
 6124 Special education - Supplemental; however, for the federal safety net portion, the amount awarded rather than the amount included on report 1197 will be used;
6125 Special education - Infants and toddlers - Federal;
 6138 Secondary vocational education;
 6146 Skills center;
 6151 Disadvantaged;
 6152 School improvement;
 6153 Migrant;
 6154 Reading first;
 6162 Math and science - Professional development;
 6164 Limited English proficiency;
 6176 Targeted assistance;
 6198 School food services (federal); and
 6199 Transportation - Operations.

(b) For the 2004 calendar year, the following state and federal allocations are taken from the F-195 budget including budget extensions.

For the 2005 calendar year and thereafter, the following federal allocations shall be taken from the school district's second prior year F-196 annual financial report:

- 4321 Special education;
- 4322 Special education - Infants and toddlers - State;
- 4365 Transitional bilingual;
- 4398 School food services;
- 4399 Transportation - Operations;
- 5200 General purpose direct federal grants - Unassigned;
- 6100 Special purpose - OSPI - Unassigned;
- 6200 Direct special purpose grants;
- 6211 Federal Stimulus - Title 1;
- 6212 Federal Stimulus - School Improvement;
- 6213 Federal Stimulus - State Fiscal Stabilization Fund;
- 6214 Federal Stimulus - IDEA;
- 6218 Federal Stimulus - Competitive Grants;
- 6219 Federal Stimulus - Other;
- 6221 Special education - Medicaid reimbursement;
- 6224 Special education supplemental;
- 6225 Special education - Infants and toddlers - Federal;
- 6238 Secondary vocational education;
- 6246 Skills center;
- 6251 Disadvantaged;
- 6252 School improvement;
- 6253 Migrant;
- 6254 Reading first;
- 6262 Math and science - Professional development;
- 6264 Limited English proficiency;
- 6267 Indian education - JOM;
- 6268 Indian education - ED;
- 6276 Targeted assistance;
- 6298 School food services;
- 6299 Transportation - Operations;
- 6300 Federal grants through other agencies - Unassigned;
- 6310 Medicaid administrative match;
- 6311 Federal Stimulus - Title 1;
- 6312 Federal Stimulus - School Improvement;
- 6313 Federal Stimulus - State Fiscal Stabilization Fund;
- 6314 Federal Stimulus - IDEA;
- 6318 Federal Stimulus - Competitive Grants;
- 6319 Federal Stimulus - Other;
- 6321 Special education - Medicaid reimbursement;
- 6324 Special education supplemental;
- 6325 Special education - Infants and toddlers - Federal;
- 6338 Secondary vocational education;
- 6346 Skills center;
- 6351 Disadvantaged;
- 6352 School improvement;
- 6353 Migrant;
- 6354 Reading first;
- 6362 Math and science - Professional development;
- 6364 Limited English proficiency;
- 6367 Indian education - JOM;
- 6368 Indian education - ED;
- 6376 Targeted assistance;

- 6398 School food services;
- 6399 Transportation - Operations; and
- 6998 USDA commodities.

(5) Effective for levy authority and local effort assistance calculations for the 2005 calendar year and thereafter:

(a) District revenues determined in subsection (4) of this section shall be reduced for revenues received as a fiscal agent. School districts shall report fiscal agent revenues pursuant to instructions provided by the superintendent of public instruction.

(b) The amount determined in subsection (4)(b) of this section, after adjustment for fiscal agent moneys, shall be inflated for one year using the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce.

(6) State and federal moneys generated by a school district's students and redirected by the superintendent of public instruction to an educational service district at the request of the school district shall be included in the district's levy base.

(7) State basic education moneys generated by a school district's students and allocated directly to a technical college shall be included in the district's levy base.

(8) Funding which the district would have received calculated pursuant to RCW 84.52.0531 shall be included in the district's levy base.

(9) Allocations referenced above received by a charter school shall be included in the school district's levy base for the calendar year for which levy authority is being calculated only if the charter school is eligible to receive levy moneys from that levy.

WSR 14-14-052
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 25, 2014, 3:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-07-112 on March 19, 2014.

Title of Rule and Other Identifying Information: The subject of this proposed rule-making effort is adoption of new WAC 232-12-286 Reducing the spread of hoof disease—Unlawful transport of elk hooves.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on August 8-9, 2013 [2014], at 8:30 a.m.

Date of Intended Adoption: On or after August 8, 2014.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by July 25, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by August 1, 2014, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new WAC will reduce the probability of hoof disease spreading from Units 501 through 564 and 642 through 699 to other areas by limiting the transport of potentially infected hooves to other areas in the state.

Reasons Supporting Proposal: This proposal is part of the department's ongoing efforts to protect Washington's unexposed elk population from the spread of hoof disease.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.055, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nate Pamplin, Natural Resources Building, Olympia, (360) 902-2515; and Enforcement: Steven Crown, Natural Resources Building, Olympia, (360) 902-2936.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes do not directly regulate small business. This rule proposal involves recreational hunting requirements.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is not related to hydraulics rules.

June 25, 2014
Joanna M. Eide
Rules Coordinator

NEW SECTION

WAC 232-12-286 Reducing the spread of hoof disease—Unlawful transport of elk hooves. (1) It is unlawful to transport the hooves of harvested elk beyond the site where the animal was killed in Game Management Units 501 through 564, and 642 through 699.

(2) Violation of this section is an infraction under RCW 77.15.160, Infractions.

WSR 14-14-058
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed June 26, 2014, 2:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-24-105.

Title of Rule and Other Identifying Information: WAC 246-824-070 Examination appeal procedures, amending the process to appeal examination results for dispensing optician applicants.

Hearing Location(s): Department of Health, 111 Israel Road S.E., Room 145, Tumwater, WA 98501, on August 12, 2014, at 1:00 p.m.

Date of Intended Adoption: August 14, 2014.

Submit Written Comments to: Judy Haenke, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by August 12, 2014.

Assistance for Persons with Disabilities: Contact Judy Haenke by August 5, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule clarifies the informal examination review process for dispensing optician applicants and removes the stated process for formal review of examination scores.

Reasons Supporting Proposal: The informal review process has been a worthwhile and low cost tool in allowing candidates to express their concerns about the examination. There are other more efficient appeal processes in place when an applicant does not meet the credentialing requirements such as the notice of determination hearing or the brief adjudicative proceeding.

Statutory Authority for Adoption: RCW 18.130.040(4).

Statute Being Implemented: RCW 18.130.040(4) and chapter 18.34 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Judy Haenke, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4947.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Judy Haenke, Program Manager, 111 Israel Road S.E., Tumwater WA 98501, phone (360) 236-4947, fax (360) 236-2901, e-mail judy.haenke@doh.wa.gov. A cost-benefit analysis was not prepared. By definition, this is a procedural rule and does not meet the definition of a significant legislative rule.

June 25, 2014
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 02-18-025, filed 8/23/02, effective 9/23/02)

WAC 246-824-070 ((Examination appeal procedures.)) Informal review of examination results. (1) Any candidate who does not pass the examination may request informal review of his or her examination results by the dispensing optician examining committee. ~~((This request must be in writing and must be received by the department within thirty days of receipt of the examination results. The committee will not set aside its prior determination unless the candidate shows error in examination content or procedure, or bias, prejudice, or discrimination in the examination process. The committee will not consider any challenges to examination scores unless the total revised score on any examination~~

~~section would result in a passing score on that section of the examination:))~~

~~(2) ((The procedure for filing)) The candidate must request an informal review within thirty days after receiving the examination results from the department.~~

~~(3) To request an informal review ((is as follows:~~

~~((a)) the candidate must contact the department of health ((office in Olympia)) for an appointment to appear personally to review incorrect answers on the written portion of a failed examination, ((and)) or score sheets on the failed practical portion of the examination.~~

~~((b)) (4) The candidate ((will be provided)) must complete a form ((to complete in the department of health office in Olympia in defense of examination answers.~~

~~((e)) provided by the department. The candidate must ((specifically)) identify the challenged portion(s) of the examination and ((must)) state the specific reason or reasons why the candidate feels the results of the examination should be changed.~~

~~((3) Any candidate who is not satisfied with the result of the informal examination review may submit a request for a formal hearing to be held before the dispensing optician examining committee. This request must be in writing and must be received by the department within thirty days of receipt of the results of the committee's informal examination review. The written request must specifically identify the challenged portion(s) of the examination and must state the specific reason(s) why the candidate feels the results of the examination should be changed. The examining committee will not set aside its prior determination unless the candidate shows error in examination content or procedure, or bias, prejudice, or discrimination in the examination process. The committee will not consider any challenges to examination scores unless the total revised score on any individual examination section would result in a passing score on that section of the examination.~~

~~(4) The formal hearing will be held pursuant to the Administrative Procedure Act, chapter 34.05 RCW, and the model procedural rules for adjudicative proceeding of the department of health, chapter 246-10 WAC.))~~

WSR 14-14-066

PROPOSED RULES

STATE BOARD OF HEALTH

[Filed June 27, 2014, 10:21 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Chapter 246-650 WAC, Newborn screening sample collections and health provider reporting.

Hearing Location(s): Washington State Capitol Campus, Cherberg Building, Hearing Room 3, 304 15th Avenue, Olympia, WA 98504, on August 13, 2014, at 1:30 p.m.

Date of Intended Adoption: August 13, 2014.

Submit Written Comments to: Lain Knowles, Department of Health, Public Health Labs, 1610 N.E. 150th Street, MSTP K17-9, Shoreline, WA 98155-9701, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (206) 418-5415, by August 4, 2014.

Assistance for Persons with Disabilities: Contact Melanie Hisaw by August 4, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amends the newborn screening chapter 246-650 WAC, so that rules are consistent with changes made by SHB 2544, chapter 18, Laws of 2014. SHB 2544 amended chapter 70.83 RCW to require each hospital, and all health care providers attending a birth outside of a hospital to collect and submit a sample blood specimen to the department within a specified timeframe. The hospital or health care provider must collect the blood spot specimen for all newborns no more than forty-eight hours after the birth of the newborn. The department must receive the sample blood specimen within seventy-two hours after the collection, excluding any day that the Washington state public health laboratory is closed. The bill also adds an annual report for time taken to notify parent(s) when further diagnostic testing is required.

Reasons Supporting Proposal: With the exception of those newborn infants whose parents or guardians object to testing because of conflict with their religious tenants [tenants] and practices, it is important to screen all newborns for the metabolic disorders. Newborn screening saves lives and reduces long-term care costs for affected babies. In 2012, the newborn screening program detected 209 newborns with a metabolic disorder among the 86,180 births in Washington. Early detection of a metabolic disorder helps equip families with the necessary health information and resources.

Statutory Authority for Adoption: Chapter 70.83 RCW, SHB 2544 (chapter 18, Laws of 2014).

Statute Being Implemented: SHB 2544 (chapter 18, Laws of 2014).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lain Knowles, Department of Health, Public Health Labs, 1610 N.E. 150th Street, Shoreline, WA 98155-9701, (206) 418-5420.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

June 27, 2014

Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 13-24-072, filed 11/26/13, effective 1/1/14)

WAC 246-650-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

For the purposes of this chapter:

(1) "Amino acid disorders" means disorders of metabolism characterized by the body's inability to correctly process amino acids or the inability to detoxify the ammonia released during the breakdown of amino acids. The accumulation of amino acids or their by-products may cause severe complications including mental retardation, coma, seizures, and possibly death. For the purpose of this chapter amino acid disorders include: Argininosuccinic acidemia (ASA), citrullinemia (CIT), homocystinuria (HCY), maple syrup urine disease (MSUD), phenylketonuria (PKU), and tyrosinemia type I (TYR I).

(2) "Board" means the Washington state board of health.

(3) "Biotinidase deficiency" means a deficiency of an enzyme (biotinidase) that facilitates the body's recycling of biotin. The result is biotin deficiency, which if undetected and untreated, may result in severe neurological damage or death.

(4) "Congenital adrenal hyperplasia" means a severe disorder of adrenal steroid metabolism which may result in death of an infant during the neonatal period if undetected and untreated.

(5) "Congenital hypothyroidism" means a disorder of thyroid function during the neonatal period causing impaired mental functioning if undetected and untreated.

(6) "Cystic fibrosis" means a life-shortening disease caused by mutations in the gene encoding the cystic fibrosis transmembrane conductance regulator (CFTR), a transmembrane protein involved in ion transport. Affected individuals suffer from chronic, progressive pulmonary disease and nutritional deficits. Early detection and enrollment in a comprehensive care system provides improved outcomes and avoids the significant nutritional and growth deficits that are evident when diagnosed later.

(7) "Department" means the Washington state department of health.

(8) "Fatty acid oxidation disorders" means disorders of metabolism characterized by the inability to efficiently use fat to make energy. When the body needs extra energy, such as during prolonged fasting or acute illness, these disorders can lead to hypoglycemia and metabolic crises resulting in serious damage affecting the brain, liver, heart, eyes, muscle, and possibly death. For the purpose of this chapter fatty acid oxidation disorders include: Carnitine uptake defect (CUD), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), medium-chain acyl-CoA dehydrogenase deficiency (MCADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD).

(9) "Galactosemia" means a deficiency of enzymes that help the body convert the simple sugar galactose into glucose resulting in a buildup of galactose and galactose-1-PO₄ in the blood. If undetected and untreated, accumulated galactose-1-

PO₄ may cause significant tissue and organ damage often leading to sepsis and death.

(10) "Hemoglobinopathies" means a group of hereditary blood disorders caused by genetic alteration of hemoglobin which results in characteristic clinical and laboratory abnormalities and which leads to developmental impairment or physical disabilities.

(11) "Organic acid disorders" means disorders of metabolism characterized by the accumulation of nonamino organic acids and toxic intermediates. This may lead to metabolic crisis with ketoacidosis, hyperammonemia and hypoglycemia resulting in severe neurological and physical damage and possibly death. For the purpose of this chapter organic acid disorders include: 3-OH 3-CH₃ glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), and propionic acidemia (PROP).

(12) "Newborn" means an infant born in ~~((a hospital))~~ any setting in the state of Washington ~~((prior to discharge from the hospital of birth or transfer))~~.

(13) "Newborn screening specimen/information form" means the information form provided by the department including the filter paper portion and associated dried blood spots. A specimen/information form containing patient information is "health care information" as ~~((defined by the Uniform Health Care Information Act, RCW 70.02.010(7)))~~ used in chapter 70.02 RCW.

(14) "Significant screening test result" means a laboratory test result indicating a suspicion of abnormality and requiring further diagnostic evaluation of the involved infant for the specific disorder.

(15) "Severe combined immunodeficiency (SCID)" means a group of congenital disorders characterized by profound deficiencies in T- and B- lymphocyte function. This results in very low or absent production of the body's primary infection fighting processes that, if left untreated, results in severe recurrent, and often life-threatening infections within the first year of life.

AMENDATORY SECTION (Amending WSR 13-24-072, filed 11/26/13, effective 1/1/14)

WAC 246-650-020 Performance of screening tests.

(1) Hospitals ~~((providing))~~ and other providers of birth and delivery services or neonatal care to infants shall:

(a) Inform parents or responsible parties, by providing a departmental information pamphlet or by other means, of:

(i) The purpose of screening newborns for congenital disorders;

(ii) Disorders of concern as listed in WAC 246-650-020(2);

(iii) The requirement for newborn screening;

(iv) The legal right of parents or responsible parties to refuse testing because of religious tenets or practices as specified in RCW 70.83.020; and

(v) The specimen storage, retention and access requirements specified in WAC 246-650-050.

(b) Obtain a blood specimen for laboratory testing as specified by the department from each newborn (~~(prior to discharge from the hospital or, if not yet discharged,)~~) no later than (~~(five days of age)~~) forty-eight hours following birth.

(c) Use department-approved newborn screening specimen/information forms and directions for obtaining specimens.

(d) Enter all identifying and related information required on the specimen/information form following directions of the department.

(e) In the event a parent or responsible party refuses to allow newborn screening, obtain signatures from parents or responsible parties on the department specimen/information form.

(f) Forward the specimen/information form with dried blood spots or signed refusal to the Washington state public health laboratory so that it will be received no later than (~~(the day after collection or refusal signature)~~) seventy-two hours following collection of the specimen, excluding any day that the state laboratory is closed.

(2) Upon receipt of specimens, the department shall:

(a) Record the time and date of receipt;

(b) Perform appropriate screening tests for:

(i) Biotinidase deficiency;

(ii) Congenital hypothyroidism;

(iii) Congenital adrenal hyperplasia;

(iv) Galactosemia;

(v) Hemoglobinopathies;

(vi) Cystic fibrosis;

(vii) The amino acid disorders: Argininosuccinic acidemia (ASA), citrullinemia (CIT), homocystinuria, maple syrup urine disease (MSUD), phenylketonuria (PKU), and tyrosinemia type I (TYR 1);

(viii) The fatty acid oxidation disorders: Carnitine uptake defect (CUD), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), medium chain acyl-coA dehydrogenase deficiency (MCADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD);

(ix) The organic acid disorders: 3-OH 3-CH₃ glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), propionic acidemia (PROP);

(x) Severe combined immunodeficiency (SCID);

~~((b))~~ (c) Report significant screening test results to the infant's attending physician or family if an attending physician cannot be identified; and

~~((e))~~ (d) Offer diagnostic and treatment resources of the department to physicians attending infants with presumptive positive screening tests within limits determined by the department.

(3) Once the department notifies the attending health care provider of significant screening test results, the attending health care provider shall notify the department of the date upon which the results were disclosed to the parent or guardian of the infant. This requirement expires January 1, 2020.

AMENDATORY SECTION (Amending WSR 03-24-026, filed 11/24/03, effective 12/25/03)

WAC 246-650-040 Reports to the board and the public. (1) The department shall report to the board annually the following information concerning tests conducted (~~(pursuant to)~~) under this section:

~~((1))~~ (a) The costs of tests as charged by the department;

~~((2))~~ (b) The results of each category of tests, by county of birth and ethnic group, as reported on the newborn screening form and, if available, birth certificates; and

~~((3))~~ (c) Follow-up procedures and the results of such follow-up procedures.

(2) The department shall compile an annual report for the public that includes:

(a) The compliance rate of each hospital meeting the deadlines established under RCW 70.83.020 for newborn screenings;

(b) The performance rate of each individual hospital;

(c) The extent to which health care providers are promptly informing parents and guardians about infant screening tests that indicate a suspicion of abnormality that requires further diagnostic evaluation.

(3) The reports must be made available in a format that does not disclose the identifying information related to any infant, parent or guardian, or health care provider.

(4) The report must be posted in an accessible location on the department of health's web site.

(5) Subsections (2) through (4) of this section expire January 1, 2020.

WSR 14-14-111
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed July 1, 2014, 3:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-10-089 on May 7, 2014.

Title of Rule and Other Identifying Information: The subject of this proposed rule making is amendments to migratory waterfowl seasons and regulations in WAC 232-28-436 for the 2014-2015 hunting season.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on August 8-9, 2013 [2014], at 8:30 a.m.

Date of Intended Adoption: On or after August 8, 2014.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by July 25, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by August 1, 2014, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to migratory waterfowl seasons and regulations

are to provide recreational activity and resource conservation.

Reasons Supporting Proposal: To provide hunting opportunity and agricultural damage control consistent with the status of waterfowl species, and establish waterfowl hunting seasons within frameworks established by the United States Fish and Wildlife Service.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.055, and 77.12.047.

Rule is necessary because of federal law, C.F.R. Title 50, Part 20; Migratory Bird Treaty Act.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nate Pamplin, Natural Resources Building, Olympia, (360) 902-2515; and Enforcement: Steven Crown, Natural Resources Building, Olympia, (360) 902-2936.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules affect recreational waterfowl hunting and do not directly regulate small business.

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

July 1, 2014
Joanne M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-17-083, filed 8/19/13, effective 9/19/13)

WAC 232-28-436 ((2013-))2014-2015 Migratory waterfowl seasons and regulations.

DUCKS

Statewide: ((Oct. 12-16, 2013 and Oct. 19, 2013 – Jan. 26, 2014; except scaup season closed Oct. 12 – Nov. 1, 2013-)) Oct. 11-15, 2014 and Oct. 18, 2014 – Jan. 25, 2015.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): ((Sept. 21-22, 2013)) Sept. 20-21, 2014.

Daily Bag Limit: 7 ducks, to include not more than 2 hen mallard, 2 pintail, ((3 scaup, 4)) 2 canvasback, and 2 redhead statewide; and to include not more than 1 harlequin, 2 scoter, 2 long-tailed duck, and 2 goldeneye in Western Washington.

Possession Limit for Regular Season: 21 ducks, to include not more than 6 hen mallard, 6 pintail, ((9 scaup, 3)) 6 canvasback, and 6 redhead statewide; and to include not more than 1 harlequin, 6 scoter, 6 long-tailed duck, and 6 goldeneye in Western Washington.

Possession Limit for Youth Hunting Weekend: 14 ducks, to include not more than 4 hen mallard, 4 pintail, ((6 scaup, 2)) 4 canvasback, and 4 redhead statewide; and to include not more than 1 harlequin, 4 scoter, 4 long-tailed duck, and 4 goldeneye in Western Washington.

Season Limit: 1 harlequin in Western Washington.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SEA DUCKS

Hunters must possess a special ((2013-2014)) 2014-15 hunting authorization and harvest record card for sea ducks when hunting harlequin, scoter, long-tailed duck, and goldeneye in Western Washington. ((~~Hunters who did not possess a 2012-13 sea duck harvest record~~)) A hunter who has not previously possessed a sea duck harvest report card must submit an application form to Washington state department of fish and wildlife (WDFW). Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest record card.

COOT (Mudhen)

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily Bag Limit: 25 coots.

Possession Limit: 75 coots.

SNIPE

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily Bag Limit: 8 snipe.

Possession Limit: 24 snipe.

GEESE (except Brant)

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): ((Sept. 21-22, 2013)) Sept. 20-21, 2014, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily Bag Limit: 4 Canada geese.

Possession Limit: 8 Canada geese.

Western Washington Goose Seasons

Goose Management Area 1: Island, Skagit, Snohomish counties. ((Oct. 12, 2013 – Jan. 26, 2014)) Oct. 11, 2014 – Jan. 25, 2015 for snow, Ross', and blue geese. ((Oct. 12-24, 2013 and Nov. 2, 2013 – Jan. 26, 2014)) Oct. 11-23, 2014 and Nov. 1, 2014 – Jan. 25, 2015 for other geese (except brant).

Daily Bag Limit: 4 geese.

Possession Limit: 12 geese.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SNOW GEESE

Hunters must possess a special ((2013-14)) 2014-15 migratory bird hunting authorization and harvest record card for snow geese when hunting snow, Ross', and blue geese in Goose Management Area 1. ((~~Hunters who did not possess a 2012-13 snow goose harvest record card must submit an application form to WDFW.~~)) A hunter who has not previously possessed a snow goose harvest report card must submit an application form to Washington state department of fish and wildlife (WDFW). Immediately after taking a snow,

Ross', or blue goose into possession, hunters must record in ink the information required on the harvest record card.

~~((SNOW GOOSE QUALITY HUNTING PROGRAM IN GOOSE MANAGEMENT AREA 1~~

~~All hunters must obey posted signs regarding access restrictions. Quality hunt units are not available for commercial uses.))~~

SKAGIT COUNTY SPECIAL RESTRICTIONS

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or to discharge a firearm for the purpose of hunting snow geese within 100 feet of any paved public road in other areas of Skagit County.

While hunting snow geese, if a hunter is convicted of (a) trespass; (b) shooting from, across, or along the maintained part of any public highway; (c) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or discharging a firearm within 100 feet of any paved public road for the purpose of hunting snow geese in other areas of Skagit County; or (d) exceeding the daily bag limit for geese, authorization will be invalidated for the remainder of the current snow goose season and an authorization will not be issued for the subsequent snow goose season.

Goose Management Area 2A

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River: Open in all areas except Ridgefield NWR from 8:00 a.m. to 4:00 p.m., Saturdays, Sundays, and Wednesdays only, ~~((Nov. 9 – Dec. 1, 2013 and Dec. 11, 2013 – Jan. 26, 2014, except closed Dec. 25, 2013 and Jan. 1, 2014.))~~ Nov. 8–30, 2014 and Dec. 10, 2014 – Jan. 25, 2015. Ridgefield NWR open from 8:00 a.m. to 4:00 p.m., Tuesdays, Thursdays, and Saturdays only, ~~((Nov. 9–30, 2013 and Dec. 12, 2013 – Jan. 25, 2014, except closed Nov. 28, 2013))~~ Nov. 8–29, 2014 and Dec. 11, 2014 – Jan. 24, 2015; except closed Nov. 11, Nov. 27, and Dec. 25, 2014; and Jan. 1, 2015.

Bag Limits for Goose Management Area 2A:

Daily Bag Limit: 4 geese, to include not more than 1 dusky Canada goose ~~((and 3 cackling geese)).~~

Possession Limit: 12 geese, to include not more than 1 dusky Canada goose ~~((and 9 cackling geese)).~~

Season Limit: 1 dusky Canada goose.

Goose Management Area 2B

Pacific County: Open from 8:00 a.m. to 4:00 p.m., Saturdays and Wednesdays only, ~~((Oct. 12–23, 2013 and Nov. 2, 2013 – Jan. 18, 2014))~~ Oct. 11–25, 2014 and Nov. 1, 2014 – Jan. 17, 2015.

Bag Limits for Goose Management Area 2B:

Daily Bag Limit: 4 geese, to include not more than 1 dusky Canada goose, ~~((3 cackling geese.))~~ and 1 Aleutian goose.

Possession Limit: 12 geese, to include not more than 1 dusky Canada goose, ~~((9 cackling geese.))~~ and 3 Aleutian geese.

Season Limit: 1 dusky Canada goose.

Special Provisions for Goose Management Areas 2A and 2B:

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

The goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total ~~((40))~~ 80 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of ~~((40))~~ 80 dusks, to be distributed ~~((5))~~ 15 for Zone 1 (Ridgefield NWR); ~~((5))~~ 25 for Zone 2 (Cowlitz County south of the Kalama River); ~~((45))~~ 20 for Zone 3 (Clark County except Ridgefield NWR); ~~((7))~~ 10 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); and ~~((8))~~ 10 for Zone 5 (Pacific County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunters must possess a valid special ~~((2013–14))~~ 2014-15 migratory bird hunting authorization and harvest record card for Goose Management Area 2A/2B ~~((and daily goose harvest record card))~~ when hunting geese in Goose Management Areas 2A and 2B. New hunters and those who did not maintain a valid ~~((2012–13))~~ 2013-14 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time.

Immediately after taking any goose into possession, hunters must record in ink the information required on the harvest record card. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. All geese shall be presented intact and fully feathered at the check station. If a hunter takes the season bag limit of 1 dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest record card, authorization will be invalidated and the hunter will not be able to hunt geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late goose season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

Special Late Goose Season for Goose Management Area 2A:

Open to WDFW master hunter program graduates and youth hunters (15 years of age or under, who are accompanied by a master hunter) possessing a valid special ~~((2013–14))~~ 2014-15 migratory bird hunting authorization for Goose Management Area 2A/2B and daily goose harvest record card, in

areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.: Saturdays and Wednesdays only, (~~Feb. 1 – Mar. 5, 2014~~) Feb. 4 – Mar. 8, 2015.

Daily Bag Limit: 4 geese, to include not more than 1 dusky Canada goose (~~and 3 cackling geese~~).

Possession Limit: 12 geese, to include not more than 1 dusky Canada goose (~~and 9 cackling geese~~).

Season Limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. WDFW will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds (~~(45)~~) 85 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.

Goose Management Area 3

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B: (~~Oct. 12-24, 2013 and Nov. 2, 2013 – Jan. 26, 2014~~) Oct. 11-23, 2014 and Nov. 1, 2014 – Jan. 25, 2015.

Daily Bag Limit: 4 geese.

Possession Limit: 12 geese.

Eastern Washington Goose Seasons

Goose Management Area 4

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties: Saturdays, Sundays, and Wednesdays only during (~~Oct. 12, 2013 – Jan. 19, 2014; Nov. 11, 28 and 29, 2013; Dec. 26, 27, 30, and 31, 2013; and every day Jan. 20-26, 2014~~) Oct. 11, 2014 – Jan. 18, 2015; Nov. 11, 27, and 28, 2014; Dec. 25, 26, 29, and 30, 2014; and every day Jan. 19-25, 2015.

Goose Management Area 5

Includes all parts of Eastern Washington not included in Goose Management Area 4: (~~Oct. 12-14, 2013, every day from Oct. 19, 2013 – Jan. 26, 2014~~) Oct. 11-13, 2014 and every day from Oct. 18, 2014 – Jan. 25, 2015.

Bag Limits for all Eastern Washington Goose Management Areas:

Daily Bag Limit: 4 geese.

Possession Limit: 12 geese.

BRANT

Open in Skagit County only on the following dates: Jan. (~~11, 12, 15, 18, 19, 22, 25, and 26, 2014~~) 10, 11, 14, 17, 18, 21, 24, and 25, 2015.

If the (~~(2013-14)~~) 2014-15 preseason brant population in Skagit County is below 6,000 (as determined by the midwinter waterfowl survey), the brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates: (~~Jan. 4, 5, 7, 9, 11, 12, 14, 16, 18, and 19, 2014~~) Jan. 3, 4, 6, 8, 10, 11, 13, 15, 17, and 18, 2015.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT BRANT

Hunters must possess a special (~~(2013-14)~~) 2014-15 migratory bird hunting authorization and harvest record card for brant when hunting brant. (~~(Hunters who did not possess a 2012-13 brant harvest record card must submit an application form to WDFW.)~~) A hunter who has not previously possessed a brant harvest report card must submit an application form to Washington state department of fish and wildlife (WDFW). Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest record card.

Bag Limits for Skagit and Pacific counties:

Daily Bag Limit: 2 brant.

Possession Limit: 6 brant.

SWANS

Season closed statewide.

MANDATORY REPORTING FOR MIGRATORY BIRD HARVEST RECORD CARDS

Hunters must report (~~(2013-14)~~) 2014-15 harvest information from band-tailed pigeon harvest record cards to WDFW by Sept. 30, (~~(2013)~~) 2014, and harvest information from brant, sea duck, and snow goose harvest record cards to WDFW by Feb. 15, (~~(2014)~~) 2015. Every person issued a migratory bird hunting authorization and harvest record card must return the entire card to WDFW or report the card information at the designated internet site listed on the harvest record card. Any hunter failing to report by the deadline will be in noncompliance of reporting requirements. Hunters who have not reported hunting activity by the reporting deadline for any harvest record card acquired in (~~(2013-14)~~) 2014-15 will be required to pay a \$10 administrative fee before any new (~~(2014-15)~~) 2015-16 migratory bird authorization and harvest record card will be issued. A hunter may only be penalized a maximum of \$10 during a license year.

FALCONRY SEASONS**DUCKS, COOTS, AND SNIPE (Falconry)**

(Bag limits include geese and mourning doves.)

~~((Oct. 12-16, 2013 and Oct. 19, 2013 – Jan. 26, 2014))~~ Oct. 11-15, 2014 and Oct. 18, 2014 – Jan. 25, 2015 statewide.

Daily Bag Limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession Limit: 9, straight or mixed bag with geese and mourning doves during established seasons.

GEESE (Falconry)

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: ~~((Oct. 12, 2013 – Jan. 26, 2014))~~ Oct. 11, 2014 – Jan. 25, 2015 for snow, Ross', or blue geese. ~~((Oct. 12-24, 2013 and Nov. 2, 2013 – Jan. 26, 2014))~~ Oct. 11-23, 2014 and Nov. 1, 2014 – Jan. 25, 2015 for other geese.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, ~~((Nov. 9-24, 2013 and Dec. 4, 2013 – Jan. 26, 2014))~~ Nov. 8-23, 2014 and Dec. 3, 2014 – Jan. 25, 2015.

Goose Management Area 2B: Saturdays and Wednesdays only, ~~((Oct. 12-23, 2013 and Nov. 2, 2013 – Jan. 18, 2014))~~ Oct. 11-25, 2014 and Nov. 1, 2014 – Jan. 17, 2015.

Goose Management Areas 3, 4, and 5: ~~((Oct. 12-13, 2013 and Nov. 2, 2013 – Jan. 26, 2014))~~ Oct. 11-12, 2014 and Nov. 1, 2014 – Jan. 25, 2015.

Daily Bag Limit for All Areas: 3 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession Limit for All Areas: 9 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Date of Intended Adoption: Not sooner than August 6, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on August 5, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 29, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 182-504-0135 explains what a Washington apple health client's rights are in getting his or her health care coverage reinstated while pending an appeal with the agency; and adding clarifying information to WAC 182-506-0015 that was inadvertently left out of the last revision.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Jessie Dean, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1501.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee (JARRC) has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by JARRC or applied voluntarily.

July 1, 2014

Kevin M. Sullivan
Rules Coordinator

WSR 14-14-114**PROPOSED RULES****HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed July 1, 2014, 5:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-003.

Title of Rule and Other Identifying Information: WAC 182-504-0135 Washington apple health—Reinstated coverage pending an appeal (new) and 182-506-0015 Medical assistance units for non-MAGI-based Washington apple health programs.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on August 5, 2014, at 10:00 a.m.

NEW SECTION

WAC 182-504-0135 Washington apple health—Reinstated coverage pending an appeal. (1) If you disagree with a Washington apple health (WAH) decision that we (the agency or its designee) made, you have the right to appeal under RCW 74.09.741. The appeal rules are found in chapter 182-526 WAC.

(2) If we end or change your WAH coverage without the advance notice required by WAC 182-518-0025(3) and you appeal on or before the tenth day after the date you receive the written notice of the WAH decision, WAH coverage will be reinstated and continue until the appeals process ends, unless otherwise specified in this section. This is called reinstated coverage.

(3) We will treat the fifth day after the date on the notice as the date you received the notice; however, if you show that you received the notice more than five days after the date on

the notice, we will use the actual date you received the notice for counting the ten-day appeal period for the purpose of providing continued coverage. If the tenth day falls on a weekend or holiday, you have until the next business day to appeal and still be able to receive continued coverage.

(4) You receive reinstated coverage through the end of the month an administrative hearing decision is sent to you unless:

(a) An administrative law judge or our presiding officer serves an order ending reinstated coverage; or

(b) You:

(i) Tell us in writing that you do not want reinstated coverage; or

(ii) Withdraw your appeal in writing or at an administrative proceeding.

(5) You cannot receive reinstated coverage when a change in your WAH coverage is the result of a mass change. A mass change is when rules change that impact coverage for a class of applicants and recipients or due to a legislative or statutory change.

(6) A person receiving WAH medically needy coverage is not eligible for reinstated coverage beyond the end of the original certification period described in WAC 182-504-0020.

(7) If we end your WAH coverage because mail we sent to you was returned to us with no forwarding address, your WAH coverage will be reinstated if you continue to meet eligibility requirements and if we receive notification from you of your new address.

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-506-0015 Medical assistance units for non-MAGI-based Washington apple health programs. This section explains how medical assistance units (MAUs) are constructed for programs not based on modified adjusted gross income (MAGI) methodologies. (MAGI-based programs are described in WAC 182-503-0510.)

(1) An MAU is a person or group of people who must be included together when determining eligibility. MAUs are established based on each person's relationship to other family members and the person's financial responsibility for the other family members. MAUs for non-MAGI-based programs include an applicant and persons financially responsible for the applicant as described in subsection (2) of this section (as limited by subsection (3) of this section).

(2) Financial responsibility applies only to spouses and to parents, as follows:

(a) Married persons, living together are financially responsible for each other;

(b) Natural, adoptive, or step-parents are financially responsible for their unmarried, minor children living in the same household;

(c) Minor children are not financially responsible for their parents or for their siblings;

(d) Married persons' financial responsibility for each other when not living together because one or both are residing in a medical institution is described in chapter 182-513 WAC.

(3) The number of persons in the MAU is increased by one for each verified unborn child for each pregnant woman already included in the MAU under this section.

(4) A separate SSI-related MAU is required for:

(a) SSI recipients;

(b) SSI-related persons;

(c) Institutionalized persons;

(d) The purpose of applying medical income standards for an:

(i) SSI-related applicant whose spouse is not related to SSI or is not applying for SSI-related medical; and

(ii) Ineligible spouse of an SSI recipient.

(5) When determining eligibility for an SSI-related medical program, the agency determines how household income is allocated and deemed to the SSI-related person according to the rules described in WAC 182-512-0820 and 182-512-0900 through 182-512-0960.

WSR 14-14-115

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 2, 2014, 7:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-04-128.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-444-0030 Do I have to work to be eligible for Basic Food benefits if I am an able-bodied adult without dependents (ABAWD)? and 388-444-0040 Can I volunteer for an unpaid work program in order to meet the work requirements under WAC 388-444-0030?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on August 5, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 6, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 5, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 22, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-444-0030 and 388-444-0040 to extend the date for which the ABAWD waiver applies, as well as to clarify the verbiage of workfare as related to work requirements for ABAWDs.

Reasons Supporting Proposal: This rule making is part of an annual update which is required in order to correctly apply ABAWD rules based on any existing and approved ABAWD waivers.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 273.18.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only updates the date for which the ABAWD waiver is approved through.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

June 26, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-17-123, filed 8/21/13, effective 9/21/13)

WAC 388-444-0030 Do I have to work to be eligible for Basic Food benefits if I am an able-bodied adult without dependents (ABAWD)? (1) An able-bodied adult without dependents (ABAWD) is a person who:

- (a) Is physically and mentally able to work;
- (b) Is age eighteen through forty-nine; and
- (c) Has no child in the household.

(2) If you are an ABAWD, you must participate in employment and training activities under subsection (4) unless you are exempt from ABAWD requirements under WAC 388-444-0035.

(3) Nonexempt ABAWDs who fail to participate may continue to receive food assistance until September 30, ~~((2014))~~ 2015.

(4) Beginning October 1, ~~((2014))~~ 2015, an ABAWD is not eligible to receive food assistance for more than three full months in a thirty-six month period, except as provided in WAC 388-444-0035, unless that person:

- (a) Is exempt from ABAWD requirements under WAC 388-444-0035;
- (b) Works at least twenty hours a week averaged monthly;
- (c) Participates in on the job training (OJT), which may include paid work and classroom training time, for at least twenty hours a week;
- (d) Participates in an unpaid work program as provided in WAC 388-444-0040; or

(e) Participates in and meets the requirements of one of the following work programs:

- (i) The Job Training Partnership Act (JTPA);
- (ii) Section 236 of the Trade Act of 1974; or
- (iii) A state-approved employment and training program.

AMENDATORY SECTION (Amending WSR 10-23-112, filed 11/17/10, effective 12/18/10)

WAC 388-444-0040 Can I volunteer for an unpaid work program in order to meet the work requirements under WAC 388-444-0030? The department makes unpaid work programs available for persons who need to meet work requirements under WAC 388-444-0030.

(1) The following are considered unpaid work programs:

(a) Workfare, which includes:

(i) ~~((Thirty days of job))~~ Job search activities ~~((in))~~ during the first ~~((month))~~ thirty days beginning with the ~~((first))~~ day of application, or sixteen hours of volunteer work with a public or private nonprofit agency; and

(ii) In subsequent months, sixteen hours per month of volunteer work with a public or private nonprofit agency allows you to remain eligible for Basic Food benefits.

(iii) Workfare does not include enforced community service or for paying fines or debts due to legal problems.

(b) Work experience (WEX) which provides supervised, unpaid work for at least twenty hours a week. WEX is intended to improve a person's work skills and make them more competitive in the job market. WEX must be for a nonprofit organization, government agency, or tribal entity.

(2) We may not **require** you to participate more than one hundred and twenty hours per month in an unpaid-work program, paid work, or a combination of activities. ABAWDs may volunteer to participate in activities beyond one hundred and twenty hours per month.

(3) The department may pay for some of the costs for you to participate in work programs. We set the standards for the amount we will pay for these expenses.

WSR 14-14-116
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)
[Filed July 2, 2014, 7:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-107.

Title of Rule and Other Identifying Information: WAC 388-160-0265 Do I need to report runaway youth who stay at the shelter?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on August 5, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 6, 2014.

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

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 22, 2014, TTY (360) 664-6178 or (360) 664-6094 or e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 388-160-0265 establishes notification requirements for licensed shelters and organizations for the safety of youth served. RCW 13.32A.082 was changed requiring staff to contact parents within seventy-two hours of a youth coming to a shelter without parental permission, unless there are compelling reasons. If compelling reasons exist, the department must be contacted. The law also requires staff to check information that is publicly available at Washington state patrol every eight hours to see if a youth is listed as a runaway.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 13.32A.082.

Statute Being Implemented: RCW 13.32A.082.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mireya Beltre, DSHS Headquarters, 1115 Washington, Olympia, WA 98504, (360) 902-0270.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules are adopted without material change and ensure the WAC is consistent with RCW 13.32A.082. If the rule is not adopted, it would be out of compliance with state law. There is no cost to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 (5)(b). Rules adopted by reference without material change to ensure the WAC is consistent with RCW 13.32A.082. The rule content is dictated by statute.

June 26, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-15-001, filed 7/5/01, effective 8/5/01)

WAC 388-160-0265 ((Do)) When do I need to report runaway youth who stay at ((the)) a shelter? (1) Within ~~((eight))~~ seventy-two hours ~~(preferably within twenty-four hours)~~ of learning that a youth staying at a licensed shelter or licensed organization does not have parental permission to be there, ~~((shelter))~~ staff must ~~((report the location of the youth to:~~

~~(a) The parent;~~

~~(b) The law enforcement agency having jurisdiction in the shelter's area; or~~

~~(c) The department)) notify the parent unless compelling reasons exist.~~

(2) The licensed shelter licensed organization staff must:
(a) Make the report by telephone or other reasonable means; ~~((and))~~

(b) Document the report in writing in the youth's file;

~~(c) Provide the youth's whereabouts;~~

(d) Provide a description of the youth's physical and emotional condition; and

(e) Report the circumstances surrounding the youth's contact with the shelter or licensed organization.

(3) If a compelling reason exists, the licensed shelter or licensed organization must notify the department. Compelling reasons include, but are not limited to, circumstances that indicate notifying the parent will subject the minor to abuse or neglect as defined in RCW 26.44.020.

(4) Licensed shelter or licensed organization staff must review the information that Washington state patrol makes publicly available under RCW 43.43.510(2) at least once every eight hours for youth who meet this criteria, while the youth is present at the shelter. If a youth in the shelter or organization is publicly listed as missing, staff must immediately notify the department of it's contact with the missing youth and report on items in subsection (2)(a) through (e) of this section.

WSR 14-14-117
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 2, 2014, 7:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-09-112.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-436-0002 If my family has an emergency, can I get help from DSHS to get or keep our housing or utilities?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on August 5, 2014, at 10:00 a.m.

Date of Intended Adoption: August 6, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by August 5, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 22, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-436-0002 to increase additional requirements for emergent needs (AREN) issuances

from a \$750.00 maximum lifetime limit to a \$750.00 maximum in a twelve month period.

Reasons Supporting Proposal: These proposed changes are necessary to implement the WorkFirst program changes outlined in the agency detail, rec sums for the supplemental budget (ESSB 6002) that passed the legislature on March 13, 2014. The proposed amendments are already in effect via an emergency adoption, as WSR 14-10-043, filed on April 30, 2014.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kerry Judge-Kemp, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4630.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. The proposed amendments are necessary to comply with WorkFirst program changes outlined in the agency detail, rec sums for the supplemental budget (ESSB 6002) that passed the legislature on March 13, 2014.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." The proposed changes will increase the AREN issuances from a \$750.00 maximum lifetime limit to a \$750.00 maximum in a twelve month period.

June 26, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-02-047, filed 12/30/11, effective 2/1/12)

WAC 388-436-0002 If my family has an emergency, can I get help from DSHS to get or keep our housing or utilities? DSHS has a program called additional requirements for emergent needs (AREN). If your family has an emergency and you need assistance to get or keep safe housing or utilities, you may be eligible. The special AREN payment is in addition to the regular monthly cash grant your family may already get.

(1) To get AREN, you must:

(a) Be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), or refugee cash assistance (RCA);

(b) Have an emergency housing or utility need;

(c) Have a good reason that you do not have enough money to pay your housing or utility costs; and

(d) Have not previously received the AREN maximum (~~lifetime~~) limit of seven hundred fifty dollars in a 12-month

period. We will count all AREN payments received (~~since April 2001~~) in a 12-month period by any adult in your TANF assistance unit, for any assistance unit, when we calculate your (~~lifetime~~) AREN limit.

(2) To get AREN, you must be eligible for TANF, SFA, or RCA. This means you must:

(a) Get benefits through TANF, SFA, or RCA. For RCA you must also be pregnant or have an eligible child; or

(b) Apply for TANF, SFA, and RCA, and meet all eligibility criteria including:

(i) The maximum earned income limit under WAC 388-478-0035;

(ii) The requirement that your unearned income not exceed the grant payment standard;

(iii) The requirement that your countable income as defined under WAC 388-450-0162 must be below the payment standard in WAC 388-478-0020 when you have both earned income and unearned income;

(iv) The resource limits under chapter 388-470 WAC;

(v) The program summary rules for either TANF (WAC 388-400-0005); SFA (WAC 388-400-0010); or RCA (WAC 388-400-0030); and

(vi) The requirement that you must be pregnant or have an eligible child.

(3) If you do not get or do not want to get TANF, SFA or RCA, you cannot get AREN to help with housing or utility costs. We will look to see if you are eligible for diversion cash assistance (DCA) under WAC 388-432-0005.

(4) To get AREN, you must have an emergency housing or utility need. You may get AREN to help pay to:

(a) Prevent eviction or foreclosure;

(b) Get housing if you are homeless or need to leave your home because of domestic violence;

(c) Hook up or prevent a shut off of utilities related to your health and safety. We consider the following utilities to be needed for health and safety:

(i) Electricity or fuel for heating, lighting, or cooking;

(ii) Water;

(iii) Sewer; and

(iv) Basic local telephone service if it is necessary for your basic health and safety. If you receive TANF or SFA, the Washington telephone assistance program (WTAP) may be used to help you pay for basic local telephone service.

(d) Repair damage or defect to your home when it causes a risk to your health or safety:

(i) If you own the home, we may approve AREN for the least expensive method of ending the risk to your health or safety;

(ii) If you do not own the home, you must ask the landlord in writing to fix the damage according to the Residential Landlord-Tenant Act at chapter 59.18 RCW. If the landlord refuses to fix the damage or defect, we may pay for the repair or pay to move you to a different place whichever cost is lower.

(e) If you receive TANF or SFA, WorkFirst support services under WAC 388-310-0800 may be used to help you relocate to new housing to get a job, keep a job, or participate in WorkFirst activities. Nonhousing expenses that are not covered under AREN may be paid under WorkFirst support

services. This includes expenses such as car repair, diapers, or clothing.

(5) To get AREN, you must have a good reason for not having enough money to pay for your housing or utility costs. You must prove that you:

(a) Did not have money available that you normally use to pay your rent and utilities due to an emergency situation that reduced your income (such as a long-term illness or injury);

(b) Had to use your money to pay for necessary or emergency expenses. Examples of necessary or emergency expenses include:

(i) Basic health and safety needs for shelter, food and clothing;

(ii) Medical care;

(iii) Dental care needed to get a job or because of pain;

(iv) Emergency child care;

(v) Emergency expenses due to a natural disaster, accident, or injury; and

(vi) Other reasonable and necessary expenses.

(c) Are currently homeless; or

(d) Had your family's cash grant reduced or suspended when we budgeted your expected income for the month, but the income will not be available to pay for the need when the payment is due. You must make attempts to negotiate later payments with your landlord or utility company before you can get AREN.

(6) In addition to having a good reason for not having enough money to pay for your costs, you must also explain how you will afford to pay for the on-going need in the future. We may deny AREN if your expenses exceed your income (if you are living beyond your means). We may approve AREN to help you get into housing you can afford.

(7) If you meet the above requirements, we decide the amount we will pay based on the following criteria.

(a) AREN payments may be made up to a maximum of seven hundred fifty dollars in a ~~((lifetime))~~ in a 12-month period.

(b) The number of AREN payments you can receive is not limited, as long as the total amount received by all adults in the assistance unit for any assistance unit, does not exceed the seven hundred fifty dollar ~~((lifetime))~~ limit in a 12-month period. If you or another adult in your assistance unit have already received the ~~((lifetime))~~ limit, you may not be eligible to receive additional payments.

(c) We will determine if any adult TANF/SFA recipient living in your household has already received the AREN ~~((lifetime))~~ limit.

(d) We have the discretion to approve an AREN payment above the seven hundred fifty dollar ~~((lifetime))~~ limit when your health and safety are in imminent danger.

(e) The amount of AREN is in addition to the amount of your monthly TANF, SFA, or RCA cash grant.

(f) We will decide the lowest amount we must pay to end your housing or utility emergency. We will contact your landlord, utility company, or other vendor for information to make this decision. We may take any of the following steps when deciding the lowest amount to pay:

(i) We may ask you to arrange a payment plan with your landlord or utility company. This could include us making a

partial payment, and you setting up a plan for you to repay the remaining amount you owe over a period of time.

(ii) We may have you use some of the money you have available in cash, checking, or savings to help pay for the expense. We will look at the money you have available as well as your bills when we decide how much we will pay.

(iii) We may consider income that is excluded or disregarded for cash assistance benefit calculations, such as SSI, as available to meet your emergency housing need.

(iv) We may consider money other individuals such as family or friends voluntarily give you. We will not count loans of money that you must repay to friends or family members.

(v) We may consider money from a nonneedy caretaker relative that lives in the home.

(vi) We may look at what other community resources you currently have to help you with your need.

(g) The seven hundred fifty dollar ~~((lifetime))~~ limit applies to the following people even if they leave the assistance unit:

(i) Adults; and

(ii) Minor parents that get AREN when no adults are in the assistance unit.

(8) We pay AREN directly to the landlord, mortgage company, utility, or other vendor.

(9) We may assign you a protective payee for your monthly grant under WAC 388-460-0020.

WSR 14-14-121

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed July 2, 2014, 8:07 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-13-090 How is an employee affected when his/her position is reallocated?, 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action?, 357-28-082 Is step M on the salary schedule different than other salary steps?, 357-28-110 Must an employee who is promoted receive a salary increase?, 357-28-115 Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase?, 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range?, 357-28-035 What must be addressed in the employer's salary determination policy?, and 357-28-088 If an employee accepts a transfer or demotion will the time spent at step L count towards the six years to qualify for step M in the new position?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 14, 2014, at 8:30 a.m.

Date of Intended Adoption: August 14, 2014.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by August 7, 2014. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 7, 2014, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed changes correspond with the recent changes made for represented employees, which allow an employee upon promotion or reallocation be placed at step M if that step falls within the required percentage of increase or minimum number of step increase.

Reasons Supporting Proposal: This is to align the state civil service rules with the supported collective bargaining agreement.

Statutory Authority for Adoption: Chapter 41.06 RCW.
Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kristie Wilson, 128 10th Avenue S.W., (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

July 2, 2014
Roselyn Marcus
Assistant Director
Legal and Legislative Services

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-13-090 How is an employee affected when his/her position is reallocated?

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and retains existing appointment status.</p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>→ The employee retains appointment status; has the right to be placed on the employer's internal layoff list; and has his/her salary set in accordance with WAC 357-28-120.</p>

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>→ The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements.</p> <p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and he/she has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</p> <p>Upon appointment to the higher class, the employee's base salary must be increased a minimum of a two step increase, not to exceed step ((L)) <u>M</u> of the range as provided in WAC 357-28-115.</p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>→ The employee retains the previous base salary in accordance with WAC 357-28-120.</p> <p><i>If the employee does not meet the competencies and other position requirements:</i></p> <p>→ The employer's layoff procedure applies.</p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p> <p>→ The employer's layoff procedure applies.</p>
The director revising the classification plan.	The employee remains in the position and keeps existing appointment status. See WAC 357-28-130 for determining the employee's salary.		

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-035 What must be addressed in the employer's salary determination policy? The employer's salary determination policy must minimally address the following:

- (1) Setting base salary for new employees;
- (2) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a position in a new class;
- (3) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a permanent position while in a nonpermanent appointment;

- (4) Setting base salary in accordance with WAC 357-28-140 when an employee transfers to a new position;
- (5) Setting base salary when an employee is appointed from an internal or statewide layoff list;
- (6) Setting base salary when an employee is reallocated to a position with a lower salary range and the employee's previous base salary is above step ((~~L~~)) M of the new salary range as permitted in WAC 357-28-120. Under no circumstance should an employee's salary exceed their previous base salary;
- (7) Setting base salary when an employee demotes for reasons other than accepting a demotion in lieu of layoff or accepting a demotion when a position is reallocated;

(8) Setting base salary when an employee is reverted following a voluntary demotion;

(9) Authorizing premiums for recruitment and retention as provided in WAC 357-28-095 and 357-28-100; and

(10) Setting base salary and progression based on recruitment and retention rather than years of experience for the nurse special pay salary schedules, if allowed by the employer.

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-082 Is step M on the salary schedule different than other salary steps? Step M is a longevity step. An employee cannot be appointed to step M upon initial hire (~~(or progress to step M upon promotion)~~).

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-088 If an employee (~~(accepts a new appointment)~~) transfers or demotes will the time spent at step L count towards the six years to qualify for step M in the new position? If an employee (~~(accepts a new appointment)~~) transfers to a position (~~(which is the same pay range as the previous position)~~), the time at step L in the previous position will count towards the six years to qualify for step M in the new position.

If an employee (~~(accepts a new appointment to a position which is a different pay range as the previous position)~~) is demoted (voluntary or involuntary), the time at step L in the previous position will not count towards the six years to qualify for step M (~~(in the new salary range. An exception to this is if the new appointment is due to an employee accepting a demotion in lieu of layoff or a layoff option to a position with a lower salary range maximum. In that case, the time spent at step L in the previous position will count towards the six years to qualify for step M in the new salary range)~~) except in accordance with WAC 357-28-135(2).

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-110 Must an employee who is promoted (~~(to a position in a class with a higher salary range)~~) receive a salary increase? An employee who is promoted (~~(to a position in a class with a higher salary range)~~) must receive a minimum increase of two steps not to exceed step (~~(E)~~) M of the salary range. The employer may grant (~~(higher increases)~~) more than an increase of two steps not to exceed step (~~(E)~~) M if:

(1) Significant increases in duties and responsibilities, as documented by the employer, warrant greater compensation;

(2) The increase is necessary for internal salary alignment, retention of the employee, or other documented business needs; or

(3) The increase is necessary to bring the employee to the minimum of the salary range for the position.

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-115 Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase? An employee occupying a position that is reallocated to a class with a higher salary range must receive a minimum increase of at least two steps not to exceed step (~~(E)~~) M of the salary range in accordance with WAC 357-28-110.

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range? An employee occupying a position that is reallocated to a class with the same or lower salary range must be placed within the new salary range at an amount equal to his/her previous base salary. If the previous base salary exceeds the new salary range, the employee's base salary must be set equal to step (~~(E)~~) M of the salary range for the reallocated position. The employee's base salary may be set (~~(at)~~) higher than step M (~~(or higher than the range maximum)~~), but not exceeding the previous base salary, if allowed by the employer's salary determination policy.

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action? The base salary of an employee appointed to a position due to a layoff action must be determined as follows:

(1) An employee who accepts a layoff option to a different position with the same salary range keeps the same base salary.

(2) An employee who accepts a demotion in lieu of layoff or accepts a layoff option to a position with a lower salary range maximum must be placed within the new range at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new range, the employee's base salary must be set equal to step (~~(E)~~) M of the new salary range. If the employee's previous base salary was at step M of the salary range the employee must be placed at step M of the new salary range.

(3) An employee who is appointed from an internal or statewide layoff list to a position with the same range as the position from which the employee was laid off must be placed within the range at a salary equal to the employee's previous base salary.

(4) An employee who is appointed from an internal or statewide layoff list to a position with a lower range maximum than the position from which the employee was laid off must have the salary determined by the employer's salary determination policy.

WSR 14-14-122
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed July 2, 2014, 8:08 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 357-31-005 For the purpose of chapter 357-31 WAC, what days are recognized as holidays?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 14, 2014, at 8:30 a.m.

Date of Intended Adoption: August 14, 2014.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by August 7, 2014. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 7, 2014, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 6078 names the fourth Friday in November, Native American Heritage Day. We are proposing to amend this rule to address the new name. The bill was effective June 12, 2014.

Reasons Supporting Proposal: This is to align the state civil service rule with SSB 6078.

Statutory Authority for Adoption: Chapter 41.06 RCW.
Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kristie Wilson, 128 10th Avenue S.W., (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

July 2, 2014

Roselyn Marcus
Assistant Director

Legal and Legislative Services

AMENDATORY SECTION (Amending WSR 05-21-057, filed 10/13/05, effective 11/15/05)

WAC 357-31-005 For the purpose of chapter 357-31 WAC, what days are recognized as holidays? The following days are designated as holidays for the purpose of chapter 357-31 WAC:

(1) The first day of January (New Year's Day);

(2) The third Monday of January (Martin Luther King, Jr.'s birthday);

(3) The third Monday of February (Presidents' Day);

(4) The last Monday of May (Memorial Day);

(5) The fourth day of July (Independence Day);

(6) The first Monday in September (Labor Day);

(7) The eleventh day of November (Veterans Day);

(8) The fourth Thursday ((~~of~~) in November (Thanksgiving Day);

(9) The ((~~day immediately following Thanksgiving Day~~)) Friday immediately following the fourth Thursday in November (Native American Heritage Day); and

(10) The twenty-fifth day of December (Christmas Day).

Higher education employers may designate other days to be observed in place of the above holidays. Holiday schedules for higher education employers may be determined on a calendar or fiscal year basis. When a higher education employer establishes a modified schedule, paid holidays must be granted based on the modified schedule.

WSR 14-14-123
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed July 2, 2014, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-04-123 and 14-04-124.

Title of Rule and Other Identifying Information: Chapter 16-662 WAC, Weights and measures—National handbooks and retail sale of motor fuel and chapter 16-664 WAC, National type evaluation program. The department is proposing to:

(1) Adopt the 2014 edition of NIST Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices) as required by RCW 19.94.195;

(2) Adopt (with modifications) the 2014 edition of NIST Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality);

(3) Adopt (with modifications) the National Type Evaluation Program (NTEP) standard addressed in NIST Handbook 130;

(4) Adopt the 2014 edition of NIST Handbook 133 (Checking the Net Contents of Packaged Goods);

(5) Repeal chapter 16-664 WAC, NTEP; and

(6) Modify the existing text to increase rule clarity and readability.

Hearing Location(s): Washington State Department of Agriculture, Natural Resources Building, 1111 Washington Street S.E., Conference Room 259, Olympia, WA 98504-2560, on August 27, 2014, at 10:00 a.m.

Date of Intended Adoption: September 9, 2014.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by August 27, 2014.

Assistance for Persons with Disabilities: Contact Henri Gonzales by August 20, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 19.94.195 requires that the most current version of NIST Handbook 44 be adopted, in whole or in part. The department adopts the current version of NIST Handbook 44, NIST Handbook 130 with modifications, and NIST Handbook 133 in order to maintain uniformity with other states where appropriate. This proposal also includes adopting an additional chapter from NIST Handbook 130 titled, "Uniform Regulation for National Type Evaluation." This section replaces chapter 16-664 WAC, National type evaluation program, which is being repealed concurrently. The purpose of the NTEP is to assure everyone that a particular model or type of weighing device is capable of meeting applicable standards.

Reasons Supporting Proposal: The purpose of this chapter is to establish requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures and that are in effect in other states. The department is proposing to adopt the most recent version of NIST Handbook 44, 130 (with modifications), and 133. The NIST handbooks are national consensus codes that establish industry standards for weighing and measuring devices, legal metrology, engine fuel quality, net contents of packaged goods, and specifications and tolerances for reference standards and field standard weights and measures. The department adopts these handbooks in order to maintain uniformity with other states where appropriate.

Statutory Authority for Adoption: RCW 19.94.190, 19.94.195, 19.112.020, and 19.112.140, and chapter 34.05 RCW.

Statute Being Implemented: RCW 19.94.190, 19.94.195, 19.112.020, and 19.112.140.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry Buendel, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Analysis of the economic effects of the proposed rule amendments demonstrates that the changes will not be more than a minor cost to small business in the regulated industry. The agency makes some modifications to the adopted standards to accommodate state needs and current practices in order to decrease economic impacts.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

July 2, 2014
Mark Streuli
Deputy Director

AMENDATORY SECTION (Amending WSR 13-03-054, filed 1/11/13, effective 2/11/13)

WAC 16-662-100 Purpose. (1) This chapter establishes, under the authority of the Washington state department of agriculture (WSDA), requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures (NCWM) and published by the National Institute of Standards and Technology (NIST). This chapter also establishes requirements for the retail sale and advertising of motor fuel.

(2) This chapter applies specifically to the:

(a) Uniform specifications, tolerances and other technical requirements for weighing and measuring devices addressed in *NIST Handbook 44*;

(b) Uniform regulation for weighing and measuring devices under the National Type Evaluation Program (NTEP) addressed in *NIST Handbook 130*;

(c) Uniform procedures for checking the net contents of packaged goods addressed in *NIST Handbook 133*;

~~((e))~~ (d) Uniform packaging and labeling regulation addressed in *NIST Handbook 130*;

~~((f))~~ (e) Uniform regulation for the method of sale of commodities addressed in *NIST Handbook 130*;

~~((g))~~ (f) Uniform examination procedure for price verification addressed in *NIST Handbook 130*;

~~((h))~~ (g) Engine fuels, petroleum products, and automotive lubricants regulation addressed in *NIST Handbook 130*;

~~((i))~~ (h) Specifications and tolerances for reference standards and field standard weights and measures addressed in the *NIST Handbook 105* series; and

~~((j))~~ (i) Requirements for the retail sale and advertising of motor fuel.

(3)(a) *NIST Handbook 44*, *NIST Handbook 130*, *NIST Handbook 133*, and *NIST Handbooks 105* are available on the NIST web site at <http://www.nist.gov/pml/wmd/pubs/handbooks.cfm> or may be purchased ~~((from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 and are available on the National Institute of Standards and Technology web site at <http://www.nist.gov/pml/wmd/pubs/handbooks.cfm>~~

~~((b))~~ on the NCWM web site at <http://www.ncwm.net/publications> or by mail from the National Conference on Weights and Measures, 1135 M Street, Suite 110, Lincoln, Nebraska 68508. Copies of the NIST handbooks and ASTM standards are available for viewing at the Washington State Department of Agriculture, 2nd Floor, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98504-2560.

(b) You may search the NTEP data base for certificates of conformance (CC) on the NCWM web site at http://www.ncwm.net/ntep/cert_search.

(c) For information regarding the contents and application of these publications and data base, contact the weights and measures program at the Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, telephone number 360-902-1857, or e-mail wts&measures@agr.wa.gov.

AMENDATORY SECTION (Amending WSR 13-03-054, filed 1/11/13, effective 2/11/13)

WAC 16-662-105 Standards adopted by the Washington state department of agriculture (WSDA). Except as otherwise modified in this chapter, ~~(the)~~ WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	((2013)) 2014 Edition of <i>NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices</i>
(2) The procedures for checking the accuracy of the net contents of packaged goods	((2013)) 2014 Edition of <i>NIST Handbook 133 - Checking the Net Contents of Packaged Goods</i>
(3) The requirements for packaging and labeling, method of sale of commodities, <u>national type evaluation</u> , examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants	((2013)) 2014 Edition of <i>NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality</i> . Specifically:
(a) Weights and measures requirements for all food and nonfood commodities in package form	<i>Uniform Packaging and Labeling Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130, ((2013)) 2014 Edition</i> .
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	<i>Uniform Regulation for the Method of Sale of Commodities</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130, ((2013)) 2014 Edition</i> .
(c) Weights and measures requirements for price verification	<i>Examination Procedure for Price Verification</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130, ((2013)) 2014 Edition</i> .

National standard for:	Contained in the:
(d) Definitions; standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks and dispenser filters; condemned product; product registration; and test methods and reproducibility limits	<i>Uniform Engine Fuels and Automotive Lubricants Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130, ((2013)) 2014 Edition</i> .
<u>(e) Weights and measures requirements for national type evaluation</u>	<u><i>Uniform Regulation for National Type Evaluation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130, 2014 Edition</i>.</u>
(4) Specifications and tolerances for reference standards and field standard weights and measures	<i>NIST Handbook 105-1, Specifications and Tolerances for Field Standard Weights (NIST Class F) - 1990;</i> <i>NIST Handbook 105-2, Specifications and Tolerances for Field Standard Measuring Flasks - 1996;</i> <i>NIST Handbook 105-3, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards - 2010;</i> <i>NIST Handbook 105-4, Specifications and Tolerances for Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Volumetric Provers - 2010;</i> <i>NIST Handbook 105-5, Specifications and Tolerances for Field Standard Stopwatches - 1997;</i> <i>NIST Handbook 105-6, Specifications and Tolerances for Thermometers - 1997;</i> <i>NIST Handbook 105-7, Specifications and Tolerances for Dynamic Small Volume Provers - 1997;</i> <i>NIST Handbook 105-8, Specifications and Tolerances for Field Standard Weight Carts - 2003.</i>

AMENDATORY SECTION (Amending WSR 13-03-054, filed 1/11/13, effective 2/11/13)

WAC 16-662-115 Modifications to NIST Handbook 130. ((The)) (1) WSDA adopts the following modifications to the listed sections of the *Uniform Regulation for the Method of Sale of Commodities* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

Modified Section:	Modification:
((4)) Section 2.20.1. Method of Retail Sale	<p>Modify <u>the existing text in section 2.20.1</u> ((Method of Retail Sale:)) <u>with the following:</u> "Type of Oxygenate must be Disclosed ((to read:)),"</p> <p><u>(a) All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. ((For example, the label may read "contains ethanol.") The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol.</u></p> <p><u>(b) Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel.</u></p> <p><u>(c) Gasoline-ethanol blend fuels containing not more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol."</u></p> <p><u>(d) Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "Ethanol" (example: E40 Ethanol). E85 fuel</u></p>

Modified Section:	Modification:
	<p><u>ethanol shall be identified and labeled in accordance with section 3.8. E85 Fuel Ethanol.</u></p> <p><u>(e) This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). ((Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (Example: E85 Ethanol.)))</u>"</p>
((2)) Section 2.20.2. Documentation for Dispenser Labeling Purposes	<p><u>((Modify)) Replace the existing text in section 2.20.2. Documentation for Dispenser Labeling Purposes, ((to read)) with:</u> "At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel</p>

Modified Section:	Modification:
	before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."
((3)) Section 2.23. Animal Bedding	((Add a new subsection which reads)) <u>Modify the existing text to add:</u> "2.23.2. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof."
((4)) Section 2.31.2. Labeling of Retail Dispensers	((Add a new subsection which reads)) <u>Modify the existing text to add the following:</u> "2.31.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. <p>(a) Each retail dispenser of biodiesel or biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel."</p> <p>(b) <u>This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type).</u>"</p> ((Add a new subsection which reads)) <u>Modify the existing text to add the following:</u> "2.31.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. <p>(a) Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "bio</p>

Modified Section:	Modification:
	diesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel Blend). <u>(b) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type).</u> "
((5)) Section 2.31.4. Exemption	<u>Modify the existing text to delete section 2.31.4.</u>
((6)) Section 2.34. Retail Sales of Electricity Sold as a Vehicle Fuel	<u>Modify the existing text to delete section 2.34.</u>

~~((The))~~ (2) WSDA adopts the following modifications to the listed sections of the *Uniform Engine Fuels and Automotive Lubricants Regulation* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

Modified Section:	Modification:
((1)) Section 2.1.2. Gasoline-Ethanol Blends	((Modify)) <u>Replace the existing text in section 2.1.2((-to read)) with the following:</u> "When gasoline is blended with 1 to 10 volume percent ethanol, the ethanol shall meet the requirements of ASTM D4806 and either: <p>(a) The base gasoline used for blending with ethanol shall meet the requirements of ASTM D4814; except that the base gasoline shall meet the minimum temperature for a Vapor-Liquid Ratio of 20 for the applicable vapor lock protection class as follows: (1) Class 1 shall be 60°C (140°F) (2) Class 2 shall be 56°C (133°F) (3) Class 3 shall be 51°C (124°F) (4) Class 4 shall be 47°C (116°F) (5) Class 5 shall be 41°C (105°F)</p> or <p>(b) The blend shall meet the requirements of ASTM D4814."</p>

Modified Section:	Modification:
	<p>((Add a new subsection to read)) <u>Modify the existing text to add the following:</u> " 2.1.2.1. Maximum Vapor Pressure. The maximum vapor pressure of a gasoline-ethanol blend shall not exceed ASTM D4814 limits by more than 1.0 psi for:</p> <p>(a) Only 9 to 10 volume percent ethanol blends from June 1 through September 15.</p> <p>(b) All blends of 1 to 10 volume percent ethanol from September 16 through May 31."</p>
((2)) Section 2.12. Motor Oil	Delete section 2.12.
(3) Section 2.13. Products for Use in Lubricating Manual Transmissions, Gears, or Axles	Delete section 2.13.
(4) Section 2.14. Products for Use in Lubricating Automatic Transmissions	Delete section 2.14.
(5)) Section 3.2.6. Method of Retail Sale	<p>Modify <u>the existing text in section 3.2.6</u>((-to read)) <u>with the following:</u> "Type of Oxygenate must be Disclosed.</p> <p>(a) All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. ((For example, the label may read "contains ethanol.")) The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or</p>

Modified Section:	Modification:
	<p>"containing" methanol. ((This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type).))</p> <p><u>(b)</u> Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. ((Ethanol at no less than one percent and no))</p> <p><u>(c)</u> Gasoline-ethanol blend fuels <u>containing not</u> more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol."</p> <p><u>(d)</u> Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: ((E85)) <u>E40</u> Ethanol). <u>E85 fuel ethanol shall be identified and labeled in accordance with section 3.8. E85 Fuel Ethanol.</u></p> <p><u>(e)</u> This information shall be <u>posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type).</u>"</p>
((6)) Section 3.2.7. Documentation for Dispenser Labeling Purposes	<p>Modify <u>the existing text in section 3.2.7</u>((-to read)) <u>with the following:</u> "The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where</p>

Modified Section:	Modification:
	mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."
((7)) Section 3.8.2. Labeling Requirements	Add a new subsection which reads: "(e) Each retail dispenser of greater than ten percent fuel ethanol by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol)."
((8)) Section 3.9.2. Retail Dispenser Labeling	((Add a new subsection which reads)) <u>Modify the existing text in section 3.9.2 to add: "(c) Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "methanol." (Example: M85 Methanol.) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."</u>
((9)) Section 3.13. Oil	Delete section 3.13.
(10) Section 3.14. Automatic Transmission Fluid	Delete section 3.14.
((11)) Section 3.15.2. Labeling of Retail Dispensers	((Add a new subsection which reads:)) <u>Modify the existing text in subsection 3.15.2 to add: "3.15.2.5.</u>

Modified Section:	Modification:
	Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel." ((Add a new subsection which reads:)) <u>Modify the existing text in subsection 3.15.2 to add: "3.15.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend)."</u> <u>Modify the existing text in subsection 3.15.2 to add: "3.15.2.7. Placement of label. Labels shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."</u>
((12)) Section 3.15.4. Exemption	Delete section 3.15.4.

(3) WSDA adopts the following modifications to the listed sections of the Uniform Regulation for National Type Evaluation requirements published in NIST Handbook 130, identified in WAC 16-662-105 (3)(e):

Modified Section:	Modification:
<u>Section 2.3. Director</u>	<u>Modify the existing text in section 2.3 with the following: "Director – Means the director of the Washington state department of agriculture."</u>
<u>Section 4. Prohibited Acts and Exemptions</u>	<u>Modify the existing text in section (c) with the following: "A device in service in this state prior to July 5, 1997, that meets the specifications, tolerances, and other technical requirements of the <i>National Institute of Standards and Technology Handbook 44</i> shall not be required to be traceable to an active CC."</u>

Modified Section:	Modification:
	<p><u>Modify the existing text in section (d) with the following: "A device in service in this state prior to July 5, 1997, removed from service by the owner or on which the department has issued a removal order after July 5, 1997, and returned to service at a later date shall be modified to meet all specifications, tolerances, and other technical requirements of the <i>National Institute of Standards and Technology Handbook 44</i> effective on the date of the return to service. Such a device shall not be required to be traceable to an active CC."</u></p> <p><u>Modify the existing text in section (e) with the following: "A device in service in this state prior to July 5, 1997, which is repaired after such date shall meet the specifications, tolerances, and other technical requirements of the <i>National Institute of Standards and Technology Handbook 44</i> and shall not be required to be traceable to an active CC."</u></p> <p><u>Modify the existing text in section (f) with the following: "A device in service in this state prior to July 5, 1997, that is still in use may be installed at another location in this state provided the device meets requirements in effect as of the date of installation in the new location; however, the device shall not be required to be traceable to an active CC."</u></p> <p><u>Modify the existing text in section (g) with the following: "A device in service in this state prior to July 5, 1997, may be installed in this state; however, the device shall meet the specifications, tolerances, and other technical requirements for weighing and measuring devices in the <i>National Institute of Standards and Technology Handbook 44</i> and be traceable to an active CC."</u></p>
Section 5. Participating Laboratory and Agreements	Modify the existing text to delete section 5.

Modified Section:	Modification:
Section 6. Revocation of Conflicting Regulations	Modify the existing text to delete section 6.
Section 7. Effective Date	Modify the existing text to delete section 7.

AMENDATORY SECTION (Amending WSR 12-02-021, filed 12/28/11, effective 1/28/12)

WAC 16-662-120 Inspections of the net contents of packaged goods under NIST Handbook 133. WSDA will inspect((s)) packages using either "used dry tare" or "unused dry tare" in accordance with the procedures ((~~outlined~~)) in *NIST Handbook 133* and as defined in Appendix F Glossary. WSDA does not use "wet tare" in inspecting packages.

AMENDATORY SECTION (Amending WSR 13-03-054, filed 1/11/13, effective 2/11/13)

WAC 16-662-145 Posting of motor fuel prices—Cash and credit sales. The following rules apply to the posting of prices of retail sales of motor fuels. As used herein, motor fuel means any fuel used in motor vehicles including, but not limited to, gasoline, diesel, propane, and alcohol-gasoline blends. As used herein, motor vehicles shall include all wheeled motorized vehicles, and all boats and airplanes.

(1) The posted or advertised price of motor fuel at retail outlets must be available to all consumers. ((~~The grade of fuel and~~)) Any condition or qualification required to obtain the posted price must be clearly displayed in letters of contrasting color at least ((~~one-half~~)) one-third the size of the posted price and immediately adjacent thereto.

(2) The posted or advertised grade of fuel must be clearly displayed in letters of contrasting color at least one-sixth the size of the posted price and immediately adjacent thereto.

(3) A cash price may be posted or advertised if the posting of the price clearly shows it to be limited to cash purchases. The information shall be in letters at least ((~~one-half~~)) one-third the size of the posted price and immediately adjacent thereto.

((~~3~~)) (4) If mixed case letters are used to display the grade of the fuel and any condition or qualification, the size requirements of the letters apply to the upper case letters and any lower case letters must be in proportionate scale.

(5) Cash and credit sales. If a retailer elects to establish separate islands or individual dispensers for cash and credit sales, the islands or dispensers shall be clearly marked as such in letters at least six inches in height and of proportional width.

((~~4~~)) (6) Posted prices of motor fuels at retail outlets shall include all federal, state, and local taxes.

NEW SECTION

WAC 16-662-150 Unlawful acts—National type evaluation program (NTEP). It shall be unlawful for a person to:

(1) Use a device in commercial application if a Certificate of Conformance has not been issued for such device, unless exempt under WAC 16-662-105 (3)(e).

(2) Sell a device for use in commercial application if a Certificate of Conformance has not been issued for such device, unless exempt under WAC 16-662-105 (3)(e).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-662-110 Modifications to NIST Handbook 44.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 16-664-010 Purpose.
 WAC 16-664-020 Definitions.
 WAC 16-664-030 Certificate of Conformance—When required.
 WAC 16-664-040 Commercial and law enforcement equipment—Certificate of Conformance—Requirements—Exemptions—One-of-a-kind device—Repaired device—Remanufactured device—Device copy—Components.
 WAC 16-664-050 Unlawful acts.
 WAC 16-664-060 Penalty.

WSR 14-14-124

**WITHDRAWAL OF PROPOSED RULES
 DEPARTMENT OF
 SOCIAL AND HEALTH SERVICES**

(By the Code Reviser's Office)

[Filed July 2, 2014, 9:05 a.m.]

WAC 388-412-0040, proposed by the department of social and health services in WSR 14-01-111, appearing in issue 14-01 of the Washington State Register, which was distributed on January 2, 2014, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

**WSR 14-14-133
 PROPOSED RULES
 DEPARTMENT OF
 FISH AND WILDLIFE**
 [Filed July 2, 2014, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-16-050 on July 28, 2011.

Title of Rule and Other Identifying Information: Repealing chapter 220-110 WAC, Hydraulic code rules and replace with chapter 220-660 WAC, Hydraulic code rules.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on August 8-9, 2014, at 8:30 a.m.

Date of Intended Adoption: On or after September 26, 2014.

Submit Written Comments to: Randi Thurston, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Randi.Thurston@dfw.wa.gov, fax (360) 902-2602, by August 1, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by August 7, 2014, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The hydraulic code rules detail how hydraulic projects must be conducted to protect fish life. Hydraulic code rules and related administrative procedures have not been significantly updated since 1994. The proposed rule changes update the rules and clarify the application and permit-processing procedures, enabling the department to prevent or mitigate the impacts to fish life and habitat posed by hydraulic projects through the best available science. To facilitate these rule changes and prepare for the upcoming recodification of department WACs, the department proposes repealing chapter 220-110 WAC and creating new rules in chapter 220-660 WAC.

The department prepared a supplemental draft programmatic environmental impact statement (PEIS) on the proposed changes to the hydraulic code rules. Comments on the draft EIS and proposed rules are being taken separately but concurrently. The PEIS will be available for a thirty day public review beginning July 16, 2014, and will be available online at http://wdfw.wa.gov/licensing/sepa/sepa_comment_docs.html. The document may be obtained in hard copy or CD by written request to the SEPA responsible official at SEPAdesk2@dfw.wa.gov, or by fax (360) 902-2946.

Reasons Supporting Proposal: Existing rules have not been updated to account for statutory changes to chapter 77.55 RCW or to changes in method to protect fish life from the impacts of a variety of hydraulic project types in waters of the state. In addition, methods for submitting and processing applications have changed and the rules need to be updated to account for modern practices for administering the processing of applications.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife (WDFW), governmental.

Name of Agency Personnel Responsible for Drafting: Randi Thurston, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2602; Implementation: Lisa Veneroso, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2836; and Enforcement: Steve Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

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

Small Business Economic Impact Statement

1 Background and Scope:

1.1 Small Business Economic Impact Statement

(SBEIS): Prior to adopting a rule RCW 34.05.325 directs an agency to: Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented ...

In addition the Regulatory Fairness Act, in RCW 19.85.040, directs that: To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules ...

In RCW 19.85.020(3) "Small business" is defined as: ... any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.

This report presents the findings of both the cost-benefit analysis (CBA), as directed under RCW 34.05.325, and the SBEIS, as directed under RCW 19.85.040.

1.2 Public participation and review of proposed rules: WDFW has involved the public and stakeholders in developing the updated hydraulic code rules. WDFW formed a stakeholder advisory group to provide comments on an initial draft of the HPA rules. This group included eighteen representatives from the construction industry, nongovernmental organizations, state and federal agencies, and tribes. This group met eight times between October 31 and the end of December 2011, receiving presentations on and discussing issues relating to one or two specific aspects of the HPA rules at each meeting. The group engaged in policy discussions about the proposed changes and the impacts to their interests, and commented on revised rule proposals prepared by WDFW. Those rule documents were also posted on the WDFW web site for comment by any reader. Three separate drafts of the revised code rules have been posted on the WDFW web site along with forms to comment on the rules. The fourth draft accompanied the September 2013 PEIS. A final draft accompanies this supplemental draft PEIS. This draft was revised based on September 2013 PEIS comments and will be finalized concurrent with the final EIS. The fish and wildlife commission will consider the final draft rules and hear public testimony prior to adopting final rules in the summer of 2014.

2 Proposed Action and Baseline:

2.1 Changes under the proposed rules: The proposed rule changes will update the requirements and make them consistent with statutory, procedural, and administrative changes and current fish science and design technology. Specifically the rule changes will:

- Incorporate up-to-date fish science and technology;
- Simplify the permitting of certain types of projects;
- Improve procedural and administrative requirements to better align with statutory changes made since the rules were last revised; and
- Establish a structure for adaptive management in response to changing science and technology and/or the results of effectiveness monitoring.

2.2 Baseline: Defining the baseline, against which to measure potential impacts of the proposed changes to the hydraulic code rules, is not as simple as comparing the existing rules, last updated in 1994, to the proposed changes. Other federal and state regulatory authorities and judicial decisions dictate the design, construction and maintenance of projects located in waters of the state. If a permittee is required to follow other existing rule(s), regulation(s) and standard(s) that are the same or more stringent than those proposed by WDFW, then the economic impact *attributable* to WDFW's proposed rule change would be minimized, or even eliminated. For instance, comparing a road culvert designed according to the change proposed to WAC 220-660-190 Water crossing structures, to an existing culvert size might increase the cost of the design and/or construction of the culvert, but the existing culvert does not satisfy the fish passage required [by] National Marine Fisheries Service Anadromous Salmonid Passage Facility Design (see Section 2.2.1.1, below). Therefore to assign the costs of the proposed rule changes in WAC 220-660-190 would overstate the impact of the proposed rule change.

3 Data Profile, Methods and Results: WDFW maintains a database of hydraulic project approval (HPA) applications. The database contains information about individual applications including the year the application was submitted, the status of the application, the name of the company (or individual) submitting the application and categorizes the applicants into groups. The applicant groups are:

- Agriculture, including farms, timber companies and local dike, drainage and irrigation districts;
- Single family residence;
- Multiple family use including homeowners' associations;
- Commercial/industrial, including energy companies, land development, private marinas, etc.;
- Government, including federal, tribal, state and regional;
- Nonprofit agency public;
- Nonprofit agency private.

The method used to estimate the probable costs of the proposed rule changes answered the following questions:

- How many HPAs will be submitted annually that have to meet the requirements of a proposed rule

change for which there are no related regulations (see Table 1)?

- What is a reasonable range of estimated costs for those proposed rule changes?

Estimates of both the range of costs and the annual volume of HPAs are used to estimate a range of implementation costs of the proposed rule changes. For example, if a proposed rule change is likely to increase project costs significantly but the likelihood that any project will be effected [affected] by the proposed change is low, then the expected cost of the proposed rule change could be low. Conversely, if the cost of implementing a proposed rule change on any one project is relatively low, but the proposed rule change would likely impact a relatively high percentage of projects seeking an HPA then the expected cost of the proposed rule change could be high.

In addition to understanding the potential costs and annual number of proposed rule change[s] this analysis also answered the following:

- Who (which entities) might be impacted by the proposed rule changes, e.g. federal and state agencies, tribes, commercial and industrial users, residential, etc.?

Understanding the type of entity (e.g. agriculture, government, etc.) impacted by the proposed rule changes contributes to the SBEIS, which estimates whether a small business is disproportionate[ly] affected by the proposed rule changes. Also, understanding which entity might be impacted helps estimate the number of HPAs that would be exempt from the 404 permitting requirement.

To answer two of the above three questions; (1) how many HPAs are submitted in one year and (2) which applicants might be impacted by the proposed rule change, the analysis assumed that the historical record of HPAs, that is - the types of projects that have needed permits and the types of entities that applied - represents the best estimate of future projects and applicants.

WDFW maintains a database of HPA applications (Chapman, 2014a). **Table 2** shows the number of HPAs issued per year from 2008 through 2012. On average over 2,500 applications are issued per year.

Table 2. Number of HPAs issued per year, 2008-2012, all projects, all applicants, excluding forestry.

Year	2008	2009	2010	2011	2012	Grand Total	5-Year Average
HPA Count	2,657	2,666	2,177	2,456	2,782	12,738	2,548

Source: Barber, E. 2014.

What follows is a description of the historical record of HPAs issued over the five-year period from 2008 to 2012, including an estimate of how many applications would have been impacted by the proposed rules had the rules been in effect during that period of time. Also, a description of the estimated costs of each HPA is described.

3.1 Who Applies for HPAs? The WDFW HPA database contains information about individual applications including (but not limited to) the:

- Year the application was submitted;
- Status of the application (pending, issued, hold, etc.);
- Type of application (e.g. forest practice, JARPA, public notice, etc.);
- Description of the project;
- Name of the company (or individual) submitting the application;
- Applicant groups (e.g. government, agriculture, commercial/industrial, residential, etc.).

Table 3 lists the number of HPAs issued between 2008 and 2012 by applicant group. Single family residences and government are the top two applicant groups, each individually representing just over 35.0 percent of all the HPAs, for a combined total of seventy percent of the HPAs for the time period. Agricultural applicants are third in volume, with 14.0 percent of the HPAs from 2008-2012, followed by commercial/industrial applicants submitting 8.0 percent of all HPAs. The remainder of the applicant groups represent less than 6.0 percent of all HPAs for the study period.

Table 3. Total HPAs by Applicant Group, 2008 - 2012

Applicant Group	Number of HPAs		Percent of Total
	5-Year Total	5-Year Average	
Agriculture	1,737	249	14%
Commercial/Industrial	964	961	8%
Government	4,606	46	36%
Multiple Family Use	225	90	2%
Nonprofit Agency Private	419	21	3%
Nonprofit Agency Public	101	937	1%
Single Family Residence	4,686	243	37%
Grand Total	12,738	2,548	100%

Source: Barber, E. 2014.

3.2 How Many HPAs Could Be Subject to the Proposed Rule Changes?

Table 4 presents an estimate of the average annual number of HPAs, issued between 2008 and 2013, that may have been subject to a proposed rule change, had the rules been in effect at the time. Note that any one HPA may be included in **Table 4** in multiple columns, as one HPA could be subject to more than one rule.

The majority of all HPAs, approximately 32.0 percent, issued between 2008 and 2013 were subject to proposed WAC 220-660-190 Water crossing structure. Twenty percent of all applications issued between 2008 and 2013 would have

been subject to proposed WAC 220-660-310 Tidal reference areas, and proposed WAC 220-660-330 Authorized work times in saltwater areas. Thirteen percent of the HPAs would have been subject to five proposed rules; freshwater habitats of special concern (WAC 220-660-100), residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in freshwater areas (WAC 220-660-140), saltwater habitats of special concern (WAC 220-660-320), intertidal forage fish spawning bed surveys (WAC 220-660-340) and seagrass and macroalgae habitat surveys (WAC 220-660-350). The remainder of the rules would have impacted ten percent or less of the HPAs.

Table 4. Estimate of the Average Annual Percent of Total HPAs by Proposed Rules, 2008-2013.

Proposed WAC Sections		Percent of Total
Number	Title	
220-660-100	Freshwater habitats of special concern	12.9%
220-660-110	Authorized work times in freshwater areas	0.0%
220-660-120	Common freshwater construction provisions	0.0%
220-660-130	Streambank protection and lake shoreline stabilization	0.0%
220-660-140	Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in freshwater areas	12.9%
220-660-150	Boat ramps and launches in freshwater areas	0.9%
220-660-160	Marinas and terminals in freshwater areas	0.3%
220-660-170	Dredging in freshwater areas	7.8%
220-660-180	Sand and gravel removal	0.3%
220-660-190	Water crossing structures	31.8%
220-660-200	Fish passage improvement structures	9.4%
220-660-210	Channel relocation and realignment	0.1%
220-660-220	Large woody material placement, repositioning, and removal in freshwater areas	7.1%
220-660-230	Beaver dam management	1.1%
220-660-240	Pond construction	0.3%
220-660-250	Water diversions and intakes	4.2%
220-660-260	Outfall structures in freshwater areas	1.8%
220-660-270	Utility crossings in freshwater areas	2.6%
220-660-280	Felling and yarding of timber	0.1%
220-660-290	Aquatic plant removal and control	0.3%
220-660-300	Mineral prospecting	8.9%
220-660-310	Tidal reference areas	19.7%
220-660-320	Saltwater habitats of special concern	13.4%
220-660-330	Authorized work times in saltwater areas	19.7%
220-660-340	Intertidal forage fish spawning bed surveys	13.2%
220-660-350	Seagrass and macroalgae habitat surveys	13.4%
220-660-370	Bank protection in saltwater areas	5.9%

Proposed WAC Sections		Percent of Total
Number	Title	
220-660-380	Residential and public recreational docks, piers, ramps, floats, watercraft lifts and buoys in saltwater areas	5.2%
220-660-390	Boat ramps and launches in saltwater areas	0.7%
220-660-400	Marinas and terminals in saltwater areas	0.6%
220-660-410	Dredging in saltwater areas	0.6%
220-660-420	Artificial Aquatic Habitat Structures	0.4%

Source: Barber, E. WDFW 2014.

Table 5 shows the annual average number of HPAs assumed to be subject to the proposed rule changes by applicant group. Included in Table 5 are the proposed rules that could potentially impact greater than 5.0 percent of the annual average number of HPAs. As seen in Table 4, 32.0 percent of the average annual HPAs are subject to proposed WAC 220-660-190 Water crossing structures. Of those HPAs the majority, 49.0 percent, are issued to governments. Twenty percent of the HPAs subject to the water crossing structures proposed rule are issued to agricultural and forestry applicants. Sixteen percent of the HPAs subject to the water crossing structures rule are issued to commercial and industrial applicants.

The single family residence applicant group is issued the largest number of HPAs (64.0 percent) that are subject to the proposed Tidal reference area rule (WAC 220-660-310) and proposed Authorized work times in saltwater areas rule (WAC 220-660-330). Governments are issued 21.0 percent of HPAs subject to these two proposed rules.

Governments and single family residents continue to be the two applicant groups with the majority of the HPAs subject to the proposed rule for nearly all other proposed rules except fish passage improvement structures (WAC 220-660-200). With fish passage improvement structures, governments are still issued the most (37.0 percent) of all HPAs; however, the commercial/industrial and agriculture and forestry applicant group receive 30.0 percent and 25.0 percent of the HPAs, respectively.

Table 5. Estimated Five-Year Average Annual Number of HPAs by Rule and Applicant Group, Ordered by Volume, 2008-2012.

Proposed WAC Sections		Agriculture and Forestry	Commercial /Industrial	Government	Multiple Family Use	Nonprofit Agency		Single Family Residence	Grand Total	Percent of Total
Number	Title					Private	Public			
220-660-190	Water crossing structures	159	133	393	9	17	4	95	810	32%
<i>% by applicant</i>		20%	16%	49%	1%	2%	0%	12%	100%	
220-660-310	Tidal reference areas	7	36	104	13	19	3	319	501	20%
<i>% by applicant</i>		1%	7%	21%	3%	4%	1%	64%	100%	
220-660-330	Authorized work times in saltwater areas	7	36	104	13	19	3	319	501	20%
<i>% by applicant</i>		1%	7%	21%	3%	4%	1%	64%	100%	
220-660-100	Freshwater habitats of special concern	20	17	162	5	11	2	111	328	13%
<i>% by applicant</i>		6%	5%	49%	2%	3%	1%	34%	100%	
220-660-140	Residential and public recreation docks, piers, ramps, floats, watercraft lifts, and buoys in freshwater areas	12	23	33	14	16	1	228	327	13%
<i>% by applicant</i>		4%	7%	10%	4%	5%	0%	70%	100%	
220-660-320	Saltwater habitats of special concern	6	32	83	12	16	1	192	342	13%
<i>% by applicant</i>		2%	9%	24%	4%	5%	0%	56%	100%	
220-660-340	Intertidal forage fish spawning bed surveys	6	30	82	12	15	1	190	336	13%
<i>% by applicant</i>		2%	9%	24%	4%	4%	0%	57%	100%	
220-660-350	Seagrass and macroalgae habitat surveys	6	32	83	12	16	1	192	342	13%
<i>% by applicant</i>		2%	9%	24%	4%	5%	0%	56%	100%	
220-660-200	Fish passage improvement structures	294	361	445	1	31	6	57	1,195	9%
<i>% by applicant</i>		25%	30%	37%	0%	3%	1%	5%	100%	
220-660-300	Mineral prospecting					5	2	1,130	1,137	9%
<i>% by applicant</i>		0%	0%	0%	0%	0%	0%	99%	100%	
220-660-170	Dredging in freshwater areas	78	46	619	6	47	17	181	994	8%
<i>% by applicant</i>		8%	5%	62%	1%	5%	2%	18%	100%	
220-660-220	Large woody material placement, repositioning, and removal in freshwater areas	63	51	479	15	92	13	191	904	7%
<i>% by applicant</i>		7%	6%	53%	2%	10%	1%	21%	100%	
220-660-370	Bank protection in saltwater areas	7	34	142	13	23	3	527	749	6%
<i>% by applicant</i>		1%	5%	19%	2%	3%	0%	70%	100%	

Table 7. Quantified and Qualified Estimated Costs of Implementing Proposed Rule Changes

Proposed Section Change		Est. Historical Permits	Econ. Impact	Estimated Annual HPA		Estimated Annual HPA		DRAFT Cost per HPA		DRAFT Cost Extended		Notes
Number	Title			Low	High	Low	High	Low	High	Low	High	
		(%)		(%)	(%)	(#)	(#)	(\$s)	(\$s)	(\$ 000s)	(\$ 000s)	
220-660-040	Applicability of hydraulic project approval requirements	0.0%	⊕	0.0%	0.0%	0	0	N/E	N/E	N/E	N/E	(i)
220-660-050	Procedures — hydraulic project approvals	N/E	⊕	N/E	N/E	526	1,176	-\$150	-\$150	-\$79	-\$176	(ii)
220-660-080	Mitigation requirements for hydraulic projects	N/E	●	9.0%	15.0%	325	390	N/E	N/E	N/E	N/E	(iii)
220-660-110	Authorized work times in freshwater areas	N/E	⊕	N/E	N/E	233	350	N/E	N/E	N/E	N/E	(i)
220-660-120	Common freshwater construction provisions	80.0%	●	72.0%	88.0%	233	264	0%	0%	\$0	\$0	(iv)
220-660-130	Streambank protection and lake shoreline stabilization	N/E	●	N/E	N/E	325	390	N/E	N/E	N/E	N/E	(v)
220-660-170	Dredging in freshwater areas	7.8%	●	7.0%	8.6%	4	4	N/E	N/E	N/E	N/E	(iv)
220-660-190	Water crossing structures	31.8%	●	28.6%	35.0%	146	178	N/E	N/E	N/E	N/E	(iv)
220-660-230	Beaver dam management	1.1%	⊕	1.0%	1.3%	26	32	N/E	N/E	N/E	N/E	
220-660-300	Mineral prospecting	8.9%	⊕	8.0%	9.8%	205	250	N/E	N/E	N/E	N/E	
220-660-350	Seagrass and macroalgae habitat surveys	13.4%	●	12.1%	14.8%	308	377	\$1,200	\$10,000	\$370	\$3,770	(vii)
220-660-360	Common freshwater construction provisions	80.0%	●	72.0%	88.0%	233	264	0%	0%	\$0	\$0	(iv)
220-660-410	Dredging in saltwater areas	0.6%	●	0.5%	0.6%	0	0	0%	0%	\$0	\$0	(vi)
Total of estimated quantified impacts										\$291	\$3,594	

N/A =Not Applicable; N/E = Not Estimated

- (i) Unable to estimate the number of HPAs, also costs savings relatively small.
- (ii) Number of HPAs estimated as the difference between the GHPAs issued and the number of individual projects completed under the GHPA. Cost conservatively estimated as the cost of the permit, not including labor to prepare the permit application.
- (iii) Mitigation of the HPA applicants exempt from 404 permits, the cost of mitigation is project specific.
- (iv) Sources: (a) Guy, 2011; (b) Stroud, 2011; (c) Kaczmarek, 2011; (d) Fabricatros and Manufactures Association; (e) Keidle, 2011. The number of HPAs was estimated where the number of applications is only those where Project_ Environ = Freshwater or Marine as appropriate and applicant group = Agric & forestry. Costs are the percent increase in construction costs for material that complies with the proposed rule.
- (v) Unable to estimate the number of HPAs, also costs savings would range widely based on project specifics.
- (vi) Potential impact for HPAs where applicant is exempt from a 404 permit, e.g. farming, ranching, silviculture and projects costs vary widely.
- (vii) Swarts, 2014, Thurston, 2014.

4 SBEIS:

The Regulatory Fairness Act, in RCW 19.85.040, directs that: To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules . . .

In RCW 19.85.020(3) "Small business" is defined as: . . . any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.

None of the proposed rule changes would have a disproportionate cost impact on small businesses.

A copy of the statement may be obtained by contacting Randi Thurston, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2602, fax (360) 902-2155, e-mail Randi.Thurston@dfw.wa.gov. A more detailed SBEIS, which includes the CBA, is available by contacting Randi Thurston using the contact information provided above.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Randi Thurston, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2602, fax (360) 902-2155, e-mail Randi.Thurston@dfw.wa.gov.

July 2, 2014
 Joanna M. Eide
 Rules Coordinator

Chapter 220-660 WAC
HYDRAULIC CODE RULES

NEW SECTION

WAC 220-660-010 Purpose. A hydraulic project is the construction or performance of work that uses, diverts, obstructs, or changes the natural flow or bed of any of the salt or fresh waters of the state. Unless otherwise provided, any person who wants to conduct a hydraulic project must get a construction permit called the hydraulic project approval (HPA) from the department. The purpose of the HPA is to ensure that construction or performance of other work is done in a manner that protects fish life. This chapter establishes the rules for the department's HPA authority (chapter 77.55 RCW).

NEW SECTION

WAC 220-660-020 Instructions for using chapter 220-660 WAC. The technical provisions in WAC 220-660-090 through 220-660-460 represent common provisions for the protection of fish life for typical projects proposed to the department. Implementation of these provisions is necessary to minimize project-specific and cumulative impacts to fish life. These provisions reflect the current and best science, technology, and construction practices related to the protection of fish life. The department will incorporate new science and technology as it becomes available, and will allow alternative practices that provide equal or greater protection for fish life.

The technical provisions will apply to a hydraulic project when included as provisions on the HPA. Each application will be reviewed on an individual basis. Common technical provisions applicable to a specific project may be modified or deleted by the department pursuant to WAC 220-660-070. HPAs may also have special provisions to address project-specific or site-specific considerations not adequately addressed by the common technical provisions. In addition, all hydraulic projects must meet the applicable mitigation requirements in WAC 220-660-080.

In addition to the rules in this chapter, the department has developed guidance to help applicants. This guidance reflects the department's experience and expertise with various types of hydraulic projects. Following the guidance will help ensure that a hydraulic project adequately protects fish life and will speed the department's review and decision process. All guidance documents are available on the department's web site.

NEW SECTION

WAC 220-660-030 Definitions. The following are definitions for terms used in this chapter. Common terms that are already defined in statute are noted as such.

- (1) "Abandoning an excavation site" means not working an excavation site for forty-eight hours or longer.
- (2) "Aggregate" means a mixture of minerals separable by mechanical or physical means.

(3) "Aquatic beneficial plant" means all native and non-native aquatic plants except those on the state noxious weed lists in WAC 16-750-005, 16-750-011, and 16-750-015.

(4) "Aquatic invasive species" means an invasive species of the animal kingdom with a life cycle that is at least partly dependent upon fresh, brackish, or marine waters. Examples include nutria, waterfowl, amphibians, fish, and shellfish.

(5) "Aquatic noxious weed" means an aquatic plant on the state noxious weed lists in WAC 16-750-005, 16-750-011, and 16-750-015.

(6) "Aquatic plant" means a native or nonnative emergent, submersed, partially submersed, free-floating, or floating-leaved plant species that is dependent upon fresh, brackish, or marine water ecosystems and includes all stages of development and parts.

(7) "*Aquatic Plants and Fish* pamphlet" means a document that details the rules for aquatic noxious weed and aquatic beneficial plant removal and control activities and that serves as the hydraulic project approval for certain plant removal and control activities in Washington state.

(8) "Artificial materials" means clean, inert materials used to construct diversion structures for mineral prospecting.

(9) "Associated human-made agricultural drainage facilities" means dikes, drains, pumps, drainage tiles, and drainage pipe made by humans that protect agricultural land.

(10) "Authorized agent" means someone who is authorized by the applicant to act on behalf of the applicant.

(11) "Bank" means any land surface landward of the ordinary high water line next to a body of water and constrains the water except during floods. The term bank also includes all land surfaces of islands within a body of water that are below the flood elevation of the surrounding body of water.

(12) "Bankfull width" means the width of the surface of the water at the point where water just begins to overflow into the active floodplain. In streams where there is no floodplain it is the width of a stream or river at the dominant channel forming flow with a recurrence interval in the one- to two-year range.

(13) "Beach area" means the beds between the ordinary high water line and extreme low water.

(14) "Bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water runoff devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered artificially.

(15) "Bed materials" means naturally occurring materials such as gravel, cobble, rock, rubble, sand, mud, and aquatic plants that form the beds of state waters. Bed materials are also found in deposits or bars above the wetted perimeter of water bodies.

(16) "Board" means the pollution control hearings board created in chapter 43.21B RCW.

(17) "Bottom barrier or screen" means sheets of synthetic or natural fiber material used to cover and kill plants growing on the bottom of a watercourse.

(18) "Boulder" means a stream substrate particle larger than ten inches in diameter.

(19) "Bridge shadow" means the area under a bridge defined by the shadow cast by the sun. This area may not receive enough light and rain to support the plant growth needed for biotechnical bank stabilization.

(20) "Chronic danger" means a condition declared by the county legislative authority 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.

(21) "Chronic danger HPA" means a written hydraulic project approval issued in response to a chronic danger declaration made by a county legislative authority.

(22) "Classify" means to sort aggregate by hand or through a screen, grizzly, or similar device to remove the larger material and concentrate the remaining aggregate.

(23) "Commission" means the Washington state fish and wildlife commission.

(24) "Compensatory mitigation" means the restoration, creation, enhancement, or preservation of aquatic resources for the purposes of compensating for unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

(25) "Concentrator" means a device used to physically or mechanically separate the valuable mineral content from aggregate.

(26) "Control" of an aquatic noxious weed means to prevent all seed production and to prevent the dispersal of all propagative parts capable of forming new plants.

(27) "County legislative authority" means a county commission, council, or other legislative body.

(28) "Crevice" means removing aggregate from cracks and crevices using hand-held mineral prospecting tools or water pressure.

(29) "Critical food fish or shellfish habitats" means those habitats that are essential to fish life. These habitats include habitats of special concern listed in WAC 220-660-120 and 220-660-330 and habitats for priority fish and shellfish.

(30) "Department" means the department of fish and wildlife.

(31) "Design flood" means a stream discharge of a specific rate and probability that is best suited for the design of a project to create and shape habitat or to protect property and structures to a given level of risk (e.g., the 100-year design flood).

(32) "Director" means the director of the department of fish and wildlife.

(33) "Ditch" means a wholly artificial watercourse or a natural watercourse (waters of the state) altered by humans.

(34) "Diver-operated dredging" means the use of portable suction or hydraulic dredges held by SCUBA divers to remove aquatic plants.

(35) "Dredging" means removal of bed material using other than hand-held tools.

(36) "Early infestation" of an aquatic noxious weed means a stage of development, life history, or area of coverage that makes one hundred percent control and eradication likely to occur.

(37) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(38) "Emergency HPA" means a verbal or written hydraulic project approval issued in response to a declaration of emergency.

(39) "Entrained" means the entrapment of fish into a watercourse diversion that has no screen, into high velocity water along the face of an improperly designed screen, or into the vegetation cut by a mechanical harvester.

(40) "Equipment" means any device powered by internal combustion; hydraulics; electricity, except less than one horsepower; or livestock used as draft animals, except saddle horses; and the lines, cables, arms, or extensions associated with the device.

(41) "Eradication" of an aquatic noxious weed means to eliminate a noxious weed within an area of infestation.

(42) "Established ford" means a crossing place in a watercourse that was in existence and used annually before 1986 or permitted by the department in or after 1986, and has identifiable approaches on the banks.

(43) "Excavation line" means a line on the dry bed at or parallel to the water's edge. The department determines the distance from the water's edge for each project site. The excavation line may change with water level fluctuations.

(44) "Excavation site" means the pit, furrow, or hole from which aggregate is removed to process and recover minerals, or into which wastewater is discharged to settle out sediments.

(45) "Excavation zone" means the area between the excavation line and the bank or the center of the gravel bar.

(46) "Expedited HPA" means a written hydraulic project approval issued in those instances where when normal permit processing would result in a significant hardship for the applicant or unacceptable damage to the environment.

(47) "Farm and agricultural land" means those lands identified in RCW 84.34.020.

(48) "Filter blanket" means one or more layers of pervious materials (organic, mineral, or synthetic) designed and installed to provide drainage, yet prevent the movement of soil particles by flowing water.

(49) "Fish conservation bank" means a fish habitat creation, restoration, or enhancement project intended to provide a bank of credits to compensate for impacts to fish habitat from future development projects. Fish conservation banks are managed to optimize desired habitat for listed and at-risk fish species.

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

(51) "Fish habitat enhancement project" means a hydraulic project that meets criteria in RCW 77.55.181 (1)(a).

(52) "Fish habitat improvement structures or stream channel improvements" means natural materials such as large wood, rock, or synthetic materials such as chain or rope placed in or next to bodies of water to make existing conditions better for fish life. Examples are engineered logjams, large woody material, and boulders.

(53) "Fish guard" means a device installed at or near a surface water diversion head gate, or on the intake of any device used for pumping water from fish-bearing waters, to prevent entrainment, injury, or death of fish life. Fish guards physically keep fish from entering the diversion or pump intake and do not rely on avoidance behavior.

(54) "Fish life" means all fish species, including food fish, shellfish, game fish, nonclassified fish and shellfish species, and all stages of development of those species.

(55) "Fish passage improvement structure" means artificial structures that are used to provide passage through, over, and/or around artificial barriers. They provide a graduated change in gradient with refuge areas allowing fish to pass barriers.

(56) "Fish screen" means "fish guard."

(57) "Flood gate" means a structure to control flooding through which water flows freely in one direction but is prevented from flowing in the other direction.

(58) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that must not be fished for except as authorized by rule of the commission.

(59) "Forest practices hydraulic project" means a hydraulic project that requires a forest practices application or notification under chapter 76.09 RCW.

(60) "Frequent scour zone" means the area between the wetted perimeter and the toe of the slope. The frequent scour zone is comprised of aggregate, boulders, or bedrock. Organic soils are not present in the frequent scour zone.

(61) "Freshwater area" means those state waters and associated beds below (waterward of) the ordinary high water line that are upstream of stream and river mouths. Freshwater areas also include all lakes, ponds, and tributary streams and surface-water-connected wetlands that provide or maintain fish habitat.

(62) "Functional grating" means the percent open area of the grating that is not covered or blocked by any objects such as structural components, framing wood, flotation tubs, or objects placed on the surface of the grating.

(63) "Ganged equipment" means two or more pieces of mineral prospecting equipment coupled together to increase efficiency. An example is adding a second sluice to a high-banker.

(64) "General provisions" means those provisions that are in every HPA.

(65) "*Gold and Fish* pamphlet" means a document that details the rules for conducting small-scale and other prospecting and mining activities and that serves as the hydraulic project approval for certain mineral prospecting and mining activities in Washington state.

(66) "Habitat function" means the natural attributes of a given habitat that support the fish and shellfish species that rely upon that habitat.

(67) "Habitat value" means an estimate of habitat quality, ecologically important functions and the relative value of the hydraulic project site within the watershed.

(68) "Hand-held equipment" means equipment held by hand and powered by internal combustion, hydraulics, pneumatics, or electricity. Examples are chainsaws, drills, and grinders.

(69) "Hand-held mineral prospecting tools" means:

(a) Tools used for mineral prospecting that are held by hand and are not powered by internal combustion, hydraulics, or pneumatics. Examples are metal detectors, shovels, picks, trowels, hammers, pry bars, hand-operated winches, and battery-operated pumps specific to prospecting; and

(b) Vac-pacs.

(70) "Hand-held tools" means tools held by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Examples are shovels, rakes, hammers, pry bars, and cable winches. This definition does not apply to hand-held tools used for mineral prospecting. See "hand-held mineral prospecting tools."

(71) "Hatchery" means any water impoundment or facility used for the captive spawning, hatching, or rearing of fish life.

(72) "High-banker" means a stationary concentrator operated outside the wetted perimeter of the body of water from which the water is removed and that uses water supplied by hand or by pumping. A high-banker consists of a sluice box, hopper, and water supply. Aggregate is supplied to the high-banker by means other than suction dredging. This definition excludes rocker boxes. See Figure 1.



Figure 1: High-banker

(73) "High-banking" means using a high-banker to recover minerals.

(74) "Hydraulic drop" means an abrupt drop in water surface elevation.

(75) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

(76) "Hydraulic project approval" or "HPA" means:

(a) A written approval for a hydraulic project issued under this chapter and signed by the director of the department or the director's designee; or

(b) A verbal approval for an emergency hydraulic project issued under this chapter by the director of the department or the director's designee; or

(c) The following printed pamphlet approvals:

(i) A "*Gold and Fish*" pamphlet issued under this chapter by the department, which identifies and authorizes specific minor hydraulic project activities for mineral prospecting and placer mining; or

(ii) An "*Aquatic Plants and Fish*" pamphlet issued under this chapter by the department, which identifies and authorizes specific aquatic noxious weed and aquatic beneficial plant removal and control activities.

(77) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(78) "In-lieu fee (ILF) program" means a state or federal certified program authorizing a person pay a fee to a third party in lieu of conducting project-specific mitigation or buying credits from a mitigation or fish conservation bank.

(79) "In-water blasting" means the use of explosives on, under, or in waters of the state, or in any location adjacent to the waters of the state, where blasting could impact fish life or fish habitat.

(80) "Job site" means the area of ground including and immediately adjacent to the area where work is conducted under an HPA. For mineral prospecting and placer mining projects, the job site includes the excavation site.

(81) "Joint aquatic resources permit application" or "JARPA" means a form provided by the department and other agencies that a person submits to request a written HPA for a hydraulic project.

(82) "Lake" means any natural standing fresh waters or artificially impounded fresh waters of the state, except impoundments of the Columbia and Snake rivers.

(83) "Large woody material" means trees or tree parts larger than four inches in diameter and longer than six feet, or rootwads, wholly or partially waterward of the ordinary high water line.

(84) "Macroalgae" means any of the nonvascular aquatic plant species (the red, green, or brown seaweeds) that can be seen without using a microscope. They may be attached to the substrate or other macroalgae by a holdfast, or found drifting individually or in mats.

(85) "Maintenance" means repairing, remodeling, or making minor alterations to a facility or project to keep the facility or project in properly functioning and safe condition.

(86) "Major modification" means any change to a hydraulic project that is not a minor modification.

(87) "Marina" means a public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include, but are not limited to, overnight or live-aboard boating accommodations.

(88) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the stor-

ing, handling, transferring, or transporting of goods to and from vessels.

(89) "Mean annual flood" means the average of all the annual peak floods of record.

(90) "Mean higher high water" or "MHHW" means the tidal elevation obtained by averaging each day's highest tide at a particular location over a period of nineteen years, as determined by National Oceanic and Atmospheric Administration (NOAA). It is measured from mean lower low water, which is a reference datum used to delineate waters of the state in saltwater areas.

(91) "Mean lower low water" or "MLLW" means the 0.0 feet tidal elevation, as determined by NOAA. It is determined by averaging each day's lowest tide at a particular location over a period of nineteen years. MLLW is a reference datum used to delineate waters of the state in saltwater areas. NOAA provides detailed information on their "Tides, Currents, and Predictions" web site.

(92) "Mechanical harvesting and cutting" means partially removing or controlling aquatic plants by using aquatic mechanical harvesters, which cut and collect aquatic plants, and mechanical cutters, which only cut aquatic plants.

(93) "Mineral prospect" or "mineral prospecting" means to excavate, process, or classify aggregate using hand-held mineral prospecting tools and mineral prospecting equipment.

(94) "Mineral prospecting equipment" means any natural or manufactured device, implement, or animal (other than the human body) used in any aspect of prospecting for or recovering minerals.

(95) "Mini high-banker" means a high-banker with a riffle area of three square feet or less. See Figure 2.



Figure 2: Mini high-banker

(96) "Mini rocker box" means a rocker box with a riffle area of three square feet or less. See Figure 3.

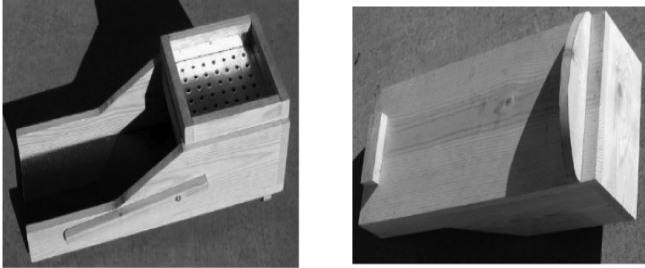


Figure 3: Mini rocker box (top view and bottom view)

(97) "Mining" means the production activity that follows mineral prospecting.

(98) "Minor modification" means a small change in work timing or plans and specifications of a hydraulic project.

(99) "Mitigation" means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts to fish life or habitat.

(100) "Mitigation bank" means a site where wetlands or other aquatic resources are restored, created, enhanced, or preserved. The bank exists expressly to provide compensatory mitigation before unavoidable impacts to wetlands or other aquatic resources occur.

(101) "Mitigation sequencing" means taking the steps in the mitigation sequence. The department and the applicant must consider and implement mitigation actions in the following sequential order:

(a) Avoid the impact altogether by not taking a certain action or parts of an action.

(b) Minimize impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking steps to avoid or reduce impacts.

(c) Rectify the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reduce or eliminate the impact over time by preservation or maintenance.

(e) Compensate for remaining unmitigated impacts by replacing, enhancing, or providing substitute resources or environments.

(f) Monitor the impact and take appropriate corrective measures to reach the identified goal.

(102) "Multiple site permit" means a hydraulic project approval issued to a person under RCW 77.55.021 for hydraulic projects occurring at more than one specific location and which includes site-specific requirements.

(103) "Natural conditions" means environmental situations that occur or are found in nature. This does not include artificial or manufactured conditions.

(104) "Nearshore zone" means the three critical "edge" habitats as follows: The edge between upland and aquatic environments, the edge between the shallow productive zone and deep water, and the edge between fresh and marine waters.

(105) "Ordinary high water line" or "OHWL" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vege-

tation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining freshwater is the elevation of the mean annual flood.

(106) "Pan" means an open metal or plastic dish operated by hand to separate gold or other minerals from aggregate by washing the aggregate. See Figure 4.



Figure 4: Pan

(107) "Panning" means the use of a pan to wash aggregate.

(108) "Permanent ford" means a ford approved by the department that is in place for more than one operating season.

(109) "Person" means an applicant, authorized agent, permittee, or contractor. The term person includes an individual, or a public or private entity, or organization.

(110) "Placer" means a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals.

(111) "Pool" means a portion of the stream with reduced current velocity, often with water deeper than the surrounding areas.

(112) "Power sluice" means "high-banker."

(113) "Power sluice/suction dredge combination" means a machine that can be used as a power sluice, or with minor modifications, as a suction dredge. See Figure 5.



Figure 5: Power sluices/suction dredge combination

(114) "Process aggregate" or "processing aggregate" means the physical or mechanical separation of the valuable mineral content within aggregate.

(115) "Prospecting" means the exploration for minerals and mineral deposits.

(116) "Protection of fish life" means avoiding and minimizing impacts to fish life and fish habitat through mitigation sequencing.

(117) "Purple loosestrife" means *Lythrum salicaria* and *Lythrum virgatum* as classified in RCW 17.10.010(10) and defined in RCW 17.26.020 (5)(b).

(118) "Qualified professional" means a scientist, engineer, or technologist specializing in a relevant applied science or technology including fisheries or wildlife biology, engineering, geomorphology, geology, hydrology, or hydrogeology. This person may be certified with an appropriate professional organization, and acting under that association's code of ethics and subject to disciplinary action by that association. A qualified professional can also be someone who, through demonstrated education, experience, accreditation, and knowledge relevant to the particular matter, may be reasonably relied on to provide advice within that person's area of expertise.

(119) "Redd" means a nest made in gravel, consisting of a depression dug by a fish for egg deposition, and associated gravel mounds. See Figure 6.

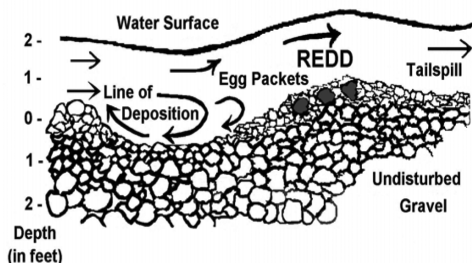


Figure 6: Cross-section of a typical redd

(120) "Rehabilitation" means major work required to restore the integrity of a structurally deficient or functionally obsolete structure. This can include partial replacement of a structure.

(121) "Replacement" means the complete removal of an existing structure and construction of a substitute structure in the same general location.

(122)(a) "Riffle" means the bottom of a concentrator containing a series of interstices or grooves to catch and retain a mineral such as gold; or

(b) "Riffle" means a short, relatively shallow and coarse-bedded length of stream over which the stream flows at higher velocity and higher turbulence than it normally does in comparison to a pool.

(123) "River" means "watercourse."

(124) "Riparian zones" means the land adjacent to streams, rivers, ponds, lakes, and those wetlands whose soils and vegetation are influenced by ponded or channelized water. They are the transition areas between aquatic and upland habitats with elements of both ecosystems.

(125) "Rocker box" means a nonmotorized concentrator consisting of a hopper attached to a cradle and a sluice box operated with a rocking motion. See Figure 7.

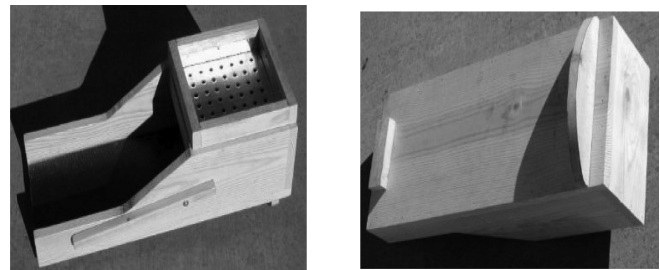


Figure 7: Rocker box

(126) "Rotovation" means the use of aquatic rotovators, machines that have underwater rototiller-like blades, to uproot aquatic plants as a means of control.

(127) "Roughened channel" means to construct a channel of a graded mix of sediment with enough roughness and hydraulic diversity to achieve fish passage. Roughened channels are designed to resist erosion and are often built at a steeper gradient than the prevailing channel.

(128) "Saltwater area" means those state waters with salinity as high as 35 parts per thousand of dissolved salts. It includes the associated beds below (waterward of) the ordinary high water line. Saltwater areas include estuaries and other surface water connected wetlands that provide or maintain fish habitat. Salinity in estuaries may range from 0.5 to 30 parts per thousand of dissolved salts.

(129) "Scientific measurement devices" means devices that measure and/or record environmental data, such as staff gauges, tide gauges, water recording devices, water quality testing and improvement devices, and similar instruments.

(130) "Seagrass" means native *Zostera* species, *Ruppia maritima*, and *Phyllospadix* species.

(131) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that must not be taken except as authorized by rule of the commis-

sion. The term shellfish includes all stages of development and the bodily parts of shellfish species.

(132) "Sluice" means a trough equipped with riffles across its bottom used to recover gold and other minerals with the use of flowing water. See Figure 8.



Figure 8: Sluice

(133) "Spartina" means *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens* as classified in RCW 17.10.010(10) and defined in RCW 17.26.020 (5)(a).

(134) "Special provisions" means those requirements that are part of a HPA, are site- or project-specific, and supplement or amend the technical provisions.

(135) "Spiral wheel" means a hand-operated or battery-powered rotating pan used to recover gold and minerals with the use of water. See Figure 9.



Figure 9: Spiral wheel

(136) "Stable slope" means a slope without measurable evidence of slumping, sloughing, or other movement. Stable slopes will not show evidence of landslides, uprooted or tilted trees, exposed soils, water-saturated soils, and mud, or the recent erosion of soils and sediment. Woody vegetation is typically present on stable slopes.

(137) "Suction dredge" means a machine used to move submerged aggregate by hydraulic suction. The aggregate is processed through an attached sluice box to recover gold and other minerals. See Figure 10.



Figure 10: Suction dredge

(138) "Suction dredging" means using a suction dredge to recover gold and other minerals.

(139) "Tailings" means the waste material that remains after processing aggregate to remove valuable mineral content.

(140) "Temporary ford" means a ford that is in place for no more than one operating season or less.

(141) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

(142) "Toe of the bank" means the distinct break in slope between the stream bank or shoreline and the stream bottom or marine beach or bed, excluding areas of sloughing. For steep banks that extend into the water, the toe may be submerged below (waterward of) the ordinary high water line. For artificial structures, such as jetties or bulkheads, the toe refers to the base of the structure where it meets the stream bed or marine beach or bed.

(143) "Toe of the slope" means the base or bottom of a slope at the point where the ground surface abruptly changes to a significantly flatter grade.

(144) "Unimpeded fish passage" means the free movement of all fish species at any mobile life stage around or through a human-made or natural structure.

(145) "Unstable slope" means a slope with visible or measurable evidence of slumping, sloughing, or other movement. Evidence of unstable slopes includes landslides, uprooted or tilted trees, exposed soils, water-saturated soils, and mud, or the recent erosion of soils and sediment. Woody vegetation is typically not present on unstable slopes.

(146) "Vac-pac" means a motorized, portable vacuum that you use for prospecting. See Figure 11.



Figure 11: Vac-pac

(147) "Water crossing structures" means structures that span over, through, or under a watercourse. Examples are bridges, culverts, conduits, and fords.

(148) "Water right" means a certificate of water right, a vested water right or a claim to a valid vested water right, or a water permit, under Title 90 RCW.

(149) "Watercourse" or "stream" means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of fish habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain fish habitat. This definition does not include irrigation ditches, canals, storm water treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

(150) "Waters of the state" or "state waters" means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state. RCW 77.55.011(25).

(151) "Weed rolling" means the use of a mechanical roller designed to control aquatic plant growth.

(152) "Wetland(s)" is as defined in RCW 90.58.030.

(153) "Wetted perimeter" means the areas of a watercourse covered with water. The wetted perimeter varies with flow, discharge, and tides.

(154) "Woody vegetation" means perennial trees and shrubs having stiff stems and bark. Woody vegetation does not include grasses, forbs, or annual plants.

(155) "Written notice" or "written notification" means a communication via U.S. mail or via e-mail.

NEW SECTION

WAC 220-660-040 Applicability of hydraulic project approval authority. (1) **When an HPA is required:** A person must obtain an HPA from the department before conducting a hydraulic project, unless the activity is exempt from this requirement as provided in subsection (2) of this section.

(2) **No HPA is required for the following hydraulic projects:**

(a) Installing oyster stakes, boundary markers, or property line markers by hand or with hand-held tools;

(b) Driving across an established ford (RCW 77.55.031);

(c) Remedial actions by the department of ecology or a person under a consent decree, order, or agreed order under RCW 70.105D.090 (RCW 77.55.061). Although no HPA is required, the department of ecology must ensure compliance with the substantive requirements of this chapter;

(d) Landscape management plans approved by the department and the department of natural resources under RCW 76.09.350(2) serve as an HPA for the life of the plan if fish are selected as one of the public resources covered under the plan (RCW 77.55.201);

(e) Removing derelict fishing gear according to the guidelines described in RCW 77.12.865 (RCW 77.55.041);

(f) Removing crab pots and other shellfish gear under a permit issued under RCW 77.70.500;

(g) An activity conducted solely to remove or control *spartina* (RCW 77.55.051);

(h) An activity conducted solely to remove or control purple loosestrife performed with hand-held tools, hand-held equipment, or equipment carried by a person (RCW 77.55.-051);

(i) Installing or removing a portable boat hoist in a lake if the hoist:

(i) Is not permanently installed;

(ii) Does not have armoring or other structures installed for a foundation or protection;

(iii) Is not installed or removed using equipment operated below the OHWL;

(iv) Is not installed at the inlet or outlet of any stream;

(v) Does not require any dredging, filling, pile driving, or any other bed modifications during installation or removal;

(vi) Is not modified during or after installation by adding docks, ramps, floats, or other structures that add surface area to the hoist or allow for moorage of additional watercraft; and

(vii) Is not installed in any of the following sockeye salmon-bearing lakes:

(A) Baker;

(B) Cle Elum;

(C) Osoyoos;

(D) Ozette;

(E) Pleasant;

(F) Quinault;

(G) Sammamish;

(H) Washington; and

(I) Wenatchee.

(j) Installing, maintaining, or removing scientific measurement devices if:

(i) All work is conducted waterward of the OHWL by hand or with hand-held tools;

(ii) The project does not create a blockage to fish passage, even temporarily; and

(iii) The project does not include dewatering the worksite, placing fill or concrete, or excavating or grading the streambed or bank.

(k) Forest practices hydraulic projects, as defined in chapter 76.09 RCW; and

(l) Installation or maintenance of tideland and floating private sector commercial fish and shellfish culture facilities (RCW 77.12.047). However, an HPA is required for the construction of appurtenance structures, such as bulkheads or boat ramps, that use, divert, obstruct, or change the bed or flow of any of the salt or fresh waters of the state.

NEW SECTION

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 (wdfw.wa.gov).

(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 waterbodies can kill or injure fish or shellfish directly and can damage or destroy their habitat. Damaged or destroyed habitat can continue to cause lost production of fish and shellfish for as long as the habitat remains altered. HPAs help reduce the impacts of construction and other work to fish, shellfish, and their habitat.

(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. A regular standard HPA is limited to a single project site.

(b) Special types of standard HPAs:

(i) Fish habitat enhancement project (FHEP) 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 FHEP 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 FHEP 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 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 a project the department has scoped prior to application submittal.

(iii) General HPA.

(A) The department may issue general HPAs to government agencies, organizations, or companies to perform the same work in multiple waterbodies 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 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.

(D) 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.

(E) 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 fish 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 the authorized emergency hydraulic project is completed, any unavoidable 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 the authorized imminent danger hydraulic project is completed, any unavoidable 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) Any unavoidable impacts must be mitigated or a mitigation plan must be submitted to the department for approval within ninety days after completion of a hydraulic project authorized in an expedited HPA.

(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 commencing the hydraulic project.

(b) A person must review a pamphlet HPA before conducting the authorized hydraulic project.

(c) When a pamphlet HPA is required, 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 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, 8:00 a.m. to 5:00 p.m. 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;
- (B) An emergency HPA, subsection (5) of this section;

(C) A minor modification of an HPA, WAC 220-660-030(97); and

(D) A major modification of an HPA, WAC 220-660-030(85).

(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 or landowner representative, and the authorized agent, if any. Completing and submitting the application form 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;

(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 and their habitats, including any reports assessing impacts to fish life and their habitats, and plans to mitigate those impacts to ensure the project results in no net loss of fish habitat function, value and quantity;

(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 previously 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) Projects applied for before July 10, 2012, and modifications of permits issued to those projects; 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.

(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 98504-3234;

(III) E-mail: 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 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 e-mailed notification of an incomplete application to the applicant or authorized agent. This written or e-mailed 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 any application that has been incomplete for more than six months. The department must provide the applicant with written notification at the time the application expires. The applicant or authorized agent must submit a new complete application to receive further consideration of the project.

(11) 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 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, expedited, and modified HPAs are exempt from the review period requirement.

(b) Except for imminent danger, expedited, and emergency 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) 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 storm water 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 agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(c) The department may not process any application if the application has been delayed for processing more than six months for any of the reasons identified in subsection (13)(a) or (b) of this section. The department must provide the applicant with written notification at the time the application expires. The applicant or authorized agent must submit a new complete application to receive further consideration of the project.

(14) 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 their habitats. The permittee should contact the biologist who issued the HPA 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) Hydraulic project approval expiration time periods:

(a) Except for emergency, imminent danger, expedited and pamphlet HPAs, the department may grant standard HPAs for a period of 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 may be granted for a period of up to sixty days, and emergency HPAs may be granted 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) Requesting a time extension, renewal, or major modification of a hydraulic project approval:

(a) The permittee may request a time extension, renewal, or modification 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 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 number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, 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.

(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 to an approved HPA.

(d) 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.

(e) 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.

(f) The department will issue a written HPA if the request is approved.

(17) 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.

NEW SECTION

WAC 220-660-060 Integration of hydraulic project approvals and forest practices applications. (1) Description:

(a) In 1999, the *Forests and Fish Report* and Engrossed Substitute House Bill 2091, which amended the Forest Practices Act, chapter 76.09 RCW, envisioned a more integrated approach to permitting hydraulic projects that also require forest practices applications (FPAs). In May 2001, the forest practices board adopted permanent forest practices rules in Title 222 WAC, which incorporated fish protection measures normally included in hydraulic project approvals (HPAs) for projects in nonfish-bearing waters.

(b) In April 2012, the Washington state legislature, through Second Engrossed Substitute Senate Bill 6406, amended the Forest Practices Act in chapter 76.09 RCW and the hydraulic code statutes in chapter 77.55 RCW. The amendment requires integrating hydraulic code rule fish protection standards (Title 220 WAC) into the forest practices rules for hydraulic projects in fish-bearing waters on forest land. As codified in RCW 77.55.361 and 76.09.040, the requirements of the hydraulic code rules will no longer apply to any forest practices hydraulic project as soon as fish protection standards have been integrated into the forest practices rules, and technical guidance has been developed and approved for inclusion in the *Forest Practices Board Manual*. Thereafter, forest practices hydraulic projects will be regulated under forest practices rules. The amended statutes also include a requirement that the department adopt rules establishing the procedures for the concurrence review process. This process is outlined in subsection (3) of this section.

(2) General review and comment on forest practices hydraulic projects:

(a) The department may review and provide comments on any FPA.

(b) For FPAs that include a forest practices hydraulic project involving fish-bearing waters or shorelines of the state, the department must review the forest practices hydraulic projects and either provide comments to the department of natural resources (DNR), or document that the review has occurred without the need for comments. Before commenting, the department will strive to communicate with the applicant regarding any concerns relating to consistency with fish protection standards. The department will also strive to maintain communications with DNR as concerns arise and to inform DNR of communications with applicants.

(c) The department will encourage forest landowners to consult with department biologists, including site visits as needed, before submitting an FPA containing a hydraulic project. This will help ensure that project design plans and specifications meet fish protection standards. Preapplication collaboration with the department will result in more efficient and successful outcomes for forest landowners and their proposed hydraulic projects. In addition to the general review and comment process for forest practices hydraulic projects described in this subsection, hydraulic projects meeting the criteria described in subsection (3)(a) of this section will follow the concurrence review process.

(3) Concurrence review process:

(a) The department must review forest practices hydraulic projects meeting the following criteria and provide written comments to DNR on the project's ability to meet fish protection standards:

(i) Culvert installation or replacement, and repair at or below the bankfull width, as that term is defined in WAC 222-16-010 on July 10, 2012, in fish-bearing rivers and streams that exceed five percent gradient;

(ii) Bridge construction or replacement, and repair at or below the bankfull width, of fish-bearing unconfined streams; or

(iii) Fill within the 100-year flood level, as that term is defined in WAC 222-16-010, of fish-bearing unconfined streams.

(b) After the department receives notification from DNR that an FPA includes one or more hydraulic projects meeting the criteria in subsection (3)(a) of this section, the department has thirty days to review the forest practices hydraulic project(s) for consistency with fish protection standards.

(c) Within five business days after notification from DNR, or as soon as possible thereafter, the department will determine if all information needed to assess the hydraulic project's consistency with fish protection standards is included in the application.

(d) If information is missing, the department will immediately contact the applicant to request the missing information. The department will also provide written notification to DNR, indicating that specific information is missing and that the applicant has been notified. If the applicant fails to provide missing information in a timely manner so that the department can complete its review within the required

thirty-day time frame, the department may issue a nonconurrence on a proposed project.

(e) If, during the thirty-day concurrence review period, the department determines that a forest practices hydraulic project may not be consistent with fish protection standards, the department will attempt to work with the applicant to modify the proposed project. The department will strive to include DNR on site visits with the applicant as needed.

(f) The department must provide written notification of concurrence or nonconurrence to DNR within the thirty-day review period, stating whether or not the hydraulic project is consistent with fish protection standards. As part of the written notification to DNR, the department must provide information about the outcomes of any meetings with the applicant, including agreements or disagreements, any missing information requested, and any proposed changes needed to meet fish protection standards.

(g) The department will recommend that DNR deny the FPA when efforts described in subsection (3)(e) of this section have not resulted in a successful outcome, the project will result in direct or indirect harm to fish life, and enough mitigation cannot be assured by modifying the hydraulic project proposal or by DNR's agreement to add appropriate provisions to the FPA.

NEW SECTION

WAC 220-660-070 Changes to hydraulic project approval technical provisions. (1) The department may modify or delete technical provisions in this chapter through establishing conditions on an HPA permit when any of the following is demonstrated:

- (a) There is no logical application to a project;
- (b) A person provides an alternative to the provision that demonstrates that it provides equal or greater protection for fish life;
- (c) Enforcement of the original provision would result in denial of an HPA when there is enough mitigation defined to allow the project;
- (d) The modification or deletion of the provision will not cause a loss of or injury to fish or shellfish, or the loss or permanent degradation of the habitat that supports fish and shellfish populations;
- (e) The proposed hydraulic project is part of an approved cleanup action under Model Toxics Control Act, Comprehensive Environmental Response Compensation and Liability Act, or Superfund Amendment and Reauthorization Act;
- (f) The technical provisions conflict with applicable local, state, or federal regulations that provide equal or better protection for fish life;
- (g) The technical provision or provisions are not possible due to geological, engineering or environmental constraints or safety concerns; or
- (h) New scientific information is made available that demonstrates the project will result in equal or greater protection of fish and shellfish, and their related habitat.

(2) The department may add conditions on the HPA permit to protect fish life as needed to address project-specific or site-specific impacts not adequately addressed by the technical provisions. However, all provisions must relate to the

project and be proportional to the impact of the project. The HPA will include all of the technical provisions with which a person will be required to comply.

NEW SECTION

WAC 220-660-080 Mitigation requirements for hydraulic projects. (1) **Description:** The department defines mitigation as sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts. The department applies the technical and special provisions to mitigate impacts to fish life from hydraulic projects. This mitigation minimizes loss of fish habitat function, value, and quantity.

(2) **Fish life concerns:** Work conducted in or near water can negatively impact fish life. Best management practices such as proper design and siting, construction timing, isolating the work area, sediment and erosion control, water-quality management, and revegetation can avoid, minimize, and rectify many of these impacts. These best management practices are reflected in the technical provisions. However, remaining impacts may require compensation to offset the loss of fish habitat function, value, and quantity.

(3) Mitigation requirements:

(a) The department must determine if the project actions proposed will mitigate for the project impacts to fish life, including fish habitat function, value, and quantity based on available information.

(b) A person must pay for any surveys, studies, or reports required by the department to determine if the hydraulic project mitigates impacts to fish life. When required, the department will provide a written explanation of why the information is required and what standards or protocols the applicant must follow.

(c) Mitigation includes all of the action steps in the mitigation sequence. The department and the applicant must consider and implement mitigation actions in the following sequential order:

- (i) Avoid the impact altogether by not taking a certain action or parts of an action;
- (ii) Minimize impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking steps to avoid or reduce impacts;
- (iii) Rectify the impact by repairing, rehabilitating, or restoring the affected environment;
- (iv) Reduce or eliminate the impact over time by preservation or maintenance;
- (v) Compensate for remaining unmitigated impacts by replacing, enhancing, or providing substitute resources or environments; and
- (vi) Monitor the impact and take appropriate corrective measures to reach the identified goal.

(d) Compensatory mitigation is not required for hydraulic projects if other actions in the mitigation sequence are taken that prevent or offset impacts to fish life.

(e) The department may require advance mitigation if an experimental mitigation technique is being performed. If required, the advance mitigation should be fully functional prior to the project impacts.

(f) Replacement of any portion of any structure must comply with the requirements in this chapter governing materials that may be used.

(4) Compensatory mitigation:

(a) The department may determine that compensatory mitigation actions are needed to offset impacts remaining after other actions in the mitigation sequence are completed.

(b) When compensatory mitigation is needed to offset impacts, the department prefers compensatory mitigation actions that restore impacted functions on-site or immediately adjacent to the impact site.

(c) The department may not limit the scope of compensatory mitigation options to areas on or near the project site, or to habitat types that are the same type as those on the project site. The department must fully review and give due consideration to compensatory mitigation proposals that improve the overall fish habitat functions and values of the watershed. The department must also accommodate the mitigation needs of the infrastructure or noninfrastructure development, including proposals or portions of proposals that are explored or developed in RCW 90.74.040. However, the department will not approve compensatory mitigation that does not provide equal or better fish habitat functions and values.

(d) The department will evaluate mitigation credits and debits on a scientifically valid measure of fish habitat function, value, and quantity such as the habitat equivalency analysis, habitat evaluation procedure or other method acceptable to the department. Compensatory mitigation must compensate for temporal losses, uncertainty of performance, loss of habitat quantity and differences in habitat functions, types, and value.

(e) The department will consider the use of credits from an approved programmatic option such as a state or federal certified fish conservation bank, a joint 404/401 mitigation and fish conservation bank, or in-lieu fee program as a form of compensation only after the standard mitigation sequencing has been applied at the impact site. These credits should benefit the same fish stocks or fish species as those impacted by the hydraulic project.

(f) For calculating compensatory mitigation requirements under this chapter, the environmental baseline is habitat conditions at the time the HPA application is submitted. However, this baseline does not apply to hydraulic projects illegally constructed.

(g) The department will evaluate impacts caused by a hydraulic project by comparing the condition of the habitat before project construction or the performance of work to the anticipated condition of the habitat after project completion.

(h) Maintenance on a legally constructed structure does not require compensatory mitigation unless: The maintenance causes a new loss of fish habitat function, value or quantity not associated with the original construction of the structure.

(i) Maintenance work that rehabilitates and replaces a structure must comply with the applicable common technical provisions and project-specific and site-specific provisions.

(j) Removal of a human-made or engineered structure does not require compensatory mitigation. However, the department may require bank resloping, revegetation, and other job site stabilization measures after structure removal.

(k) The department may require monitoring to determine the extent and severity of impacts and the effectiveness of the compensation projects. The department may require corrective measures to ensure performance goals and objectives specified in the HPA are achieved. The monitoring and contingency plan must ensure the compensatory mitigation meets the performance goals and objectives. This plan may be part of a larger mitigation plan.

(5) Mitigation plan:

(a) The department may require a mitigation plan for projects with unavoidable adverse impacts and those with ongoing, complex, and experimental mitigation actions.

(b) The department must notify a person in writing if a mitigation plan is required and specify what the plan must include if a mitigation plan was not submitted with the application.

(c) An applicant may use a mitigation plan to propose compensatory mitigation within a watershed. Pursuant to RCW 90.74.020, a mitigation plan must:

(i) Guarantee long-term viability of the created, restored, enhanced, or preserved fish habitat, including assurances for protecting any essential fish habitat functions and values defined in the mitigation plan;

(ii) Provide long-term monitoring of any created, restored, or enhanced mitigation site; and

(iii) Be consistent with the local comprehensive land use plan and any other applicable planning process in effect for the development area, such as an adopted subbasin or watershed plan.

(d) When making a permit decision, the department must consider, pursuant to RCW 90.74.020, whether the mitigation plan provides equal or greater fish habitat functions and values compared to the existing conditions. This consideration must be based upon the following factors:

(i) The relative value of the mitigation for the target fish species or fish stocks, in terms of the function, value, and quantity of habitat;

(ii) The compatibility of the proposal with broader resource management and habitat management objectives and plans, such as existing resource management plans, species recovery plans, watershed plans, critical areas ordinances, the forestry riparian easement program, the riparian open space program, the family forest fish passage program, and shoreline master programs;

(iii) The ability of the mitigation to address scarce fish habitat functions or values within a watershed;

(iv) The benefits of the proposal to the broader watershed landscape, including the benefits of connecting various fish habitat units and reducing population-limiting fish habitats;

(v) The benefits of implementing advance compensatory mitigation before the project's anticipated impacts occur; and

(vi) The significance of any negative impacts to nontarget fish species, fish stocks, or resources.

(e) A mitigation plan may be approved through a memorandum of agreement between a person and the department.

(f) The department will require a memorandum of agreement between an applicant and the department if mitigation actions, including monitoring, exceed the five-year statutory time limitation of the HPA.

NEW SECTION

WAC 220-660-090 Technical provisions. Technical provisions are avoidance and minimization mitigation measures commonly used to protect fish life. WAC 220-660-100 through 220-660-450 are common technical provisions listed by hydraulic project types. All projects will also be reviewed relative to the provisions of WAC 220-660-080. The department will require certain technical provisions depending upon the individual proposal and the site characteristics. Additional special provisions may be included to address site-specific conditions. Those provisions must be in the HPA. The department may apply saltwater provisions listed in WAC 220-660-310 through 220-660-450 to a project in tidally influenced areas upstream of river mouths and the mainstem Columbia River downstream of Bonneville Dam.

NEW SECTION**WAC 220-660-100 Freshwater habitats of special concern. (1) Description:**

(a) There are ninety-one species of fish in Washington: Fifty species of native fish and forty-one introduced fish species. Freshwater habitats of special concern are listed in WAC 220-660-120 and 220-660-330, and include priority habitats in the priority habitats and species program. These habitats of special concern provide essential functions important in the developmental life histories of twenty-two priority fish species. Priority fish species include species that are listed under state and federal endangered species laws, and species of recreational, commercial, or tribal importance.

(b) The presence of freshwater habitats of special concern or adjacent areas with similar characteristics may restrict project type, design, location, and timing. These restrictions also may benefit other fish species that use these habitats. The department may determine the location of such habitats by a site visit, and/or by considering maps, publications, and other available information.

(2) Fish life concerns:

(a) All fish and shellfish have special habitat requirements related to water quality and quantity (including temperature) and to the physical features of the stream or body of water in which they live. For example, salmon and steelhead spawn and live for a time in a stream before going to the ocean. They require an ample supply of clean, cool, well-oxygenated water. Adults need clean gravel in which to spawn and juvenile fish require in-stream cover such as tree parts, boulders, or overhanging banks in which to hide from predators. Vegetated stream banks shade the water from the warming effects of the sun. Insects drop off overhanging vegetation and provide food. When juvenile salmon or steelhead enter saltwater, their habitat requirements change. During this critical transition period, they must have shallow, near-shore waters where they can migrate, school, feed, and seek protection from larger fish. Each species of fish and shellfish has similar, yet unique requirements. They have become adapted to and require these natural conditions as a result of the ten thousand years of evolution since the last ice age. The degradation of any one of the elements of their required habitat results in reduced numbers of fish and shellfish.

(b) Construction activity in or near the water has the potential to kill fish or shellfish directly. More importantly, this activity can also alter the habitat that fish and shellfish require. Direct damage or loss of habitat results in direct loss of fish and shellfish production. Direct killing of fish or shellfish is usually a one-time loss. Damaged habitat, however, can continue to cause lost production of fish and shellfish for as long as the habitat remains altered.

(3) Freshwater habitats of special concern:

(a) The following habitats serve essential functions in the developmental life history of twenty-two priority fish species:

(i) Spawning habitat;

(ii) Rearing habitat;

(iii) Migration corridors;

(iv) Cover and shelter provided by large woody debris, live tree roots, deep pools, shallow water, undercut banks, overhanging vegetation, turbulence, and large interstitial areas in cobble or boulder substrate;

(v) Off-channel habitat including wall-based channels, flood swales, side channels, and floodplain spring channels;

(vi) Native aquatic vegetation beds; and

(vii) Native riparian vegetation zones.

(b) The following are important geomorphic processes that form and maintain freshwater habitats of special concern:

(i) Woody material sources, delivery, and transport; and

(ii) Sediment sources, delivery, and transport.

(c) A person may request information from the department about the location of priority fish species and freshwater habitats of special concern. Information about priority fish species is also available on the department's web site.

NEW SECTION

WAC 220-660-110 Authorized work times in freshwater areas. (1) Description: The department authorizes work during less critical times of the year to reduce the risk of impacts to fish life at critical life stages. In-water work is not allowed during critical periods of the year unless a person can implement mitigation measures to eliminate risk to fish life.

(2) **Fish life concerns:** Work in or near watercourses can harm fish life including incubating eggs and fry, and juveniles and spawning adults, or other sensitive life history stages. Therefore, work must occur at times of the year when the risk to fish life is reduced unless the risk can be avoided.

(3) Determining authorized work times:

(a) The department has the discretion to modify timing windows depending on actual site conditions (such as hydrology, run timing, and fish presence) and the risk of the proposed work to fish life. The department must specify authorized work times for hydraulic projects in or near waters of the state when it issues HPAs. When determining the authorized work times, the department will use the information below to determine the appropriate timing window for each project individually. Work timing considers:

(i) Life history stages of the fish and shellfish species present:

(A) Presence or absence of spawning, incubating, rearing, migrating, and other critical habitat at or near the worksite; and

(B) The migration timing of juveniles and adults in both fresh and saltwater.

(ii) The expected impact of construction activities, equipment type, and access;

(iii) Best management practices proposed by the applicant, including proposed plans to:

(A) Control, contain, and manage sediment and erosion at the worksite;

(B) Contain and manage wastewater at the worksite;

(C) Isolate the impacts of the work to fish life using appropriate worksite isolation techniques; and

(D) Minimize damage to riparian, wetland, and aquatic vegetation at the worksite.

(iv) Mitigation measures volunteered or imposed upon the project;

(v) Existing or predicted weather conditions or flow during construction activities; and

(vi) Other circumstances and conditions.

(b) The department must publish on its public web site the times when spawning salmonids and their incubating eggs and fry, or other critical life history stage are least likely to be within Washington state fresh waters.

NEW SECTION

WAC 220-660-120 Common freshwater construction provisions. (1) **Description:** Common freshwater construction provisions can apply to many hydraulic projects. However, only applicable common construction provisions will be applied to a specific hydraulic project. Common construction provisions include job site access, equipment use, construction materials, sediment and erosion control containment, in-water work area isolation, fish removal, job site repair, and revegetation.

(2) **Fish life concerns:** Construction and other work can negatively affect fish life. Some activities may kill or injure fish while others can cause behavioral changes that reduce fish growth and survival. Some activities can damage the habitat used for spawning and egg incubation, rearing, feeding, hiding from predators, and migration.

(3) **Staging areas:** Establish staging areas (used for activities such as equipment storage, vehicle storage, fueling, servicing, and hazardous material storage) in a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.

(4) **Job site access:**

(a) Use existing roadways or travel paths whenever possible. If not possible, minimize the number of new temporary access roads constructed.

(b) Design and locate new temporary access roads to avoid and minimize erosion and delivery of sediment to waters of the state.

(c) Clearly mark boundaries to establish the limit of work associated with site access and construction.

(d) Limit the removal of native vegetation to one side of the channel to maintain the best shade coverage. Where possible, locate the project access site to minimize the need to remove woody vegetation. Woody vegetation greater than six inches diameter that must be removed must be marked in the field by the applicant and specifically approved for removal by the department.

(e) Retain all natural habitat features on the bed or banks including large woody material and boulders. These natural habitat features may be moved during construction but they must be placed near the preproject location prior to demobilization.

(5) **Equipment use:**

(a) Avoid and minimize unintentional damage to or removal of riparian, aquatic, and wetland vegetation by confining the use of equipment to specific access and work corridors.

(b) Avoid and minimize the use of equipment below the OHWL of rivers, streams, and lakes.

(c) If wet or muddy conditions exist, in or near a riparian or wetland area, use equipment that reduces ground pressure, if possible.

(d) Check equipment daily for leaks and complete any required repairs in an upland location before using the equipment in or near the water.

(e) Equipment used in or near water must use vegetable-based lubricants.

(6) **Construction materials:**

(a) Store all construction and deconstruction material at a location and in a way that will prevent contaminants such as petroleum products, hydraulic fluid, fresh cement, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.

(b) Do not stockpile construction material below the OHML in rivers, streams, and lakes unless authorized to do so in the HPA.

(c) Use only clean, suitable material as fill material (no trash, debris, car bodies, asphalt, concrete, etc.).

(d) If the department approves the use of angular rock, the rock must be large enough and installed to withstand the 100-year peak flow or other design flow approved by the department.

(e) To prevent leaching, construct forms for any wet concrete. Place impervious material over any exposed concrete not lined with forms that will come in contact with waters of the state. Forms and impervious materials must remain in place until the concrete is cured.

(f) Do not use wood treated with oil-type preservative (creosote, pentachlorophenol) in any hydraulic project. Wood treated with waterborne preservative chemicals (ACZA, ACQ) may be used provided the western wood preservers institute has approved the waterborne chemical for use in the aquatic environment. The manufacturer must follow the western wood preservers guidelines and the best management practices to minimize preservative migration from treated wood into aquatic environments. To minimize leaching, wood treated with a preservative by someone other than a manufacturer must follow the field treating guidelines. These guidelines are available at www.wwpinstitute.org.

(g) Use tarps or other methods to completely contain treated wood sawdust, trimmings, and drill shavings.

(h) The department discourages the use of whole tires. Products made from scrap tires specifically manufactured for use in the aquatic environment are allowed by the department.

(7) Construction-related sediment, erosion and pollution containment:

(a) When possible, work in the dry watercourse (when no natural flow is occurring in the channel, or when flow is diverted around the worksite).

(b) Protect all disturbed areas from erosion. Maintain erosion and sediment control until demobilization and cleanup of the job site is completed.

(c) When using straw for erosion and sediment control, use only straw that has been certified as free of noxious weeds and their seeds.

(d) If flow conditions arise that are likely to result in unanticipated and unpreventable erosion or siltation of waters of the state, all hydraulic project activities must stop except those needed to control erosion and siltation.

(e) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials, from entering or leaching into waters of the state.

(f) Route the construction water (wastewater) the project to an upland area above the limits of anticipated floodwater. Remove fine sediment and other contaminants before discharging the construction water to waters of the state.

(g) Deposit waste material from the project, such as construction debris, silt, excess dirt, or overburden in an upland area above the limits of anticipated floodwater unless the material is authorized by the department for reuse in the project. Do not burn wood treated with preservatives, trash, waste, or other deleterious materials below the OHWL.

(h) Deposit all trash from the project at an appropriate upland location.

(i) Prevent transporting and introducing aquatic invasive species by thoroughly cleaning vessels, equipment, boots, waders, and other gear before removing the gear from the worksite.

(8) In-water work area isolation using block nets:

(a) Do not install block nets at sites with heavy vegetation, large cobble or boulders, undercut banks, or deep pools unless there is no difficulty securing and/or maintaining the nets.

(b) Install a downstream block net if fish may reenter the work area from downstream.

(c) Install block nets at sites that have reduced flow volume or velocity, uniformity of depth, and good accessibility.

(d) After the first block net is secured at the upstream end, use a second block net to herd fish downstream and out of the project area.

(e) The department must determine the maximum size of the block net opening. The size of the opening depends on the bypass design, the purpose of the block net, and the fish species likely to be present.

(f) Install the block nets at an angle to the direction of flow (not perpendicular to the flow) to avoid entrapping fish in the net.

(g) To anchor block nets, place bags filled with clean round gravel along the bottom of the nets.

(h) Secure block nets along both banks and the channel bottom to prevent failure from debris accumulation, high flows, and/or flanking.

(i) To keep fish out of the worksite, leave block nets in place until the work is complete and conditions are suitable for fish.

(j) Check block nets at least three times a day for entangled fish and accumulated debris.

(9) In-water work area isolation using a temporary bypass:

(a) Isolate fish from the work area by using either a total or partial bypass to reroute the stream through a temporary channel or pipe.

(b) The hydraulic capacity of the stream bypass must be equal to or greater than the peak flow event expected when the bypass will be operated. A person may have to conduct a hydrologic analysis to determine the magnitude of this flow event. The department may not require hydraulic analysis for short-term bypass on low stream flows.

(c) Provide fish passage during times of the year when fish are expected to migrate.

(d) Sequence the work to minimize the duration of dewatering.

(e) Use the least-impacting method that is possible to temporarily bypass or exclude water from the work area. Consider the physical characteristics of the site and the anticipated volume of water flowing through the work area.

(f) Design the temporary bypass to minimize the length of the dewatered stream channel.

(g) During all phases of bypass installation and decommissioning, maintain flows downstream of the project site to ensure survival of all downstream fish.

(h) Install the temporary bypass before starting other construction work in the wetted perimeter.

(i) The department may require the installation of a cofferdam or similar device at the upstream and downstream end of the bypass to prevent backwater from entering the work area.

(j) Return diverted water to the channel immediately downstream of the work area. Dissipate flow energy from the diversion to prevent scour or erosion of the channel and bank.

(k) If the diversion inlet is a gravity diversion that provides fish passage, place the diversion outlet where it facilitates gradual and safe reentry of fish into the stream channel.

(l) If the bypass is a pumped diversion it must run continuously, once started, until it is no longer necessary to bypass flows. This requires back up pumps on site and twenty-four-hour monitoring for overnight operation.

(m) If the diversion inlet is a pump diversion in a fish-bearing stream, the pump intake structure must have a fish screen installed, operated, and maintained in accordance with RCW 77.57.010 and 77.57.070. Screen the pump intake by one of the following:

(i) Perforated plate: 0.094 inch (maximum opening diameter);

(ii) Profile bar: 0.069 inch (maximum width opening); or
 (iii) Woven wire: 0.087 inch (maximum opening in the narrow direction).

(iv) The minimum open area for all types of fish guards is twenty-seven percent. The screened intake must have enough surface area to ensure that the velocity through the screen is less than 0.4 feet per second.

(n) The fish screen must remain in place whenever water is withdrawn from the stream through the pump intake.

(o) Maintain fish screens to prevent injury or entrapment of fish.

(p) Remove fish screens on dewatering pumps in the isolated work area only after all fish are safe and excluded from the work area.

(q) Isolate pump hose intakes with block nets so that fish do not get near the intake.

(r) Before restoring water to the work area, stabilize the bed with clean material sized to match undisturbed sediments.

(s) Complete all in-water and channel restoration work before rewatering the work area.

(10) In-water work area isolation using a cofferdam structure:

(a) Use modeling to determine the impact of the cofferdam or similar device on water-surface elevations during all anticipated flows. The department will not require modeling for short-term cofferdams installed in low flow streams.

(b) When designing the cofferdam or similar device, consider the infiltration rate of seepage flow from the riverbed and banks.

(c) Install and remove cofferdams or similar devices in a way that maintains water quality.

(11) In-water work without a bypass or cofferdam:

(a) In the following instances, the department will not require the use of a cofferdam, bypass, or similar structure to separate the work area from waters of the state:

(i) When installing a cofferdam, bypass, or similar structure would cause greater impacts to fish life than it would prevent;

(ii) When the work area is in deep or swiftly flowing water;

(iii) When turbidity is not a concern;

(iv) When fish can be excluded by nets or screens; or

(v) When fish are not present.

(12) Fish removal:

(a) All persons participating in fish capture and removal must have training, knowledge, and skills in the safe handling of fish.

(b) If electrofishing will be conducted, a person with electrofishing training must be on-site to conduct or direct all electrofishing activity.

(c) If personnel are available, the department and affected tribes may help capture and move fish life from the job site.

(d) Place block nets up and downstream of the in-water work area.

(e) Capture and safely move fish life from the work area to the nearest suitable free-flowing water.

(13) Demobilization and cleanup:

(a) Restore the disturbed bed, bank, and riparian zones as close as possible to their preproject condition unless modified elevations and contours are authorized by the department in the approved construction drawings.

(b) Completely remove any temporary fill and return the affected areas to preproject elevation and contours. Fill material must be removed before the end of the in-water timing window if the fill material could erode into or deliver sediment-laden water into waters of the state.

(c) By the end of the in-water work period, abandon temporary roads in wet or flood-prone areas.

(d) By the end of the in-water work period, remove all temporary stream crossings and restore the bed and banks to their preproject condition.

(e) Upon completion of the project, remove all materials or equipment from the site and dispose of all excess spoils and waste materials in an upland area above the limits of anticipated floodwater.

(f) To prevent fish from stranding, backfill trenches, depressions, and holes in the bed that may entrain fish during high water or wave action.

(g) Removed or replaced structures and associated materials must not reenter waters of the state unless authorized by the department.

(h) To minimize sediment delivery to the stream or stream channel, do not return in-stream flows to the work area from a bypass, cofferdam or similar structure until all in-channel work is completed and the bed and banks are stabilized.

(i) Using a proven methodology, replace native riparian, aquatic, and wetland vascular plants (except noxious weeds) damaged or destroyed by construction.

(j) The department must approve planting densities and maintenance requirements for replanting on a site-specific basis.

(k) Complete replanting during the first dormant season (late fall through late winter) after project completion. Maintain plantings for at least three years to ensure at least eighty percent of the plantings survive. Failure to achieve the eighty percent survival in year three will require that a person submit a plan with follow-up measures to achieve requirements or reasons to modify requirements.

(l) The department may waive the requirement to plant vegetation where the potential for natural revegetation is adequate or where other factors preclude it.

(m) The department may require fencing or other structures to prevent livestock, wildlife, or unauthorized persons from accessing the replanted sites until the plantings are well established.

(n) Remove temporary erosion and sediment control methods after job site is stabilized.

(14) Required permittee notification: If a fish kill occurs or fish are observed in distress at the job site, immediately stop all activities causing harm. Immediately notify the department of the problem. If the likely cause of the fish kill or fish distress is related to water quality, also notify the Washington military department emergency management division at 1-800-258-5990. Activities related to the fish kill or fish distress must not resume until the department gives

approval. The department may require additional measures to mitigate impacts.

NEW SECTION

WAC 220-660-130 Stream bank protection and lake shoreline stabilization. Appropriate methods to design stream bank structures are available in the department's *Integrated Streambank Protection Guidelines*, as well as other published manuals and guidelines.

(1) **Description:**

(a) Stream bank and lake shoreline erosion is a process where soil, gravel, and rock within the bank of a waterway become mobilized by the flow or wave action of water. Stream bank and lake shoreline erosion is a natural process that supplies the materials necessary to create features such as beaches, gravel bars, and floodplains. However, activities that alter the surrounding environment can greatly increase the rate of erosion. One of the primary causes of accelerated erosion is a reduction in the amount of vegetation within the riparian zone of a watercourse or lake.

(b) Stream bank protection and lake shoreline stabilization structures are permanent or temporary structures constructed to reduce or prevent stream bank and shoreline erosion. Structural techniques armor the bank with material such as riprap, concrete, or timber. Biotechnical techniques attempt to mimic natural processes by using live plantings, rootwads, and large woody material (LWM). Biotechnical techniques usually impact fish life less than structural techniques. Some projects integrate both structural and biotechnical techniques.

(2) **Fish life concerns:** Stream bank protection and lake shoreline stabilization alter the bed or beach and the physical processes that form and maintain fish habitat. Direct loss of habitat may include loss of cover, spawning beds, large woody material, riparian zone function, and floodplain connectivity as well as alteration of the channel/beach. These losses and alterations decrease the complexity and diversity of fish habitats.

(3) **Bank protection and lake shoreline stabilization design - General:**

(a) The department may require a person to submit a qualified professional's rationale with the HPA application for a new structure or a replacement structure extending waterward of the existing structure or bankline. This requirement does not apply to projects that address localized scour. The rationale for the proposed technique must include:

(i) An analysis performed by a qualified professional assessing the level of risk to existing buildings, roads, or services being threatened by the erosion;

(ii) Technical rationale specific to the project design, such as a reach and site assessment to identify the mechanism of the bank failure and cause of erosion; and

(iii) Evidence of erosion and/or slope instability to warrant the work.

(b) Avoid or minimize adverse impacts to fish life by using the least impacting technically feasible alternative. The common alternatives below are in order from most to the least preferred:

(i) No action – Natural channel processes to occur;

(ii) Biotechnical techniques;

(iii) Combination of biotechnical and structural techniques; and

(iv) Structural techniques.

(c) The department may require a person to incorporate large woody material or native vegetation into the design of the structures as partial or complete mitigation for unavoidable impacts to fish life.

(d) Restrict the area of stream bank protection and lake shoreline stabilization to the least amount needed to protect eroding banks.

(e) Where technically feasible, the toe of the structure must be located landward of the OHWL. Restrict the placement of material waterward of the OHWL to installing mitigation features (e.g., logs and rootwads) approved by the department.

(f) The project must be designed to withstand the maximum selected design flow for the project.

(4) **Stream bank protection design:**

(a) When the bankline of a river or stream has changed as a result of meander migration or lateral erosion, the current location of the bank must be maintained. If this new alignment poses imminent threat to safety or infrastructure, then, on a case-by-case basis, the department may grant an exemption to establish the bank alignment waterward of the current location to provide the minimum footprint necessary to construct the bank protection elements.

(b) The design of bank protection projects must avoid or minimize impacts to fish life. The department will evaluate designs on the basis of performance. Properly designed bank protection projects:

(i) Incorporate the ecological and geomorphological processes acting at the site in the design;

(ii) Use a site and reach assessment to understand the causes of erosion;

(iii) Recognize that natural bank erosion processes and rates are essential for ecological health of the aquatic system and ensure that the design includes bank treatments that allow for natural rates of erosion to occur when possible;

(iv) Move existing infrastructure away from the eroding bank when possible;

(v) Use design flows appropriate for the type of protection and function of the individual bank protection elements;

(vi) Use natural materials when possible, including large wood and vegetation;

(vii) Avoid affecting existing spawning and rearing habitat and the processes that create and maintain it; and

(viii) Recognize that stream bank erosion treatments can cause the need for more stream bank protection projects upstream and downstream from the project site and understand that the design must prevent or minimize these impacts to habitat and property.

(5) **Lake shoreline stabilization design:**

(a) If the OHWL reestablishes landward of a lake shoreline stabilization structure, the department will consider this reestablished OHWL to be the existing OHWL for permitting purposes. If the breach was a result of storm damage or other natural conditions, the bank protection structure may be repaired or replaced in the existing footprint if the work is

conducted within three years from the date the damage occurred.

(b) The design of lake shoreline stabilization projects must avoid or minimize impacts to fish life. The department will evaluate designs on the basis of performance. Properly designed bank protection projects:

- (i) Set back infrastructure away from the eroding shoreline;
- (ii) Remove existing rock and concrete bulkheads when possible;
- (iii) Use soft shore protection methods such as beach nourishment, large wood, bank resloping, and revegetation;
- (iv) Prevent impacts to adjacent habitat; and
- (v) Bury the base of the structure deep enough to prevent undermining. Where scour depth is deep enough, choose a design that adjusts to changing scour depth without compromising the function of the bank protection.

(6) Bank protection and lake shoreline stabilization construction:

(a) The department may require a person to establish the horizontal distance of the structure from a permanent benchmark(s) (fixed objects) before starting work on the project. The benchmarks must be located, marked, and protected to serve as a post-project reference for ten years.

(b) Do not release overburden material into the waters of the state when resloping the bank.

(c) Do not use bed gravel for exterior armor unless the department has specifically authorized it.

(d) Bank protection or shoreline stabilization material and filter blanket material must be placed from the bank or a barge. Dumping material onto the bank face may occur only if the toe is established and the material can be confined to the bank face.

NEW SECTION

WAC 220-660-140 Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in freshwater areas. The requirements in this section apply to location, design, and construction of permanent and seasonal docks, piers, ramps (gangways), floats, watercraft lifts, and mooring buoys.

(1) **Description:** Docks are structures that are fixed to the shoreline but floating upon the water. Piers are fixed, pile-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. A ramp is a gangway that connects a pier or shoreline to a float and provides access between the two. Pilings that are usually associated with these structures are timber, steel, reinforced concrete, or composite posts that are driven, jacked, or cast vertically into the bed. A watercraft lift is a structure that lifts boats and personal watercraft out of the water. A mooring buoy is a structure floating on the surface of the water that is used for private and commercial vessel moorage.

(2) Fish life concerns:

(a) Over-water and in-water structures can alter physical processes that create or maintain fish habitat. These include altering the light regime, hydrology, substrate conditions, and water quality. However, light reduction is a main impact to

fish life at critical life stages. Light reduction, or shading, by over-water or in-water structures reduces survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish, shellfish, crustaceans, and many other animals.

(b) Shallow water provides juvenile fish a refuge from predators like larger fish. Over-water and in-water structures can alter movement of juvenile salmon, steelhead and other fish species. Structures grounding on the bed can physically block migration. The light/dark contrast of shading/no shading of over-water and in-water structures can affect migration behavior. Fish respond by moving into deeper water which increases the risk of predation. These structures may increase the exposure of juvenile salmon, steelhead, and other small fish to predators by providing predator habitat.

(3) Residential and public recreational dock, pier, ramp, float, watercraft lift and buoy design – General:

(a) Design and locate structures to avoid or minimize impacts to freshwater habitats of special concern.

(b) Design and locate structures to avoid or minimize impacts to fish spawning areas.

(c) Design and locate structures to avoid or minimize impacts to juvenile salmonid migration, feeding and rearing areas where shading impacts are a concern.

(i) Limit the width of residential piers and docks for the first thirty feet from the shoreline. Limit the width of recreational piers to the minimum width needed to accommodate the intended use.

(A) In certain river systems alternative residential dock criteria may apply.

(B) For the Columbia River, the following criteria may apply: Docks less than or equal to six feet in width should be located fifty feet from the shoreline and have twenty feet of water depth below the float (both criteria measured at mean low water).

(ii) Piers must extend far enough from the shoreline so floats do not impact juvenile salmonid migration, feeding and rearing areas. Grounding of floats is authorized in reservoirs and impoundments at times of the year when the water level is dropped.

(iii) The underside of pier must be at least one and one-half feet above the OHWL elevation unless prohibited by local land use regulations.

(iv) The department will require residential dock designs to include grating. The department may require a public recreational dock design to include grating.

(A) North/south oriented piers (338 to 22 degrees, or 158 to 202 degrees) greater than four feet in width must have a minimum of thirty percent of the entire deck surface covered in functional grating. The grating must be installed parallel to the length of the pier for the entire length of the pier.

(B) Northeast/southwest, northwest/southeast and east/west oriented piers (23 to 157 degrees, 203 to 337 degrees) must have at a minimum of fifty percent of the entire deck surface covered in functional grating regardless of width. The grating must be installed parallel to the width of the pier, evenly spaced along the entire length of the pier.

(C) Limit the width of residential ramps to four feet wide. Limit the width of public recreational ramps to the min-

imum width needed to accommodate the intended use. Cover the entire ramp surface with grating.

(D) A dock or float six feet wide or narrower must have at least thirty percent of the deck surface covered in functional grating. A dock or float wider than six feet (up to eight feet wide) must have at least fifty percent of the deck surface covered in functional grating. The grating material's open area must be at least sixty percent. In some waterbodies the department may require a higher proportion of grating. Locate flotation under the solid decked area only. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects on, above, or below the grating should not block light penetration.

(E) If only the minimum deck surface area described in (c)(iv)(A), (B), or (C) of this subsection is grated, the grating material's open area must be at least sixty percent unless the grating covers more than the minimum deck area. If the grating covers more than the minimum deck surface area, the grating material's open area can be reduced down to a minimum of forty percent open area.

(v) If grating is required, locate flotation under the solid decked area only.

(vi) If artificial nighttime lighting is used in the design, use low-intensity lights that are located and shielded to prevent light from attracting fish, unless there are safety constraints.

(d) Fully enclose and contain flotation for the structure in a shell (tub) or 20 - 25 mm polyethylene or polyurethane wrap. The shell or wrap must prevent breakup or loss of the flotation material into the water. The shell or wrap must not be readily subject to damage by ultraviolet radiation and abrasion.

(e) The design must not include skirting including batter fencing constructed around piers, docks, or floats unless specifically approved in an HPA.

(f) Helical screw, "duckbill," or other approved anchor(s) or piling may hold floats in place.

(g) The design should not use treated wood for the decking of the structure. The design may use treated wood for structural elements. Treated wood structural elements subject to abrasion by vessels, floats, or other objects must incorporate design features to minimize abrasion of the wood.

(h) The structure must have been usable at the site within the past twelve months of the time of application submittal to be considered a replacement structure.

(i) Replacement of more than thirty-three percent or two hundred fifty square feet of decking or replacement of decking substructure requires installation of functional grating. The grating must conform to the requirements in this section.

(4) **Pile design:**

(a) Use the minimum number of pilings required to construct a safe structure.

(b) Steel piles used to construct residential docks should not exceed six inches in diameter. Limit the diameter of steel piling used to construct public recreational docks to the minimum width needed to accommodate the intended use.

(c) The use of creosote or pentachlorophenol piling is prohibited. New and replacement piling can be steel, concrete, recycled plastic, or untreated or department approved treated wood.

(d) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(e) All pilings must be fitted with devices to prevent perching by fish-eating birds.

(5) **Watercraft lift design:**

(a) Design the watercraft lift/grid to avoid or minimize impacts to juvenile salmonid migration, feeding and rearing areas where shading impacts are a concern.

(b) The bottom of the watercraft lift/grid must be a minimum of one foot above the bed.

(c) Use the minimum number of pilings needed to support the watercraft lift/grid.

(6) **Mooring buoy design:**

(a) In waterbodies where mooring buoy systems might damage the bed and native submerged aquatic vegetation, locate and design the buoy system to minimize damage.

(i) Locate the buoy deep enough to prevent vessel grounding.

(ii) Design and install the buoy system with mid-water floats so that anchor lines do not drag.

(iii) In areas with native submerged aquatic vegetation, use an embedment-style mooring anchor instead of a surface-style mooring anchor.

(iv) Adequately size the mooring to prevent the anchor from shifting or dragging along the bed.

(b) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

(c) The mooring buoy must have a shell that is not readily subject to damage by ultraviolet radiation and abrasion caused by rubbing against vessels, the bed, and/or waterborne debris.

(7) **Residential and public recreational docks, pier, ramp, float, watercraft lift and buoy construction:**

(a) Operate and anchor vessels and barges such that they do not adversely impact native submerged aquatic vegetation.

(b) Reestablish the dock centerline during the construction phase using the same methodology used to establish the centerline on the construction drawings.

(c) A vibratory hammer or water jet drive piling is preferred for installing steel piling.

(d) If impact pile driving is used, set the drop height to the minimum needed to drive the piling.

(e) Use appropriate sound attenuation to minimize harm to fish from impact steel pile-driving noise.

(f) To avoid attracting fish to lights at night, limit impact steel pile driving to daylight hours.

(g) The department may require the following during piling removal:

(i) Use a vibratory or water jet system to dislodge piling, if possible.

(ii) After removal, place the piling on a construction barge or other dry storage site. Piles removed from the substrate must be moved immediately from the water into a barge or other dry storage site. The pile must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the pile.

(iii) If a treated wood pile breaks during extraction, remove the stump from the water column by fully extracting the stump or cutting it three feet below the substrate.

(iv) Cap the buried stump with clean sediment that matches the native material.

(v) Fill holes left by piling extraction with clean sediment that matches the native material.

(h) Securely anchor docks, floats, and mooring buoys.

(i) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

(j) Dispose of replaced docks, piers, ramps, floats, lines, chains, cables, and mooring anchors in an upland disposal site.

(k) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.

NEW SECTION

WAC 220-660-150 Boat ramps and launches in freshwater areas. (1) **Description:** A boat ramp or launch is a sloping, stabilized roadway or entry point constructed on the shoreline for launching boats from vehicular trailers or by hand for primitive boat launch designs. Ramps and launches extend into the water at a slope of typically twelve to fifteen percent and are typically oriented perpendicular to the shoreline. Ramp and launch widths vary with intended use, whereas the length often depends on the slope of the shoreline and seasonal water levels. Ramps and launches are usually constructed in areas protected from wind and waves with access to deep water close to shore. Construction materials commonly consist of gravel, concrete, or asphalt; they are often associated with marinas and parking lots.

(2) **Fish life concerns:** A boat ramp or launch typically destroys fish and shellfish habitat in its footprint. A large number of ramps or launches in a given area reduces and fragments this habitat. Ramps and launches placed above bed grade can block sediment and wood movement, and alter nearshore juvenile fish migration behavior. Ramp and launch construction, maintenance and the associated vessel activity can damage or destroy aquatic vegetation.

(3) **Boat ramp and launch design:**

(a) Design and locate the ramps and launches to avoid adverse impacts to fish spawning areas.

(b) Design and locate the ramps and launches to avoid and minimize excavation below the OHWL.

(c) Design and construct the ramps and launches to minimize interference with wood and sediment movement.

(d) Design the boat ramps and launches to prevent erosive undercutting or breaking of ramp edges.

(e) Design and construct boarding floats to minimize grounding on and shading of the bed and interfering with sediment and wood movement.

(4) **Boat ramp and launch construction:**

(a) Construct the upland portions of the ramp and launch in the dry and when the water body is at its lowest elevation or flow.

(b) Construct footings or the base of the ramp and launch below the preexisting grade of the stream bank or lakeshore to minimize undermining of the structure.

(c) Construct a ramp and launch with concrete or compressed or hardened gravel or other suitable materials approved by the department.

(d) To construct a concrete ramp and launch below the OHWL, use precast concrete slabs or isolate the wet concrete from waters of the state until it is fully hardened.

(e) Securely anchor launching rails to the stream or lake bottom.

(5) **Ramp and hand launch maintenance:** If possible, sediment and woody material removed from ramps and launches must be placed at or below the OHWL downstream of the structure.

NEW SECTION

WAC 220-660-160 Marinas and terminals in freshwater areas. The provisions in this section apply to constructing, maintaining, repairing, and removing marinas and terminals in freshwater areas.

(1) **Description:**

(a) A marina is a public or private facility providing vessel moorage space, fuel, or commercial services. Commercial services include, but are not limited to, overnight or live-aboard vessel accommodations (RCW 77.55.011(13)).

(b) A terminal is a public or private commercial wharf located in the navigable waters of the state and used, or intended to be used, as a port or facility for storing, handling, transferring, or transporting goods, passengers, and vehicles to and from vessels (RCW 77.55.011(14)).

(2) **Fish life concerns:** Marinas and terminals can alter the physical processes that create or maintain fish habitat. Possible impacts may include alteration of the light regime, hydrology, substrate conditions, and water quality. Marinas and terminals often have a larger impact area than residential docks and are often associated with heavy boat traffic and human use. Thus, the size and magnitude of the potential impacts to fish life may be greater.

(3) **Marina and terminal design – Generally:**

(a) Design, locate, and construct new marinas and terminals to avoid impacts to fish spawning and juvenile salmon migration corridors, rearing and feeding areas.

(b) The department may require physical modeling, numerical modeling, or other information that demonstrates adequate water exchange and circulation after construction.

(c) Where possible, locate new marinas and terminals in areas that will minimize impacts to fish life.

(i) Locate new marinas and terminals to avoid and minimize impacts to native aquatic vegetation.

(ii) Locate new marinas and terminals in naturally deep areas to avoid and minimize dredging.

(iii) Locate new marinas and terminals in areas deep enough to avoid and minimize propeller wash impacts to the bed.

(iv) Where practicable, locate new marinas and terminals in areas with low or impaired biological integrity.

(v) Design marinas and terminals so most over-water coverage is in the deepest water possible; this is necessary to allow light penetration to shallow water areas.

(A) Minimize the amount of pier or dock area that directly contacts the shoreline. Minimize the width of over-water and in-water structures in shallow water areas.

(B) Design and construct piers and other above-water structures as high as possible to increase light transmission.

(C) When possible, use light-reflecting materials on the underside of above-water structures that are not grated.

(4) Marina design:

(a) The department may require a marina design to include grating to minimize impacts to juvenile salmonid migration corridors and native aquatic vegetation. If grating is required, locate flotation under the solid decked area only.

(b) Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects on, above or below the grating should not block light penetration.

(c) If possible, provide slips for smaller boats in shallower water and place slips for larger boats in deeper water.

(d) Do not locate new boathouses, houseboats, and covered moorages less than thirty feet from the shoreline and in water less than twenty feet deep. Houseboats with basements are not authorized.

(e) Any replacement roof for a covered moorage and boathouse in water less than thirty feet from the shoreline and in water less than twenty feet deep must incorporate translucent materials or skylights in the roof.

(f) If artificial nighttime lighting is used in the design, use low-intensity lights that are located and shielded to prevent light from attracting fish, unless there are safety constraints.

(5) Breakwater design:

(a) Design and construct breakwaters to maintain shallow water juvenile salmon migration corridors.

(b) Avoid use of continuous sheet piles in water less than thirty feet from the shoreline and in water less than twenty feet deep.

(c) Use removable, floating breakwaters or wave boards.

(6) Pile design:

(a) Use the smallest diameter and number of pilings needed to construct a safe structure.

(b) New and replacement piling can be steel, concrete, recycled plastic, or untreated or department approved treated wood.

(c) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(d) If possible, all pilings must be fitted with devices to prevent perching by fish-eating birds.

(7) Marina and terminal construction:

(a) When installing steel piling, a vibratory hammer is preferred.

(b) If impact pile driving is needed, set the drop height to the minimum needed to drive the piling.

(c) Use appropriate sound attenuation to minimize harm to fish from impact steel pile-driving noise.

(d) To avoid attracting fish to light at night, limit impact pile driving to daylight hours.

(e) When removing piling:

(i) Use a vibratory system to dislodge piling, when possible;

(ii) After removal, place the piling on a construction barge or other dry storage site. Piles removed from the substrate must be moved immediately from the water into a barge or other dry storage site. The pile must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the pile;

(iii) If a treated wood pile breaks during extraction, remove the stump from the water column by fully extracting the stump or cutting it three feet below the substrate; and

(iv) Fill holes left by piling extraction with clean sediment that matches the native material.

(f) Securely anchor floats and mooring buoys.

(g) Dispose of replaced docks, piers, ramps, floats, lines, chains, cables, or mooring anchors in an upland disposal site.

(h) Place floats and buoys removed seasonally in an upland area (not on the beach).

(8) Marina and terminal maintenance:

(a) Upon request, the department must issue a renewable, five-year HPA for regular maintenance activities of a marina or terminal.

(b) Regular maintenance activities for the five-year HPA may include the following:

(i) Maintaining or repairing a boat ramp, launch, or float within the existing footprint;

(ii) Maintaining or repairing an existing over-water structure within the existing footprint;

(iii) Maintaining or repairing boat lifts or railway launches;

(iv) Maintaining or repairing pilings, including the replacing bumper pilings;

(v) Dredging less than fifty cubic yards of material;

(vi) Maintaining or repairing shoreline armoring or bank protection;

(vii) Maintaining or repairing wetland, riparian, or estuarine habitat; and

(viii) Maintaining or repairing an existing outfall.

(c) The five-year permit must include a requirement that a person give the department a fourteen-day notice before regular maintenance activities start.

NEW SECTION

WAC 220-660-170 Dredging in freshwater areas. The requirements of this section do not apply to suction dredging for mineral prospecting covered in WAC 220-660-300, or to diver-operated dredging for aquatic plant control covered in WAC 220-660-290.

(1) **Description:** Dredging includes removing substrate or sediment from rivers and lakes to improve vessel navigation and to maintain navigational channels and sediment traps for flow conveyance. River dredging is also used for flood abatement and to cleanup contaminated sediments.

(2) **Fish life concern:** Excessive deposition or aggradation may interfere with land use, hydraulic flow, and fish passage, and may cause stranding of fish. However, dredging can alter multiple fundamental channel processes, and effects can propagate upstream or downstream of the modified channel reach, or into tributaries, and may affect channel stability, habitat features, and floodplain interactions within and beyond the project area. Direct impacts include mortality,

physiological stress, or displacement of fish and other organisms, increased sediment transport downstream, riparian damage, and temporary loss or imbalance of nutrients and food supply. This activity usually decreases the complexity and diversity of fish habitat.

(3) Dredging design:

(a) The department may not authorize dredging in fish spawning beds unless it creates or improves the access or quality of fish spawning beds as part of an approved restoration project.

(b) The department will evaluate the potential impacts of dredging and the disposal of dredged materials in eulachon spawning areas and provision these projects based on project location, seasonality, scale, frequency, and duration and on run timing, run size, and presence/absence in the work area.

(c) The department may require a preproject channel survey or assessment by a qualified professional to determine the root causes of a sediment deposition problem and the potential channel changes that may result from dredging. This provision does not apply to maintenance dredging of navigational channels and berthing areas.

(d) The department may require pre- and post-dredge project bathymetric for dredging of navigational channels and berthing areas.

(e) Use the dredge types and methods that minimize adverse impacts to fish and shellfish and their habitat.

(4) Dredging construction:

(a) Operate a hydraulic dredge with the intake at or below the bed surface. Raise the intake up to three feet above the bed only for brief periods of purging or flushing the intake system.

(b) Operate a dragline or clamshell to minimize turbidity. During excavation, each pass with the clamshell or dragline bucket must be complete. Stockpile dredged material in the location shown on the approved plan.

(c) To avoid fish stranding, the bed must not contain pits, potholes, or large depressions upon completion of the dredging.

(d) The department may require a person to use a boom or similar device to contain floatable materials while dredging of a lake or pond.

(e) Dispose of dredged bed materials at a department-approved in-water disposal site or outside the floodplain so they do not reenter state waters. The department may allow dredged material to be used for beneficial projects such as beach nourishment or capping of contaminated sediments.

(f) To minimize turbidity, hopper dredges, scows, and barges used to transport dredged materials to the disposal or transfer sites must completely contain the dredged material.

NEW SECTION

WAC 220-660-180 Sand and gravel removal. The requirements of this section do not apply to suction dredging for mineral prospecting covered in WAC 220-660-300, or to diver operated dredging for aquatic plant control covered in WAC 220-660-290.

(1) **Description:** Sand and gravel deposited by river processes is used as construction aggregate for roads and highways (base material and asphalt), pipelines (bedding), septic

systems (drain rock in leach fields), and concrete (aggregate mix) for highways and buildings. In some areas, people remove aggregate mainly from river deposits, either from pits in river floodplains and terraces, or by removing gravel directly from riverbeds with heavy equipment.

(2) **Fish life concerns:** Removing sand and gravel from the active channel bed may affect sediment movement if it disrupts the sediment balance in the river. This disruption may cause channel adjustments that extend considerable distances beyond the excavation site. Removing instream sand and gravel changes the channel shape and bed elevation and may involve extensive clearing of vegetation, flow diversion, sediment stockpiling, and excavating deep pits. Removing sand and gravel can also produce a local sediment shortage that can reduce spawning potential and success in gravel-starved stream reaches. Disturbance or loss of gravel can create significant channel head cutting upstream from the project. Trenches or pits in the bed can trap fish. Other effects of removing instream gravel include a reduction of large woody material that is important as cover for fish, and short-term loss of insects and stream bugs that are food for fish.

(3) Sand and gravel removal design:

(a) Limit sand and gravel removal to exposed bars. Sand and gravel removal must not result in lowering the average channel cross-section profile either in the work area or downstream of it. The department may authorize removing additional sand and gravel, including from wetted portions of the channel, when the project is an integral part of a department-approved comprehensive flood control plan.

(b) The department requires a quantitative site assessment to document habitat changes. This includes preproject and post-project channel cross-section surveys for commercial sand and gravel removal projects. As a provision of a multi-year HPA, the department may require surveys to be conducted each fall. The surveys must reference cross-sections vertically to a permanent benchmark and horizontally to a permanent baseline. The cross-sections must be surveyed perpendicular to the high flow channel every one hundred feet through the work area and at cross-sections upstream and downstream at adjacent channel riffles. The HPA application submitted to the department must include the preproject survey information. A person must submit the post-project survey to the department within ninety days after removal of sand and gravel is finished or the expiration date of the HPA, whichever occurs first.

(4) Sand and gravel removal construction:

(a) The department must establish an excavation line, which is then identified in the HPA.

(b) Place boundary markers to identify the excavation zone. The department must approve the location of the boundary markers before a person starts to remove sand and gravel.

(c) Excavation must start at the excavation line and proceed toward the bank or the center of the bar, perpendicular to the alignment of the watercourse.

(d) Do not remove bed material from the waterward side of the excavation line.

(e) Do not place or operate equipment within the wetted perimeter of the watercourse.

(f) Remove sand and gravel within the excavation zone from a point starting at the excavation line and progressing upward toward the bank or the center of the bar on a minimum two percent gradient. The department may require a survey of the excavation zone upon completion of the sand and gravel removal operation to ensure the operation maintained a two percent gradient and that no depressions remain. When required, the permittee must pay for the survey.

(g) At the end of each workday, the excavation zone must not contain pits, potholes, or depressions that may trap fish because of fluctuating water levels.

(h) Limit stockpiling of material waterward of the OHWL, after the initial bed disturbance, to avoid impacts to fish life. If the department-approved stockpiling waterward of the OHWL, completely remove the material before fish start spawning in the area or stream flows start increasing. The department will determine timing restrictions for each site individually. If the water level rises and makes contact with stockpiles, further operation of equipment or removal of the stockpiles may not proceed unless the department authorizes the work.

(i) Leave the upstream end of the sand and gravel bar undisturbed to maintain watercourse stability waterward of the OHWL.

(j) Retain large woody material waterward of the OHWL. Large wood within the excavation zone must be repositioned within the watercourse. Other debris must be disposed of so it does not reenter the watercourse.

(k) Sand and gravel washing or crushing operations must take place above the limits of anticipated floodwater.

NEW SECTION

WAC 220-660-190 Water crossing structures. Appropriate methods to design water crossing structures are available in the department's *Water Crossing Design Guidelines*, or other published manuals and guidelines.

This section applies only to water crossings over fish-bearing waters. Crossings on streams with no fish must be designed to pass the 100-year recurrence interval flood flow, wood, and sediment to reduce the risk of catastrophic failure of the crossing.

An HPA is required for all construction or repair/replacement of any structure that crosses a stream, river, or other water body regardless of the location of the proposed work relative to the OHWL of state waters. An HPA is also required for bridge painting and other maintenance where there is potential for paint, sandblasting material, sediments, or bridge parts to fall into the water.

(1) **Description:** Water crossings are structures constructed to facilitate the movement of people, animals, or materials across or over rivers and other bodies of water. These structures include bridges, culverts, fords, and conduits. This chapter covers bridges, culverts, and fords. WAC 220-660-270 covers conduits. Generally, people use bridges to cross over larger streams and rivers, or over unstable channels; they use culverts to cross over smaller streams and they use fords when other stream crossing options would result in a greater impact to fish and their habitats.

(2) **Fish life concerns:**

(a) A person must design water crossing structures in fish-bearing streams to allow fish to move freely through them at all flows when fish are expected to move. All water crossings must retain upstream and downstream connection in order to maintain expected channel processes. These processes include the movement and distribution of wood and sediment and the shifting of channel patterns. Water crossings that are too small in relation to the stream can block or alter these processes, although some encroachment of the floodplain and channel migration zone will be allowed when it can be shown that such encroachment has minimal impacts to fish and their habitat.

(b) Fords have a high potential to generate and deliver sediment and may impede fish passage. However, under limited circumstances, fords are appropriate when they provide better protection to fish and their habitats than other water crossing structures.

(3) **Permanent water crossing structures – Generally:**

(a) The water crossing design must provide unimpeded passage for all species of adult and juvenile fishes. Passage is assumed when there are no barriers due to behavioral impediments, excessive water slope, drop or velocity, shallow flow, lack of surface flow, uncharacteristically coarse bed material, and other related conditions.

(b) The water crossing design must ensure that upstream and downstream channel processes and functions commonly associated with the type of channel found at the site are unconstrained by the structure so they do not cause discernible impacts to fish life. The department will make an exception where there are human-made features in the floodplain that are outside the control of the applicant and they are unlikely to be removed. By complying with the provisions under subsections (4) and (6) of this section, the applicant is assumed to provide these processes and functions.

(c) If channelization, encroachment, or other human-made changes have degraded the channel in the vicinity of the crossing, the design must have a similar slope and cross section expected under common conditions in the reach.

(i) Similar slope: The slope should be that of a stable (equilibrium) channel and not over-steepened.

(ii) Similar cross section: The cross section under or within the water crossing must have a channel bed width, a thalweg, and any overbank area that match the expected stream measurements in order to limit main channel velocity and scour to prevailing conditions.

(d) A person may propose an alternative crossing design instead of complying with the provisions under subsections (4) and (6) of this section when the following circumstances exist:

(i) A person can design a water crossing using any design methodology approved by the department provided that the method specifically addresses fish passage, the protection of fish habitat, and the maintenance of expected channel processes defined by the site conditions.

(ii) A person may use an alternative design for an individual crossing on a case-by-case basis. To be approved, the alternative plan must include: Project objectives with performance measures, inspection schedule, maintenance triggers, and a contingency plan should the project fail to meet perfor-

mance measures. Inspection must include compliance monitoring of performance measures after construction with an additional inspection three years after construction. Monitoring reports are required for these two inspections. The contingency plan is activated when the project fails to meet performance measures after the three-year inspection.

(iii) A person can use methods found in WAC 220-660-200. Fish passage improvement structures where extreme and unusual site conditions prevent them from complying with the provisions in this section and any associated impacts are adequately mitigated.

(e) To determine the average channel bed width for water crossing structure design, a person must use a minimum of three typical widths (bankfull or equivalent), measured in a stream reach that is characteristic of an alluvial or self-forming stream. A person must measure widths that describe prevailing conditions at straight channel sections and outside the influence of any culvert, bridge, or other artificial or unique channel constriction.

(f) When removing an existing crossing in preparation for a new crossing, a person must remove all the existing components (approach fill, foundations, stringers, deck, rip-rap, guide walls, culverts, aprons, etc.) likely to cause impacts to fish and their habitat. The department may approve the partial removal of certain components when leaving them has been shown to have no measurable, or minor, impact.

(4) Bridge design:

(a) The bridge must pass water, ice, large wood and associated woody material, and sediment likely to move under the bridge during the 100-year flood flows or the design flood flow approved by the department.

(b) The waterward face of all bridge elements that may come in contact with waters of the state including, but not limited to, abutments, piers, pilings, sills, foundations, aprons, wing walls, and approach fill must be landward of the OHWL. The requirement excludes midchannel piers and protection required at the toe of the embankment in confined channels.

(c) A bridge over a watercourse with an active floodplain must have a span wide enough to prevent a significant increase in the main channel average velocity (a measure of encroachment). This velocity must be determined at the 100-year flood flow or the design flood flow approved by the department. The significance threshold should be determined by considering bed coarsening, scour, backwater, floodplain flow, and related biological and geomorphological effects typically evaluated in a reach analysis.

(d) A person must design (size) the bridge to account for the lateral migration expected to occur during the bridge's lifespan to minimize the need for bank armoring. The department will approve encroachment into the channel migration zone if the mitigation sequencing can be shown to minimize impacts to fish and their habitat.

(e) Where there are existing flood control levees at the bridge construction site, or other infrastructure that is not the property of the bridge owner but would constrain the construction of a bridge, the department may approve a shorter bridge span than would otherwise be required to meet the requirements in this section.

(f) The design must have at least three feet of clearance between the bottom of the bridge structure and the water surface at the 100-year peak flow. The department may grant an exception based on engineering justification provided by the applicant.

(g) The bridge design must avoid the need for scour protection. Where midchannel piers are necessary, design them so no additional scour protection is required. If scour protection is unavoidable, the design must minimize the scour protection to the amount needed to protect piers and abutments. The design must specify the size and placement of the scour protection so it withstands expected peak flows.

(5) Bridge construction:

(a) If excavation or other construction activities take place waterward of the OHWL the work area must be isolated from the stream flow (if present) by using a cofferdam, bypass, or similar structure.

(b) A person must minimize damage to the bed and banks when placing the bridge structure.

(c) Biotechnical slope protection outside the bridge shadow is preferred.

(6) Culvert design:

(a) Stream simulation design:

(i) A stream simulation culvert must be designed and constructed to comply with the requirements of this subsection.

(ii) The width of the channel-bed inside a stream simulation culvert at the elevation of the streambed can be determined in one of two ways:

(A) The bed width may be calculated by using any published stream simulation design methodology approved by the department.

(B) The bed width of an individual culvert may be made on a case-by-case basis with an approved alternative plan that includes project objectives, inspection, maintenance, and contingency components. Inspection must include compliance monitoring after construction, and effectiveness monitoring after three years. Maintenance and contingency are triggered when project fails to meet objectives.

(iii) The stream simulation culvert must be set at the same gradient as the prevailing stream gradient.

(iv) The slope of the bed inside a stream-simulation culvert must not exceed the slope of the upstream channel by more than twenty-five percent.

(v) The stream simulation culvert must be countersunk a minimum of thirty percent and a maximum of fifty percent of the culvert rise, but not less than two feet. In the case of box and bottomless culverts, depth of culvert fill must be adequate to accommodate channel degradation and scour.

(vi) The median particle size of sediment placed inside the stream-simulation culvert must be plus or minus twenty percent of the median particle size found in a reference reach of the same stream. The department may approve exceptions if the proposed alternative sediment is appropriate given the circumstances.

(b) No-slope design:

(i) The stream channel in which a no-slope culvert will be placed must generally have a channel bed width that is ten feet or less and a gradient less than three percent. However, in

some site-specific situations the department may approve no-slope in channels with a gradient up to five percent.

(ii) The length of the culvert must not exceed seventy-five feet.

(iii) A no-slope culvert must be designed and constructed to comply with the following requirements:

(A) The culvert is installed at a zero gradient.

(B) The width of the channel-bed inside a no-slope culvert at the elevation of the streambed must be equal to or greater than the average channel bed width.

(C) The no-slope culvert is countersunk a minimum of twenty percent of the culvert rise at the culvert outlet downstream and a maximum of forty-percent of the culvert rise at the culvert inlet upstream.

(D) Combining the requirements for culvert width and countersinking, the culvert must meet the following requirements:

(I) For a circular culvert, the minimum culvert diameter must be equal to or greater than the average channel bed width plus twenty-five percent.

(II) For a culvert with an oval cross section (elliptical, pipe arch, or "squashed" pipe) the horizontal width must be equal to or greater than the average channel bed width plus twenty-five percent.

(III) For a box or pipe arch culvert, the span must be equal to or greater than the average channel bed width.

(E) The no-slope culvert must be filled to the depth of the countersink provided in (b)(iii)(C) of this subsection with material similar to what is found in the adjacent channel streambed, unless either of the following conditions exist:

(I) The culvert is located in a wetland or in an area where the channel-bed is predominately fine sediment and the culvert will be backwatered; or

(II) The culvert will fill quickly because of the frequent rate of sediment transported through the culvert and will not cause excessive cutting or slumping of the upstream channel.

(7) Temporary culvert design requirements:

(a) The department must determine allowable placement of temporary culvert and time limitations based on the specific fish resources of concern at the proposed water crossing location.

(b) The design of the temporary crossing must maintain structural integrity at the peak flow expected to occur while the crossing is in place.

(c) Temporary culverts must provide unimpeded fish passage in locations where fish passage concerns exist.

(d) A person must remove the temporary culvert and block all approaches to vehicular traffic prior to the expiration of the HPA.

(8) Emergency culvert requirements:

(a) When there is an immediate threat to life, the public, private property, or of environmental degradation, a culvert may be replaced with one that is the same size or larger than the existing one. If the emergency crossing did not have a culvert or the size is not known, the emergency culvert should be large enough to safely pass the 100-year flood event with consideration for debris and sediment. In extreme circumstances, the department may approve the use of any available culvert.

(b) Fish passage must be provided at the times of the year when fish are expected to move. If the culvert design does not provide unimpeded fish passage a person can use methods found in WAC 220-660-200 (fish passage improvement structures) to pass fish until a culvert is constructed.

(9) Culvert construction:

(a) A person must establish the culvert invert elevation with reference point(s) or benchmark(s) created prior to starting work on this project. The reference point(s) must be clearly marked and preserved for post-project compliance. Prior to backfilling, the invert elevation, as stated on the plans, must be confirmed relative to the reference points with at least a construction-grade leveling device (such as an optical auto-level or laser level).

(b) A person must install the culvert in the dry or in isolation from the stream flow by using a bypass channel or culvert, or by pumping the stream flow around the work area. The department may grant exception if installing the culvert in the flowing stream reduces siltation or turbidity.

(c) A person must embed the top of footings of bottomless culverts sufficiently below potential scour depth to prevent exposure of the footing surface and undermining.

(d) The owner(s) must maintain the culvert to ensure it complies with subsection (3) of this section (general design requirement for water crossing structures).

(e) If the culvert becomes a hindrance to fish passage, the owner must obtain an HPA and provide prompt repair.

(10) Permanent ford design:

(a) A person must design and maintain a ford so the ford does not create a channel constriction, impede fish passage, block debris passage, or degrade water quality to the detriment of fish life.

(b) The department will authorize construction of new fords in limited situations when it is the least impacting water crossing option. The following are examples of situations where the department may authorize a ford:

(i) Where there is no maintenance access during winter months or early spring and the crossing has a high risk of failure from rain-on-snow events;

(ii) The road is seasonally inaccessible due to snow pack, weather, or other conditions that seasonally limit access to the water crossing structure;

(iii) The stream has extreme seasonal flow variations and low flows during anticipated ford use;

(iv) The channel has low bank height and low gradient approaches;

(v) The stream has dynamic floodplains, such as alluvial fans; or

(vi) The stream is subject to mass wasting events, debris transport, or extreme peak flows.

(c) Permanent fords must not impede fish passage.

(d) Fords must be located outside of all known or suspected fish spawning areas such as pool tailouts.

(e) Fords must only be used during periods of no or low stream flow (whether dry or frozen) to minimize the delivery of sediment to the stream.

(f) Traffic should be separated from flowing water by utilizing vented fords or other appropriate alternatives.

(11) Temporary ford design:

(a) The department may permit temporary fords only during the time of year that avoids high stream flows or expected fish spawning or migration.

(b) If fill is associated with the driving surface of a temporary ford, it must consist of clean washed gravel between one-quarter inch and four inches in diameter.

(c) If the natural streambed is composed of material smaller than gravel, the temporary ford design must maintain a positive separation between the watercourse bed and all fill associated with the ford to ensure that material used in ford construction is removable.

(12) Ford construction:

(a) Fords must be constructed during periods of low or no stream flow or in isolation from flowing water.

(b) Fords must be constructed perpendicular to the stream flow, or as close to perpendicular as practicable.

(c) Fords must be constructed using material approved by the department.

(d) If the streambed does not have a firm rock or gravel base, install clean, washed rock or gravel to reduce sedimentation. Broken concrete and pavement or other debris should not be used to construct hardened fords. Placement of material should be limited to the approaches and crossing.

(e) A person must countersink the prism of the ford below the watercourse bed. A person must design the prism to withstand overtopping flood events, and natural debris.

(f) Fill associated with the driving surface of a permanent ford must consist of material that will not attract spawning fish.

(g) A person must protect the driving surface of ford approaches from erosion to ensure that erodible fine silt does not enter waters of the state.

(h) Fords must be regularly inspected and maintained to provide for fish passage and maintain water quality.

(13) Water crossing abandonment: Water crossing removal must be compliant with the following provisions. In all instances a person must protect the job site from erosion and plant vegetation as necessary to restore the banks and other areas disturbed during construction or removal at the site.

(a) When removing temporary crossings, a person must remove the temporary culvert, bridge, ford, and any imported fill. The site must be restored to a similar width, depth, gradient, and substrate composition as the channel segments upstream and downstream from the crossing. If water-rounded granular materials were used for fill, and they are similar to those found in the existing channel bed, the department may allow the materials to remain on the site.

(b) When removing permanent crossings, a person must remove all the components of a bridge or culvert crossing (approach fill, sills, stringers, deck, riprap, guardrails, etc.). The department may approve leaving trees or other vegetation, fill materials when appropriate, or untreated log bridge stringers. The site must be restored to the original contours or a configuration approved by the department.

NEW SECTION

WAC 220-660-200 Fish passage improvement structures. The provisions in this section apply to fish ladders, weirs constructed for fish passage management, roughened channels, trap-and-haul operations, and hydraulic design culvert retrofits.

(1) **Description:** Fish passage improvement structures facilitate the passage of fish through or around a barrier. They restore upstream and downstream fish access to habitats that have become isolated by human activities such as placing culverts, dams, and other artificial obstructions.

(2) **Fish life concerns:** Barriers can block fish from using upstream spawning and rearing habitat. The main goal is to remove fish passage barriers and ensure unimpeded passage of fish at all life stages, as well as to maintain natural channel processes and function. However, when it is not possible to remove a barrier, fishways may be an alternative mitigation measure. The department does not generally recommend using fishways because they can be partial barriers to fish passage and generally require maintenance. Fish passage structures that mainly pass one species or class of fish may unintentionally limit the passage of other species.

(3) Fish passage improvement structure design:

(a) Fish passage improvement structures should not be used to bypass permanent natural barriers except in limited situations where they are needed to restore native fish species.

(b) The HPA application must have site and biological information relevant to the specific project, such as information on species present, hydrology and topography, and existing adjacent structures.

(c) The department may require compensatory mitigation if a fish passage structure cannot pass all fish species present at all mobile life stages.

(d) The design must consider site-specific conditions that could affect the function of the fishway. These include meander migration or vertical change in streambed elevation, debris and bedload movement, tampering, vandalism, and poaching.

(e) The fish passage structure design must withstand the maximum expected flow.

(f) The fish passage structure must not result in significant migratory delays as determined by the department or mortality to fish life due to disorientation, distraction, predation, stress, or injury.

(g) The fish passage structure must accommodate expected run sizes to prevent crowding and significant delay of fish migration as determined by the department.

(h) The department will determine the inspection interval depending on the type of fish passage improvement structure and watershed conditions.

(i) The department may require the installation of a temporary fish passage structure to provide passage through temporary obstructions. The department may not require a fish passage structure if a barrier exists for such short duration that the department determines that no lasting impacts to fish life will occur.

(4) Temporary fish passage improvement structures design:

(a) A person must maintain a fish passage structure in an effective condition. If the structure starts to hinder fish passage, the person must obtain an HPA and promptly repair the problem.

(b) The department may approve the installation of temporary fishways when permanent structures are damaged or are under construction, to conduct maintenance or repair, for enhancement projects, or for seasonal water diversion structures such as irrigation diversion dams.

(c) Temporary fishways must remain operational for the duration of the temporary obstruction and must be maintained and adjusted as needed to provide efficient passage of fish life.

(5) Fish ladder design:

(a) The department may authorize a fish ladder if:

(i) The fish ladder will enable fish passage at an existing barrier, but only until the existing barrier structure is replaced; or

(ii) The department determines that constructing a bridge, culvert, or roughened channel is not possible due to the nature of the obstruction such as a flow control structure or the slope of the stream.

(b) The fish ladder design must be appropriate for the slope of the channel, water surface elevations, species present, flow regime, and conditions of the channel.

(c) The fish ladder must be designed to prevent fish from leaping out of the structure.

(d) The fish ladder pool volume must provide the hydraulic and fish capacity needed to pass all adult and juvenile fish.

(e) The fish ladder entrance (downstream end):

(i) Must provide enough streaming flow attraction during high and low flows, without excessive velocity or turbulence, to ensure fish can locate and enter the fish ladder without significant delay;

(ii) Must minimize distractions that lure fish away from the entrance to prevent fish from becoming trapped, injured, or stranded;

(iii) Must be large enough to accommodate all expected debris and ice without damage or loss of passage efficiency;

(iv) Must provide a stable flow pattern and uniform velocity at the entrance pools and transition channels to allow fish to pass through the structure unimpeded;

(v) Must provide multiple entrances to the fish ladder if a single entrance cannot attract and provide passage to all adult and juvenile fish. If the work area has multiple zones where fish accumulate, each zone must have at least one entrance; and

(vi) May be required to have artificial light to optimize fish passage.

(f) Fish ladder auxiliary water supply system (AWS):

(i) To ensure fish are attracted to the fish ladder, an AWS may be required that supplies supplementary water.

(ii) An AWS must have a diffuser design that discourages attraction of fish life to it and to protect fish from injury.

(iii) An AWS must minimize the size of spaces between the diffuser to exclude and prevent injury to the smallest fish present.

(iv) An AWS must not use an auxiliary water supply from external sources that could confuse the homing instinct of fish.

(g) To prevent harm to fish life, the department may require screening of the AWS.

(h) The department may require a trash rack at the AWS intake.

(i) Fish ladder exits must:

(i) Have a water depth that is similar to the depth inside the fish ladder;

(ii) Be located to ensure fish can safely exit the structure without susceptibility to predators, without becoming disoriented, and with the ability to continue their upstream migration; and

(iii) Be designed to protect the exit from damage by debris.

(6) **Fish ladder construction:** To reduce potential contact injuries, all edges and surfaces exposed to fish must be ground smooth to the touch, with all edges aligning in a single smooth plane.

(7) Fish ladder operation and maintenance:

(a) If target fish species are present and actively migrating, enough water must be available at all stream flows to pass fish safely and efficiently through the fish ladder or the main channel without the need of a fish ladder.

(b) A person must inspect the fish ladder for proper function at a frequency determined by the department. Place wood and sediment retrieved during inspection and maintenance downstream of the fish ladder.

(c) A person operating or maintaining the fish ladder must be able to identify maintenance issues with the fish ladder and take corrective actions or notify the department if maintenance issues arise.

(d) The department may require shutdown of the fish ladder during high flows if the flow exceeds the fish passage design flow. However, a fish ladder must not be inoperable due to high flows for longer than seven days during the migration period for the target fish species. This provision applies to locations where the shutdown will not cause flooding or damage to infrastructure or property.

(8) Fish passage weir design:

(a) Design the weir to control the water surface elevation at the weir to provide fish passage over or through an obstruction.

(b) Design the weir to minimize impacts to natural channel geometry.

(c) Design the weir to ensure continued fish passage for all species present at all mobile life stages. The department may approve exceptions when it is implementing a program to restore native fish species or to protect native fish species from the introduction of nonnative fish species, and fish passage blockage is an intended component of the project.

(9) Roughened channel design:

(a) The department may authorize a person to construct a roughened channel to facilitate the passage of fish around abrupt hydraulic drops, through culverts, or at diversion sites for water withdrawal.

(b) Roughened channels must be designed by licensed professional engineers, geomorphologists, or other qualified professionals approved by the department.

(c) Where nonleaping fish are present or when other types of fish passage improvement structures would not pass fish well enough as determined by the department, a person may be required to construct a roughened channel to bypass an obstruction.

(d) Roughened channels must create an average cross-section velocity within the limits of fish-passage design criteria and the hydraulic design option.

(e) Roughened channels must minimize impact on the existing fish life and their habitat in the channel.

(f) The size and gradation of roughened channel bed material must resist erosion at the maximum expected flow and must result in a dense structure that prevents subsurface flow.

(10) Trap-and-haul operations:

(a) The department requires an HPA for installing, maintaining, and removing fish traps for trap-and-haul activities.

(b) The fish trap must be designed to withstand the maximum expected flow.

(c) The fish trap must be operated in a way that prevents crowding and delaying target fish species migration as determined by the department.

(11) Hydraulic design culvert fish passage design:

(a) The department may authorize an existing hydraulic design culvert to remain in place until the end of its design life or until another more appropriate culvert design can be constructed. However, a hydraulic design culvert cannot remain in place to the end of its design life if it does not provide for passage of fish.

(b) Before obtaining a permit to retrofit a culvert or construct a fish passage improvement structure using the hydraulic design method, a person must submit appropriate hydrology data and hydraulic design documentation prepared by a licensed professional engineer that demonstrates compliance with this section.

(c) The hydraulic design fish passage structure must include consideration of flood capacity for current conditions and future changes likely to occur within the stream channel, and debris and bedload passage.

(d) Plans submitted to the department to retrofit a culvert or to construct a fish passage improvement structure using the hydraulic design method must comply with the following:

(i) Minimum water depth at any location within a hydraulic design passage structure without a natural bed must be at least eight-tenths of a foot. The minimum depth of flow in the passage structure is determined by:

(A) The low flow design, which is the two-year seven-day low flow discharge for the subject basin; or

(B) When flow information for the site is unavailable, the department may authorize the use of calibrated flows from a comparable gauged site or the depth of the culvert when no water is flowing.

(ii) Maximum water velocity may not exceed the values in Table 1 at any point within a culvert. Measure maximum water velocity at the high fish passage design flow.

Table 1: Maximum Velocity Design Criteria for Hydraulic Design Culvert Installation

Culvert Length	Maximum Velocity
10 - 100 ft.	4.0 feet per second
100 - 200 ft.	3.0 feet per second
> 200 ft.	2.0 feet per second

(e) The hydraulic drop within the culvert or at the culvert inlet or outlet may not exceed one-half foot. When a drop has a submerged jet (the lowest part is below the downstream water surface) or is part of a natural or roughened channel design, the department may approve an exception to this drop limit.

(f) Water turbulence within the culvert must not be a barrier to passage of target fish species.

(g) The department may modify or approve design flow criteria for specific proposals as needed to address unusual fish passage requirements.

NEW SECTION

WAC 220-660-210 Channel relocation and realignment. (1) **Description:** The department discourages channel relocation and realignment and will approve them only when a person can demonstrate benefits or lack of adverse impact to fish life. Channel relocation may solve problems of channel encroachment and/or confinement, and foster the development of a new channel with appropriate channel morphology and healthy riparian zones. Channel relocation permanently changes the location of the channel. The new channel should be designed with bioengineered stability, rather than structural stability, so that the profile, pattern, cross-section and bed elevation can be expected to achieve long-term natural functioning.

(2) Fish life concerns:

(a) Channel relocation and realignment is a major undertaking involving reconstructing the channel bed, habitat features, channel banks, and floodplain. In-channel work will have a much greater impact on the bank and channel than off-channel work. This may result in the downstream burial of invertebrates, elevated suspended solids, and habitat destruction.

(b) However, channel relocation and realignment can also benefit fish life by altering channel planform, profile, and cross-section geometry to restore fish habitat. Restoration work can range from complete reconstruction of a channel to smaller-scale alterations that induce incremental changes to channel form.

(3) Channel relocation and realignment design: A channel relocation and realignment may be approved if:

(a) Permanent new channels are similar in length, width, depth, floodplain configuration, and gradient to the old channel or channels; and

(b) The new channel incorporates fish habitat components, bed materials, channel morphology, and native or other approved vegetation that provides better protection for fish life than that which previously existed in the old channel.

(4) Channel relocation and realignment construction:

(a) During construction, a person must isolate the new channel from the flowing watercourse.

(b) Before water is diverted into a permanent new channel(s), a person must install approved fish habitat components and bed and bank protection materials to prevent erosion as specified in the approved design.

(c) When filling the old channel(s), water discharging from the fill must not adversely affect fish life.

(d) The angle of the structure used to divert the water into the new channel(s) must allow a smooth transition of water flow.

NEW SECTION**WAC 220-660-220 Large woody material placement, repositioning, and removal in freshwater areas. (1)**

Description: Large woody material (LWM) is trees and tree parts that enter stream channels mainly from stream bank undercutting, wind throw, and slope failures. Public agencies sometimes reposition or remove large woody material to address a threat to life, the public, or property. Large woody material is also placed in streams to restore or create fish habitat.

(2) Fish life concerns:

(a) Large woody material provides shelter for fish from high flows and predators. Sediment trapped by large woody material can create spawning areas for salmon and trout. Large woody material also provides habitat for aquatic insects that fish eat.

(b) Large woody material plays a main role in shaping stream channels by forming pools and increasing stream meandering and sediment storage. Large woody material dissipates flow energy, leading to improved fish migration and channel stability.

(3) Large woody material placement, repositioning and removal – Generally:

(a) The department will approve the repositioning or removal of large woody material within the watercourse when needed to protect life, the public, property, or when needed to construct or mitigate for a hydraulic project. The department will require a person to place the repositioned or removed wood directly back in the channel unless it is not possible due to geological, engineering or safety constraints. If large woody material must be removed from the channel, the department will require compensatory mitigation if the wood removal diminishes fish habitat function of value.

(b) The department will approve placement of large wood back in the channel to improve fish habitat. This may include placing channel-spanning logs, creating log jams, or introducing a single large log or rootwads to the channel. Large woody material may be stabilized against buoyant forces and hydraulic drag forces that may mobilize wood during flood flows by pinning, anchoring or burying woody material in the floodplain.

(4) Large woody material placement, repositioning or removal construction:

(a) When placing, repositioning, or removing large woody material, station equipment on the bank, bridge, or other approved location.

(b) Do not drag large woody material. Suspend large woody material during placement, repositioning, or removal so it does not damage the bed or banks. A yarding corridor or full suspension is required to avoid damage to riparian vegetation. Full suspension can be achieved with hand operated or heavy equipment or aerial log yarding towers. Where needed, the department may authorize cutting the large woody material to a size that allows suspension during removal, but still retains value as a habitat structure.

(c) When a person cannot suspend large woody material above the bed and banks, use skid logs or similar methods to avoid bank damage. After completing the yarding operation, remove skid logs in a way that avoids damage to stream banks and vegetation, and restore the bank to preproject condition.

(d) Do not disturb large woody material embedded in a bank or bed except as allowed by the department.

(e) When repositioning or removing large woody material is allowed, fill and smooth over any depressions created in the bed with material that has the same composition as native material. Fill material must be sloped towards the bank at a slope similar to the prevailing condition. Reslope and replant disturbed banks.

(f) When repositioning or removing large woody material, minimize releasing bedload, logs, or debris downstream.

(g) Do not cut firewood from accumulations of large woody material in stream or river channels.

NEW SECTION**WAC 220-660-230 Beaver dam management. (1)**

Description: (a) A person may need to remove, breach, or modify a beaver dam to prevent damage to private and public land or infrastructure from flooding. Beaver dams are normally removed using hand tools or equipment such as backhoes.

(b) An alternative to frequent dam removal is installing a beaver exclusion device. These devices prevent beavers from building a dam that blocks water flow at the mouth or inside of culverts.

(c) Installing a water level (flow) control device may be a preferred alternative to removing or breaching an established dam that maintains a beaver wetland; however, fish passage must be maintained. A person can install a water level control device to maintain a desirable beaver wetland. These devices are installed at the intended depth, extending upstream and downstream of the dam. This preserves the pond's habitat benefits.

(2) Fish life concerns:

(a) Beavers play an important ecological role in creating and maintaining ponds and wetlands for fish and wildlife habitat. Ponds also provide surface water storage that improves summer flows, as well as improving water quality through retaining sediment.

(b) Breaching, notching, or removing a dam can negatively affect fish and their habitat by dewatering the upstream pond, stranding fish, and releasing large volumes of water (that can be devoid of oxygen) and sediment downstream. Releasing sediment can affect downstream spawning areas. Breaching or removing a beaver dam may not prevent future

beaver activity in the area. Persistent breaching or removing a beaver dam can increase the risk of negative impacts to fish habitat. In these instances, the department may recommend that a person consider other beaver management techniques.

(c) Beaver exclusion devices and water level control devices can create a design challenge for fish passage and the devices can decrease the likelihood for long-term fish passage.

(3) Removal or breaching a beaver dam:

(a) Beaver dams may be removed or modified only when:

(i) The continued existence of the beaver dam poses an imminent threat to the integrity of water crossing structures, other infrastructure, private and public land or in some rare cases the environment; and

(ii) The beaver dam has been in existence for less than one year. Removal of older dams will be considered on a site-specific basis.

(b) The department will decide if compensatory mitigation is required to offset habitat loss caused by removing or breaching any beaver dam older than one year. The department will not require compensatory mitigation to remove beaver dams less than one year old.

(c) The department may allow the use of explosives to remove a beaver dam if the department determines that the use of explosives has fewer impacts than other alternatives.

(d) Beaver dam management activities must take place when the work will cause the least impact to fish life. Except for an emergency or imminent danger, all work must occur when spawning or incubating fish are less likely to be present.

(e) When possible, remove or notch beaver dams by hand or with hand-held tools and hand-operated or motorized winches.

(4) Removal or breaching a beaver dam construction:

(a) Before starting work, install effective sediment and erosion control measures to prevent sediment from entering waters of the state. Inspect the sediment and erosion control measures regularly during construction and make all needed repairs if any damage occurs.

(b) Remove the dam gradually to allow the water to release slowly and prevent the downstream release of accumulated sediment at the bottom of the pond, or cause damage or erosion to the stream bed and banks. The department may specify in the HPA the rate water can be released.

(c) The notch must not extend below the height of the accumulated sediment.

(d) To prevent bank erosion and flooding of adjacent properties, the breach in the beaver dam must not be wider than the original stream channel as measured by the department. The department may approve larger breaches on a case-by-case basis.

(e) The department will specify the sequence in which to breach or remove a series of dams to avoid severe flooding and damage to fish habitat.

(f) Leave large woody material embedded in the stream bed or banks undisturbed.

(g) During and immediately after removal, monitor upstream and downstream for stranded fish in isolated pools.

Capture and safely move all stranded or isolated fish to the nearest free-flowing water.

(5) Water level control device installation design and construction:

(a) Design and install water level control devices so that during low flows (when beavers are more actively increasing dam height), the flow passes through the device and maintains fish passage.

(b) Design and install water level control devices so that during low flows, the device will convey enough flow over and around the dam to pass fish; or design and install a water control device that also functions as a fish ladder.

(c) Install water level control devices in beaver ponds with pool depth of four feet or more. If the water level control device is installed in water shallower than four feet, the design must have an enclosure to protect the water intake from beaver activity.

(d) Maintain the water level control device to ensure it functions as designed.

(6) Beaver exclusion devices design and construction: Design, install, and maintain guards, grates, grills, fences and other beaver exclusion devices to provide unimpeded fish passage and to prevent beavers from plugging a culvert or other water crossing structures such as low bridge crossings.

NEW SECTION

WAC 220-660-240 Pond construction. (1) Description: A person may construct an out-of-channel pond for livestock watering, irrigation, fire protection, or other use. If the pond construction involves diverting water, a water right must be obtained prior to diverting waters of the state. This requirement does not apply to construction of storm water pond facilities landward of the ordinary high water line.

(2) Fish life concerns: To prevent fish from being injured or killed, a person must physically prevent fish from entering ponds not intended as fish habitat. Ponds can contribute to increased water temperatures and loss of instream flow in a watercourse, which may impact the survival of fish that need cold water for survival.

(3) Pond design and construction:

(a) Do not construct ponds within the watercourse.

(b) Design and construct the pond to protect fish life:

(i) Design, construct, and screen ponds to prevent the entry of fish unless the pond will provide beneficial habitat, as determined by the department; in which case, the design and construction must provide free and unrestricted fish access.

(ii) Unless the intent of the bypass reach is to enhance fish life or habitat, locate the outflow of the pond (return flow system) as close to the diversion point as possible so diverted water is absent from the watercourse for the shortest amount of time (shortest length of bypass reach).

(iii) Isolate the work area from the watercourse while constructing the pond, diversion system, and the return flow system. Design and construct the pond so the outflow temperature does not harm fish life.

NEW SECTION**WAC 220-660-250 Water diversions and intakes. (1)**

Description: Surface water diversions are common instream features in agricultural areas where the water is used for irrigation. Throughout the state, people also divert water for other agricultural, hydropower, industrial, recreational, residential, municipal, and hatchery uses. A water right must be obtained prior to diverting water of the state.

(2) **Fish life concerns:** To protect fish, including salmon and steelhead, Washington state law (RCW 77.57.070 and 77.57.010) requires that all surface water diversions be screened to prevent fish from being drawn into the diversions where they are at risk for injury or death. In addition to screening water to prevent entrainment of fish life, other elements of a water diversion can result in direct and indirect sources of injury or mortality. Wing and check dams can prevent or delay upstream and downstream fish passage increasing predation, and fish may be physically injured or dewatered by active cleaning mechanisms or in bypass mechanisms.

(3) Limit of department authority over water diversions and intakes:

(a) A written HPA is not required for emergency water diversions during emergency fire response. When possible, a person must notify the department before the emergency diversion. When advance notification is not possible, a person must notify the department within twenty-four hours of the emergency diversion, at the twenty-four-hour hotline number at 360-902-2536.

(b) The department cannot apply the hydraulic code to limit the amount or timing of water diverted under a water right, other than ensuring that there is sufficient bypass flow to return fish back to the stream of origin from a water diversion. However, the department requires an HPA for work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, or that will utilize any of the waters of the state to divert water under a water right.

(c) Regulating water flow from a permanent permitted irrigation structure by operating valves, or manipulating stop logs, check boards, headgates, or headboards, does not require an HPA. Any hydraulic project activity related to a change in site conditions, the manner or location of water diversion, a new landowner or contact, or new biological information, will require an HPA modification.

(d) The department must allow a person who has gravel berm dam diversion permitted by the department before January 1994 to continue to have the dam if it complies with the provisions of the HPA. However, the department can provision the approval of gravel berms.

(4) Water diversion and intake design, construction, operation, and maintenance:

(a) A diversion structure should not hinder upstream and downstream adult and juvenile fish passage. If passage problems develop, the department may require a person to modify the check or wing dam.

(b) At pump stations, screens, and headgate areas, a person may use excavation equipment or suction dredge to remove accumulated silts and gravel from within twenty feet of the point of diversion unless otherwise permitted. Place

material removed such that it will not reenter waters of the state. The water diversion must be open during this work to capture disturbed sediment within the irrigation diversion and prevent loss of sediment into the stream.

(c) Equip and maintain any device used for diverting water from a fish-bearing watercourse with a fish guard and approved by the department to prevent passage or impingement of fish into the diversion device. Maintain the fish screen and associated infrastructure as necessary to achieve the approach velocity, a functional bypass, and fish protection criteria.

(d) Irrigation diversions must not create blind diversion channels leading to the fish screen. Diversions must be equipped with a fish bypass mechanism to provide opportunity for fish entrained within a delivery canal to voluntarily return to the stream.

(e) Gravity diversions.

(i) Wing and check dams.

(A) Prior to construction of a wing or check dam, contact the department for opportunity to assess the site and determine whether active spawning and incubation is occurring at the site.

(B) Maintain diversion canals to maximize hydraulic gradient in the diversion canal to minimize the need for work within the natural watercourse. Maintenance includes removing sediment and debris at the point of diversion.

(C) Unless a gravel dam is authorized, temporary wing or check dams for irrigation may be constructed using some combination of jersey barriers, concrete blocks, steel posts and wood, pinned straw bales, plastic sheeting, and similar inert materials.

(D) Where gravel dams are permitted, must be constructed with gravels available on-site waterward of the OHWL, or with clean round gravel transported to the site. Limit bed disturbance to the minimum needed to achieve the provisions of the water right.

(E) Bed excavation depth to construct an irrigation diversion must not exceed eighteen inches unless otherwise authorized by the department to avoid destabilizing the streambed.

(F) Earth or dirt must not be used to seal the check or wing dam. Straw, plastic sheeting, filter fabric and similar inert materials may be used to seal wing or check dams.

(G) Do not use logs or woody material waterward of the OHWL for construction of the dam unless specifically authorized. Large wood from upland locations may be used to create a wing or check dam.

(H) If logs or large woody material block water flow into a ditch or inhibit construction, a person may relocate them within the OHWL.

(I) Wing or check dams must be constructed in a manner that does not cause bank erosion.

(J) All foreign materials, except clean or native gravel, used to construct wing or check dams must be removed within seven days after the end of the irrigation season.

(ii) Diversion dams must not extend completely across the stream until reasonable effort has been exercised to seal the dam to achieve the water right.

(iii) Graveled wing dams must be removed or breached down to the natural bed elevation in at least two locations at the end of the irrigation season.

(f) Start-up and shut-down of water diversions.

(i) Clean and maintain the fish bypass mechanism to ensure it is operational and will prevent injury or stranding of fish life prior to diverting water.

(ii) Ensure that there is sufficient flow within the bypass mechanism to safely return fish life from the fish screen to state waters.

(iii) If at any point during water diversion there is insufficient instream flow to provide opportunity for fish life to migrate downstream, close the fish bypass until there is sufficient flow.

(iv) Slowly ramp flows down at the end of the irrigation season in a manner that prevents stranding or predation of fish life within a canal above the fish screens or within the fish bypass mechanism. Do not close the head gate completely until fish have either left the canal and bypass or are salvaged and returned to the stream. Head gates located downstream of the fish screen may be closed immediately at the end of the irrigation season.

NEW SECTION

WAC 220-660-260 Outfall structures in freshwater areas. (1) **Description:** Outfalls move water from one place to another, typically to a body of water. They may convey irrigation water, storm water, or other waste materials. The department recommends that a person construct energy dissipation structures at the landward side of buffers when possible so discharged water can infiltrate into the soil of the buffer or to sheet flow through the buffer into the stream.

(2) **Fish life concerns:** Outfalls can cause scouring or erosion of the bed. This can cause an increase in sediment supply to downstream reaches of rivers and streams. Outfalls can also cause bank erosion. This can cause a direct loss of bank side riparian zone habitat. Riprap and other energy dissipation structures can bury fish habitat and riparian zone vegetation. In addition, outfalls can entrain fish.

(3) **Limit of department authority over storm water outfall projects:**

(a) The department may not provision HPAs for storm water discharges in locations covered by a National Pollution Discharge Elimination System municipal storm water general permit for water quality or quantity impacts. The HPA is required only for the actual construction of any storm water outfall or associated structures.

(b) In locations not covered by a National Pollution Discharge Elimination System municipal storm water general permit, the department may provision HPAs to protect fish life from adverse effects, such as scouring or erosion of the bed of the water body, resulting from the direct hydraulic impacts of the discharge.

(i) Before prescribing specific discharge rates in an HPA under this subsection, the department must:

(A) Find that the discharge from the outfall will cause harmful effects to fish life;

(B) Send the findings to the applicant and to the city or county where the project is being proposed; and

(C) Allow a person to use local ordinances or other ways to avoid the adverse effects from the direct hydraulic discharge. The forty-five day requirement for issuing HPAs

under RCW 77.55.021 is suspended when the department is meeting the requirements of this subsection.

(ii) After following the procedures in (b) of this subsection, the department may issue an HPA that prescribes the discharge rates from an outfall structure that will prevent adverse effects to the bed or flow of the waterway. The department may recommend, but not specify, the measures required to meet these discharge rates. The department may not require changes to the project design landward of the mean higher high water mark of marine waters or the ordinary high water mark of fresh waters of the state.

(4) Outfall design and construction:

(a) Before designing and constructing an outfall consider alternatives such as tying into existing municipal storm water lines to avoid multiple storm water discharge points and low impact development (LID) techniques utilizing pervious pavement, infiltration galleries, green roofs, etc., to minimize discharge impacts.

(b) To prevent the entry of adult or juvenile fish, construct the outfall structure according to a design approved by WDFW.

(c) To prevent scouring, protect the watercourse bank and bed at the point of discharge using biotechnical techniques or other department-approved methods.

(d) Design and locate outfalls so that outflow or any associated energy dissipaters do not cause loss of fish and shellfish habitat. The department may require that energy be dissipated using one or more of the following methods, or other effective method proposed by a person and approved by the department:

(i) Existing natural habitat features (such as large logs, rootwads, natural large rocks, and rock shelves) without degrading the habitat function or value of the features;

(ii) Pads of native plants (live willow or dogwood stakes or other native shrubs) and biodegradable fabric;

(iii) Imported fish habitat components (large woody material);

(iv) Manufactured in-line energy dissipaters, such as a tee diffuser;

(v) Rounded rock energy dissipation pads; or

(vi) Angular rock energy dissipation pads, if the department determines other options are not possible.

NEW SECTION

WAC 220-660-270 Utility crossings in freshwater areas. (1) **Description:** Utility lines are cables and pipelines that transport gas, telecommunications, fiber optics, power, sewer, oil, and water lines from one side of a watercourse to the other.

(2) Fish life concerns:

(a) Utility crossings pose a risk to fish and fish habitat from potential changes of substrates, destabilization of stream banks and channels, loss of riparian habitat, and release of excessive sediment once stream flows resume. Utilities not buried below bed scour depth can require rock to protect them. This reduces fish habitat, inhibits channel processes and can become fish passage barriers due to the rock or the pipeline.

(b) Trenching through stream banks and channels alters habitat and substrate characteristics and therefore their productivity and should be avoided. Trenching may also cause the proportion of surface and subsurface flows to shift, altering stream hydrology. The department prefers trenchless crossing methods such as high-pressure directional drilling or punch and bore crossings that cause very little disturbance to the streambed and banks.

(3) Utility line design:

(a) Align the conduit as perpendicular as possible to the watercourse.

(b) Avoid crossing on meander bends, braided streams, alluvial fans, active floodplains, or any other area that is inherently unstable and may lead to eroding and scouring the streambed.

(c) Avoid areas of groundwater upwelling or locations within one hundred feet upstream of documented fish spawning areas.

(4) Utility line construction:

(a) Install the conduit well below scour depth of the watercourse to prevent natural scouring of the streambed from exposing the pipeline or cable.

(b) If construction involves boring or jacking:

(i) Isolate pits from surface water flow to prevent bore hole collapse; and

(ii) Before discharging the wastewater to state waters, route wastewater from project activities and dewatering to an area outside the watercourse to allow removal of fine sediment and other contaminants.

(c) If construction involves trench excavation:

(i) Trench widths should be as narrow as possible to accommodate the pipe/line and achieve the depth specified in the approved plan.

(ii) Excavate trenches in the dry or isolate them from the flowing watercourse by installing a cofferdam, culvert, flume, or other approved method;

(iii) Plowing, placement, and covering must occur in a single pass of the equipment;

(iv) Limit disturbance of the bed and banks to the amount needed to complete the project. Before returning flow, backfill trenches with approved materials and return the bed to preproject condition.

(v) Dispose of excess spoils, upland or on a barge so they will not reenter waters of the state.

(vi) Isolate the conduit approach trench from the watercourse until the conduit is laid across the watercourse.

(d) If construction involves directional drilling:

(i) Design the drill path to an appropriate depth below the watercourse to minimize the risk of frack-out and to a depth to prevent exposure of the line from natural scouring of the streambed; and

(ii) Locate the drill entry and exit points away from the banks of the watercourse to minimize impact on these areas.

NEW SECTION

WAC 220-660-280 Felling and yarding of timber. (1)

Description: Timber felling includes "bucking" or cutting the felled tree into short lengths and limbing the felled tree. Yarding is the process of hauling logs from the cutting area to

the landing and includes skidding (dragging the logs across the ground). There are three main kinds of yarding systems; ground based, cable, and aerial logging.

(2) **Fish life concerns:** Felling and yarding timber can damage the aquatic and stream bank riparian zone habitat if done incorrectly.

(3) Felling and yarding:

(a) Do not fell trees into or across a Type S, F, or Np watercourse except when the department specifically authorizes the activity. Felling into a Type N watercourse is allowed if trees are removed as soon as it is practicable to do so.

(b) Trees or logs that accidentally enter a watercourse with identifiable bed or banks must remain where they fall unless the department specifically authorizes the removal of parts or all of the trees or logs.

(c) Use full suspension when transporting logs across a watercourse with identifiable bed or banks, so no portion of the logs or limbs can enter the watercourse or damage the bed, banks, and riparian vegetation including riparian management zone trees.

(d) The number of cable crossings over the stream must be minimized to reduce damage or disturbance to RMZ trees. Place cable tailholds across watercourses with identifiable bed or banks, if they minimize the number of new yarding roads needed. When changing roads, a person must move the cable around or over the riparian vegetation and banks to avoid damaging the vegetation and banks.

(e) Unless the department authorizes limbs and other small debris to remain, remove limbs or other small debris that enter the watercourse with identifiable bed or banks, with each change in yarding road, or within seventy-two hours after entry into the watercourse or before the onset of high flows if anticipated to occur within seventy-two hours. Place the limbs and other small debris above the anticipated limits of floodwater. Remove limbs or other small debris from dry watercourses before the normal onset of high flows. Do not disturb large woody material that was in place before felling and yarding timber.

(f) Minimize the release of sediment to waters downstream from the felling or yarding activity. Use sediment control methods as needed to avoid the release of sediment downstream. Remove accumulated sediment from above check dams before their removal.

(g) Avoid or minimize skidding, ground lead yarding, or operating equipment within flowing waters in channels with defined bed or banks.

NEW SECTION

WAC 220-660-290 Aquatic plant removal and control. (1) Description:

This section covers the physical and mechanical methods for controlling and removing aquatic plants. It does not address using grass carp, herbicides, or water column dye. Aquatic plant removal and control methods include physical, mechanical, biological, and chemical control methods. Often the best approach to controlling and removing aquatic plants is developing a vegetation management plan. A vegetation management plan is a comprehensive approach to controlling aquatic plants where all strate-

gies are considered and usually some combination of techniques is selected and implemented. These plans should be based on the biology and ecology of the aquatic plant to be controlled and the environmental characteristics of the site. Integrated vegetation management planning is encouraged to comprehensively address aquatic plant problems for a water-course.

(2) **Fish life concerns:** Beneficial plants play a significant role in lakes and streams by providing food and habitat for fish, stabilizing shorelines, and contributing to nutrient cycling. Sometimes beneficial plants can grow in overabundance, usually because of excessive inputs of nutrients such as nitrogen or phosphorus. In contrast, aquatic noxious weeds can threaten native vegetation, and fish, shellfish, and their habitat.

(3) **Limit of authority:**

(a) An activity conducted solely to remove or control spartina does not require an HPA.

(b) An activity conducted solely to remove or control purple loosestrife and that is performed with hand-held tools or equipment, or equipment carried by a person when used, does not require an HPA.

(c) Any other activity conducted solely to remove or control aquatic noxious weeds or aquatic beneficial plants requires either a copy of the current *Aquatic Plants and Fish* pamphlet HPA available from the department or an individual HPA.

(4) **Removal of aquatic plants by hand:**

(a) A copy of the current *Aquatic Plants and Fish* pamphlet available from the department serves as an HPA, unless otherwise indicated, and must be on the job site at all times.

(b) Hand removal or control of aquatic plants can help eradicate an early infestation of aquatic noxious weeds and can be effective for small, confined areas.

(c) Hand removal or control of both aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) Because of potential impacts to sockeye spawning areas, the department requires advance authorization for activities in Baker Lake and lakes Osoyoos, Ozette, Pleasant, Quinault, Sammamish, Washington, and Wenatchee. If authorization is given, the department may require mitigation through a written agreement between the applicant and the department for impacts of raking in the spawning area.

(ii) Work is restricted to hand-pulling, using hand-held tools or equipment, or using equipment that is carried by a person when used.

(iii) Removing or controlling aquatic beneficial plants to maintain an access for boating or swimming is allowed along no more than ten linear feet of the applicant's shoreline. The department requires advance authorization for boating and swimming access projects which cover a larger area.

(iv) When hand-pulling aquatic noxious weeds, remove the entire plant when possible. Completely remove detached plants and plant fragments from waters of the state when possible. Dispose of detached plants and plant fragments at an upland site such that they do not reenter waters of the state.

(v) Do not remove or disturb existing fish habitat components such as logs, stumps, and large boulders.

(vi) Conduct work in a manner that minimizes the release of sediment and sediment-laden water from the job site.

(vii) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, or any other toxic or harmful materials, from entering or leaching into waters of the state.

(viii) 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.

(ix) Avoid using contaminated equipment, which can spread plant parts. Thoroughly remove and properly dispose of all viable plants and plant parts from the equipment before using the equipment in waters of the state.

(5) **Bottom barriers and screens:**

(a) A copy of the current *Aquatic Plants and Fish* pamphlet available from the department serves as an HPA, unless otherwise indicated, and must be on the job site at all times.

(b) Bottom barriers or screens can help eradicate an early infestation of aquatic noxious weeds and are best used in small, confined areas where control of all plants is needed.

(c) Bottom barrier or screen projects to control or remove both aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) Because of potential impacts to sockeye spawning areas, the department requires advance authorization for activities in Baker Lake and lakes Osoyoos, Ozette, Pleasant, Quinault, Sammamish, Washington, and Wenatchee. If authorization is given, the department may require mitigation through a written agreement between the applicant and the department for impacts of the activity to the spawning area.

(ii) For removing and controlling aquatic noxious weeds, the bottom barrier or screen material can cover no more than fifty percent of the length of the applicant's shoreline. The department requires advance authorization for bottom barrier or screen projects covering a larger area. Bottom barrier or screen and anchor material consisting of biodegradable material may be left in place. Within two years of placement, unless otherwise approved by the department, completely remove bottom barrier or screen and anchor material that is not biodegradable to encourage recolonization of aquatic beneficial plants.

(iii) To remove or control aquatic beneficial plants to maintain an area for boating or swimming, a bottom barrier or screen and anchor material may be installed along no more than ten linear feet of the applicant's shoreline. The department requires advance authorization for bottom barrier or screen projects for boating and swimming access projects covering a larger area.

(iv) Securely anchor a bottom barrier or screen material with pea gravel-filled bags, rock, or similar material to prevent billowing and movement off site.

(v) Regularly maintain a bottom barrier or screen and anchors to ensure the barrier or screen and anchors are functioning properly. Barriers or screens that have moved or are

billowing must immediately be securely reinstalled or removed from waters of the state.

(vi) Existing fish habitat components such as logs, stumps, and large boulders may be relocated within the waterbody if needed to properly install the bottom barrier or screen. Do not remove these habitat components from the waterbody.

(vii) 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.

(viii) Avoid using contaminated equipment, which can spread plant parts. Thoroughly remove and properly dispose of all viable plants and plant parts from the equipment before using the equipment in waters of the state.

(6) Weed rolling:

(a) A copy of the current *Aquatic Plants and Fish* pamphlet available from the department serves as an HPA, unless otherwise indicated, and must be on the job site at all times.

(b) Weed rollers are best used when a person needs to control all aquatic plants.

(c) Weed rolling projects to control or remove both aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) Because of potential impacts to sockeye spawning areas, the department requires advance authorization for activities in Baker Lake and lakes Osoyoos, Ozette, Pleasant, Quinault, Sammamish, Washington, and Wenatchee. If authorization is given, the department may require mitigation through a written agreement between the applicant and the department for impacts of the activity to the spawning area.

(ii) Weed rollers cannot be used to remove an early infestation of aquatic noxious weeds. Using weed rollers to remove or control all other infestation levels of aquatic noxious weeds can cover an area of no more than two thousand five hundred square feet. The department requires advance authorization for weed roller projects covering a larger area.

(iii) The department requires advance authorization to remove or control aquatic beneficial plants.

(iv) When using weed rollers to remove or control aquatic noxious weeds, completely remove detached plants and plant parts from the waterbody. Dispose of detached plants and plant parts at an upland site so they do not reenter waters of the state.

(v) Conduct work in a manner that minimizes the release of sediment and sediment-laden water from the job site.

(vi) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, or any other toxic or harmful materials, from entering or leaching into waters of the state.

(vii) 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.

(viii) Existing fish habitat components such as logs, stumps, and large boulders may be relocated within the waterbody if needed to properly install the weed roller. Do not remove these habitat components from the waterbody.

(ix) Avoid using contaminated equipment, which can spread plant parts. Thoroughly remove and properly dispose of all viable plants and plant parts from the equipment before using the equipment in waters of the state.

(7) Mechanical harvesting and cutting:

(a) A copy of the current *Aquatic Plants and Fish* pamphlet available from the department serves as an HPA, unless otherwise indicated, and must be on the job site at all times.

(b) Mechanical harvesting and cutting projects to control or remove both aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) Do not use mechanical harvesters and cutters to remove an early infestation of aquatic noxious weeds.

(ii) The department requires advance authorization to remove aquatic beneficial plants.

(iii) When using mechanical harvesters or cutters to remove or control aquatic noxious weeds, completely remove detached plants and plant parts from the waterbody. Dispose of detached plants and plant parts at an upland site so they do not reenter waters of the state.

(iv) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, or any other toxic or harmful materials, from entering or leaching into waters of the state. Keep equipment well-maintained and use food-grade oil in the hydraulic system.

(v) 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.

(vi) Existing fish habitat components such as logs, stumps, and large boulders may be relocated within the waterbody to make room to operate the equipment. Do not remove these habitat components from the waterbody.

(vii) Conduct mechanical harvester and cutter operations only in waters deep enough to avoid contacting the bottom with the cutter blades.

(viii) Always operate mechanical harvesters and cutters so that they cause the least adverse impact to fish life.

(ix) Immediately and safely return all fish life to the waterbody that become entrained in the cut vegetation while operating a mechanical harvester.

(x) Avoid using contaminated equipment which can spread plant parts. Thoroughly remove and properly dispose of all viable plants and plant parts from the equipment before using the equipment in waters of the state.

(xi) Limit alteration or disturbance of the bank and bank vegetation to that required to conduct the project. Protect all disturbed areas from erosion using vegetation or other means. Replant the banks within one year with native or other approved woody species.

(8) Rotovation:

(a) The department requires an individual HPA for rotovation projects. Rotovation projects to control or remove both aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) Do not use rotovators to remove an early infestation of aquatic noxious weeds.

(ii) When using rotovation to remove or control aquatic noxious weeds, completely remove detached plants and plant parts from the waterbody. Dispose of detached plants and plant parts at an upland site so they do not reenter waters of the state.

(iii) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, or any other toxic or harmful materials, from entering or leaching into waters of the state. Keep equipment well-maintained and use food-grade oil in the hydraulic system.

(iv) 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.

(v) Existing fish habitat components such as logs, stumps, and large boulders may be relocated within the waterbody if needed to operate the equipment. Do not remove these habitat components from the waterbody.

(vi) Always operate rotovators such that they will cause the least adverse impact to fish life.

(vii) Avoid spreading plant parts through contaminated equipment. Thoroughly remove and properly dispose of all viable plants and plant parts from the equipment before using the equipment in waters of the state.

(viii) Limit alteration or disturbance of the bank and bank vegetation to that needed to conduct the project. Protect all disturbed areas from erosion, using vegetation or other means. Replant the banks within one year with native or other approved woody species.

(ix) Do not rotovate in fish spawning areas unless approved by the department.

(9) Aquatic plant dredging:

(a) A copy of the current *Aquatic Plants and Fish* pamphlet available from the department serves as an HPA for diver-operated dredging only, unless otherwise indicated, and must be on the job site at all times.

(b) Dredging projects to control or remove both aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) Because of potential impacts to sockeye spawning areas, the department requires advance authorization for activities in Baker Lake and lakes Osoyoos, Ozette, Pleasant, Quinault, Sammamish, Washington, and Wenatchee. If authorization is given, the department may require mitigation through a written agreement between the applicant and the department for impacts of the activity to the spawning area.

(ii) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, or any other toxic or harmful

materials, from entering or leaching into waters of the state. Keep equipment well-maintained and use food-grade oil in the hydraulic system.

(iii) 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.

(iv) Existing fish habitat components such as logs, stumps, and large boulders may be relocated within the waterbody if needed to operate the equipment. Do not remove these habitat components from the waterbody.

(v) Conduct dredging at all times with dredge types and methods that cause the least adverse impact to fish life.

(vi) Avoid using contaminated equipment, which can spread plant parts. Thoroughly remove and properly dispose of all viable plants and plant parts from the equipment before using the equipment in waters of the state.

(vii) To avoid stranding fish, the bed must not contain pits, potholes, or large depressions when dredging is finished.

(viii) Limit alteration or disturbance of the bank and bank vegetation to that needed to conduct the project. Protect all disturbed areas from erosion, using vegetation or other means. Replant the banks within one year with native or other approved woody species.

(c) Diver-operated dredging only:

(i) Diver-operated dredging can help eradicate an early infestation of aquatic noxious weeds and can help conduct long-term maintenance after control or removal using other methods.

(ii) When using diver-operated dredging to remove or control aquatic noxious weeds, a person must completely remove plants and plant parts from the waterbody. Remove plants and plant fragments from the dredge slurry before returning it to the waterbody. Dispose of dredged bed materials, including detached plants and plant parts, at an upland disposal site so as not to reenter water of the state.

(iii) Operate a hydraulic dredge with the intake at or below the surface of the material that is being removed. Raise the intake up to three feet above the bed only for brief periods of purging or flushing the intake system.

(iv) The department requires advance authorization to eradicate or control aquatic beneficial plants.

(d) Dredging other than diver-operated dredging: The department requires an individual HPA for all dredging projects to control or remove aquatic plants that do not use divers. All dredging other than diver-operated dredging must comply with the following technical provisions:

(i) Do not use draglines and clamshell dredges to remove an early infestation of aquatic noxious weeds.

(ii) When using dredging to remove or control aquatic noxious weeds, a person must completely remove plants and plant parts from the waterbody. Dispose of dredged bed materials, including detached plants and plant parts, at an upland site so they not to reenter waters of the state.

(iii) Do not conduct dredging in fish spawning areas unless approved by the department.

(iv) Operate a hydraulic dredge with the intake high enough above the root system of the vegetation being removed so the bed is not excessively disturbed. Raise the intake up to three feet above the bed only for brief periods of purging or flushing the intake system.

(v) If a dragline or clamshell is used, operate in a way that minimizes turbidity. During excavation, complete each pass with the clamshell or dragline bucket. Do not stockpile dredged material waterward of the ordinary high water line.

(10) Water level manipulation:

(a) The department requires an individual HPA to manipulate water levels.

(b) Manipulating water levels (drawdowns) to remove or control aquatic noxious weeds or aquatic beneficial plants by exposing plants and root systems to extreme temperature and moisture conditions may be appropriate under specific circumstances. Accurate plant identification is important to ensure success.

(c) Water level manipulation projects to control or remove both aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) 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.

(ii) Manipulate water levels in a way that causes the least adverse impact to fish life.

(iii) Manipulate water levels gradually and in a controlled way to prevent a sudden release of impounded water or sediments that may result in downstream bed and bank degradation, sedimentation, or flooding. Water levels must be drawn down and brought back up at rates predetermined in consultation with and approved by the department. Instream flow requirements must be maintained as water levels are brought back up.

(iv) Protect all disturbed areas from erosion, using vegetation or other means. Replant the banks within one year with native or other approved woody species.

NEW SECTION

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 and their habitat.

(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 streambeds 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. 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 wetter 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.

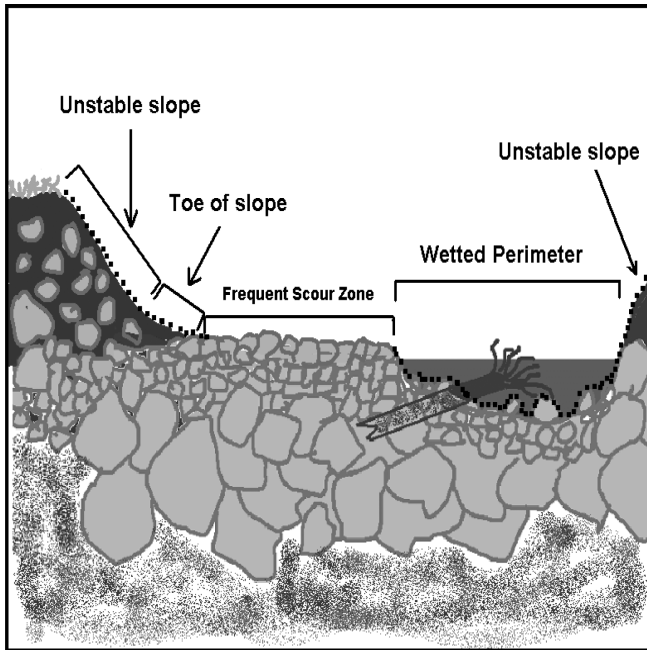


Figure 1: Cross section of a typical body of water, showing areas where excavation is not permitted under rules for mineral prospecting without timing restrictions. Dashed lines indicate areas where excavation is not permitted.

(iii) 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.

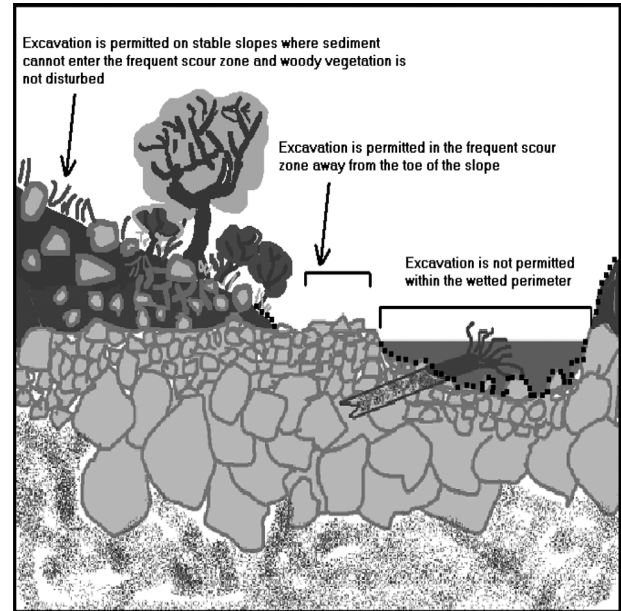


Figure 2: Permitted and prohibited excavation sites in a typical body of water under rules for mineral prospecting without timing restrictions. Dashed lines indicate areas where excavation is not permitted.

(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.

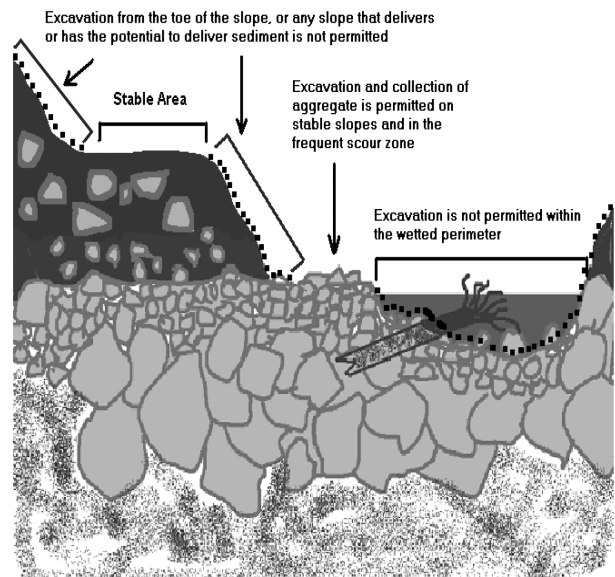


Figure 3: Limits on excavating, collecting, and removing aggregate on stream banks.

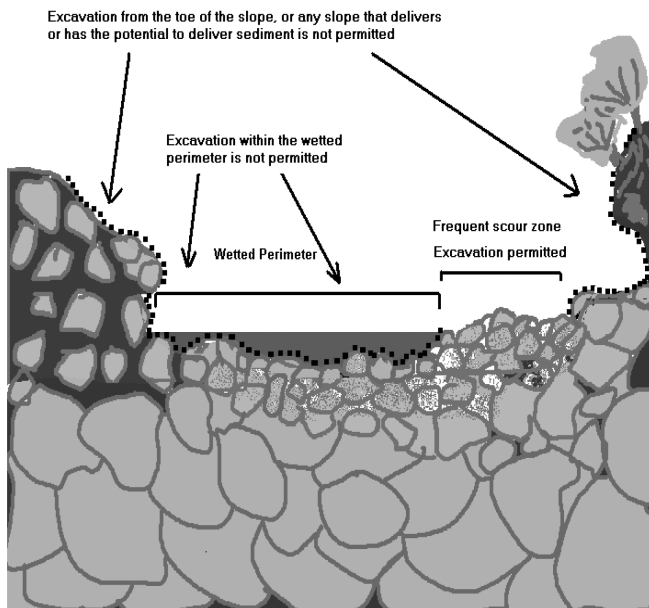


Figure 4: Excavating, collecting and removing aggregate within the wetted perimeter is not permitted.

(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 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.

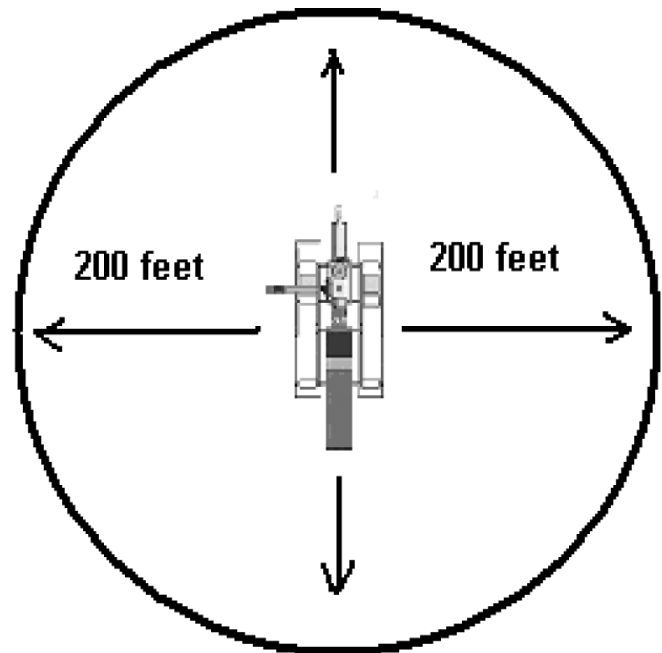


Figure 6: Equipment separation requirement.

(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 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.

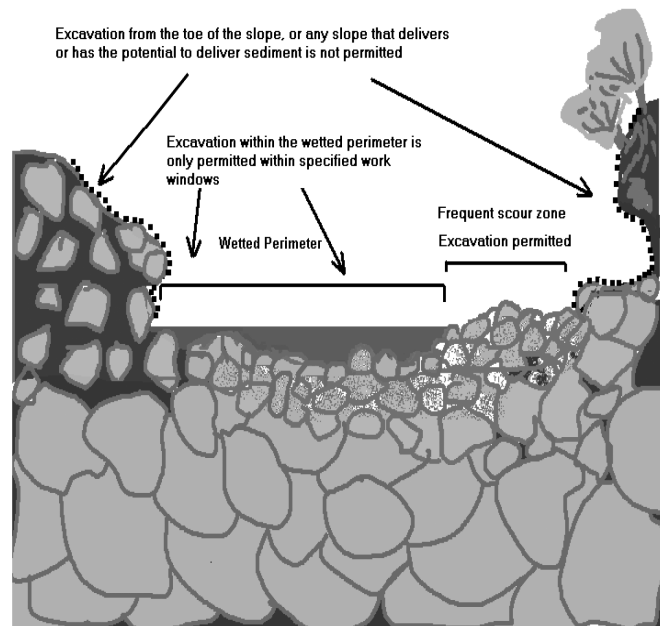


Figure 7: Cross section of a typical body of water showing unstable slopes, stable areas, and permitted or prohibited excavation sites under rules for mineral prospecting with timing restrictions. Dashed line indicates areas where excavation is not permitted.

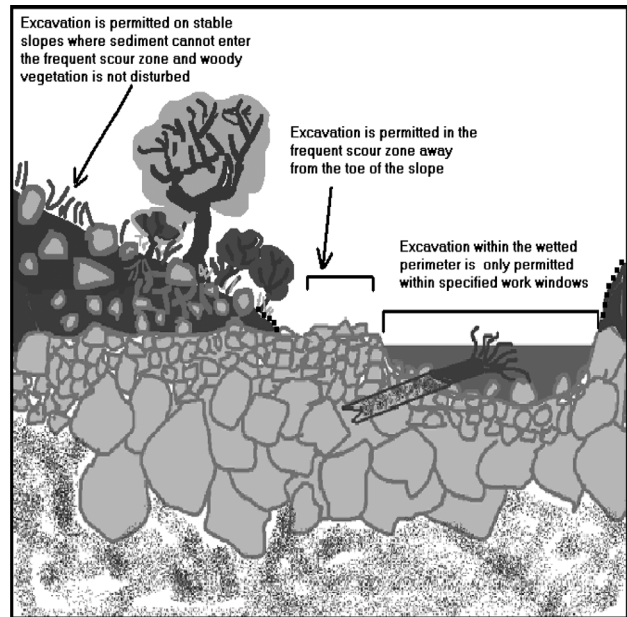


Figure 8: Cross section of a typical body of water showing unstable slopes, stable areas, and permitted or prohibited excavation sites under rules for mineral prospecting with timing restrictions. Dashed line indicates areas where excavation is not permitted.

(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.

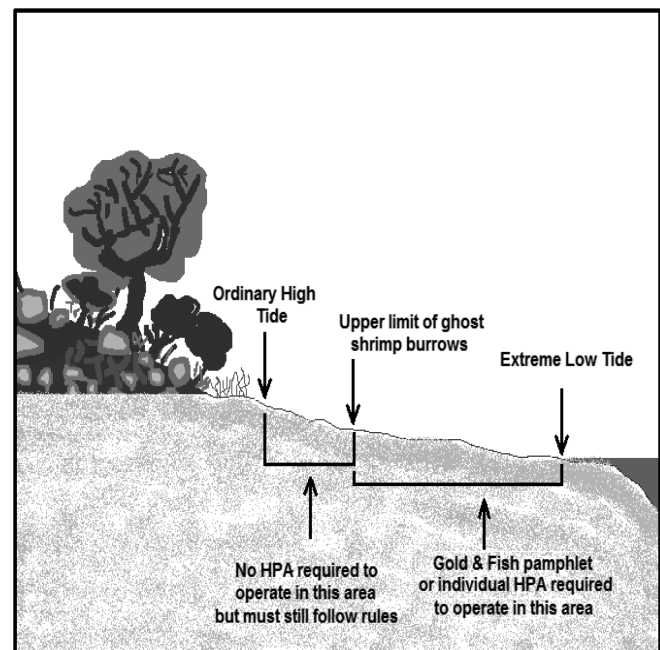


Figure 9. Beach area where no written or pamphlet HPA is required.

(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 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 waterbody.

(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 waterbodies 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 waterbodies.

(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.

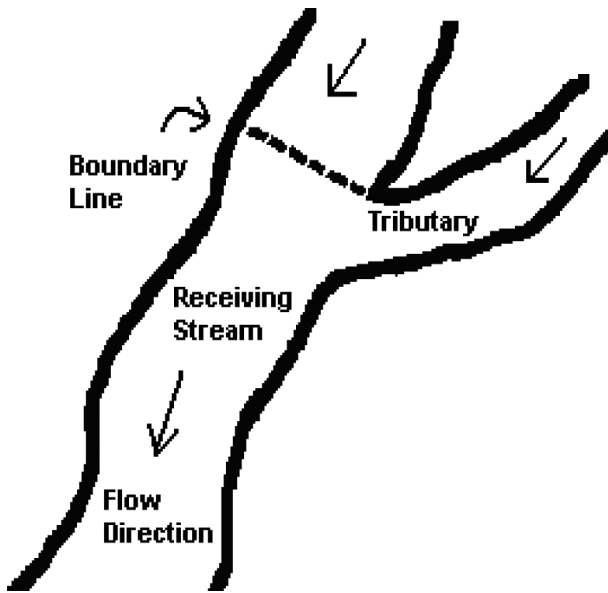


Figure 10: Where the boundary is located if a tributary listed as a boundary.

Table 2

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	–

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
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	–
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	–

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
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	–
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

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
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 Creek	July 16 - August 15	X	–
Peshastin Creek (45.0232) - Upstream of Negro 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 Creek (45.0323) - Mouth to falls at stream mile 2.9	Submit Application	–	–
Negro 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
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	–

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
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
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	-

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 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	-
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	-

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
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
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	-

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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
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	–

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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	–
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
Humptulips River (22.0004) - Mouth to Forks	August 1 - September 30	X	X

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Humtulpis River (22.0004) - Upstream of Forks	August 1 - September 30	X	-
Johns River (22.1270)	August 1 - September 30	X	X
Moclips 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	-
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	-

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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
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

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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	–
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

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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	-
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	-

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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	–
Whisky 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	–
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	–	–

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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	–
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	–

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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	–
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	–

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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
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

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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	–
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

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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	-	-
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	-	-

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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	–	–
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	–	–

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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	–
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	–

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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	July 1 - October 31	X	X
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	–

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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
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	-

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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	–
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

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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	-
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	-

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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	-	-
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

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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
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

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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	–
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	–

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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	-
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	X	X
Sultan River (07.0881) - Diversion Dam to Elk Creek	July 16 - February 28	X	X
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

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
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
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

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
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	-
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

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 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
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	–	–

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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	-
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	-	-

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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	–	–
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	–	–

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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	–
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	–	–

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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	–
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

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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	–
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

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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
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	–	–

NEW SECTION**WAC 220-660-310 Tidal reference areas. (1)**

Description: The department uses the following tidal reference areas to delineate segments of the state's marine shorelines. The authorized work times in saltwater areas vary by tidal reference area.

(2) Definitions for tidal reference areas:

(a) Tidal Reference Area 1 (Shelton): All saltwater areas in Oakland Bay and Hammersley Inlet westerly of a line projected from Hungerford Point to Arcadia.

(b) Tidal Reference Area 2 (Olympia): All saltwater areas between a line projected from Hungerford Point to Arcadia and a line projected from Johnson Point to Devil's Head. This includes Totten, Eld, Budd, Case, and Henderson Inlets, and Pickering Passage.

(c) Tidal Reference Area 3 (South Puget Sound): All saltwater areas easterly and northerly of a line projected from Johnson Point to Devil's Head and southerly of the Tacoma Narrows Bridge.

(d) Tidal Reference Area 4 (Tacoma): All saltwater areas northerly of the Tacoma Narrows Bridge and southerly of a line projected true west and true east across Puget Sound from the northern tip of Vashon Island.

(e) Tidal Reference Area 5 (Seattle): All saltwater areas northerly of a line projected true west and true east across Puget Sound from the northern tip of Vashon Island and southerly of a line projected true east from Point Jefferson at 47°45'N. latitude across Puget Sound. This area includes Port Orchard, Port Madison, and Dyes and Sinclair Inlets.

(f) Tidal Reference Area 6 (Edmonds): All saltwater areas northerly of a line projected true east from Point Jefferson at 47°45'N. latitude across Puget Sound and southerly of a line projected true east from Possession Point to Mukilteo and from Foulweather Bluff to Double Bluff.

(g) Tidal Reference Area 7 (Everett): All saltwater areas northerly of a line projected true east from Possession Point to Chennault Beach, easterly of a line projected 5° true from East Point to Lowell Point, and southerly of the Stanwood to Camano Island Highway. This area includes Port Gardner, Port Susan, and parts of Possession Sound and Saratoga Passage.

(h) Tidal Reference Area 8 (Yokeko Point): All saltwater area westerly and northerly of a line projected 5° true from East Point to Lowell Point, north of the Stanwood to Camano Island Highway, and easterly and southerly of Deception Pass Bridge and the Swinomish Channel Bridge on State Route 20. This area includes Holmes Harbor, Saratoga Passage, Skagit Bay, Similk Bay, and most of the Swinomish Channel.

(i) Tidal Reference Area 9 (Blaine): All saltwater area in Skagit County and Whatcom County that lies northerly of the Swinomish Channel Bridge on State Route 20 and westerly and northerly of Deception Pass Bridge.

(j) Tidal Reference Area 10 (Port Townsend): All saltwater area of Puget Sound as defined in WAC 220-16-210, except Hood Canal south of a line projected from Tala Point to Foulweather Bluff, and except all waters defined in Tidal Reference Areas 1 through 9. Area 10 includes waters of the San Juan Islands, Admiralty Inlet, the Strait of Juan de Fuca, and associated bays and inlets.

(k) Tidal Reference Area 11 (Union): All saltwater area of Hood Canal southerly and easterly of a line projected from the northern entrance of Lilliwaup Bay to the northern entrance of Dewatto Bay.

(l) Tidal Reference Area 12 (Seabeck): All saltwater areas of Hood Canal northerly of a line projected from the northern entrance of Lilliwaup Bay to the northern entrance of Dewatto Bay and southerly of a line projected true east from Hazel Point. This area includes Dabob Bay and Quilcene Bay.

(m) Tidal Reference Area 13 (Bangor): All saltwater area of Hood Canal northerly of a line projected true east from Hazel Point and south of a line projected from Tala Point to Foulweather Bluff. This area includes Port Gamble.

(n) Tidal Reference Area 14 (Ocean Beaches): All saltwater area between Cape Flattery and the Oregon border at the mouth of the Columbia River, excluding Grays Harbor and Willapa Bay.

(o) Tidal Reference Area 15 (Westport): All saltwater area in Grays Harbor easterly of a line projected from the outermost end of the north jetty to the outermost end of the south jetty, and westerly of 123°59'W. longitude.

(p) Tidal Reference Area 16 (Aberdeen): All saltwater area in Grays Harbor easterly of 123°59'W. longitude and westerly of the State Route 101 Bridge across the Chehalis River.

(q) Tidal Reference Area 17 (Willapa Bay): All saltwater area in Willapa Bay easterly of a line projected from Leadbetter Point to Cape Shoalwater.

NEW SECTION**WAC 220-660-320 Saltwater habitats of special concern. (1) Description:**

(a) Saltwater habitats of special concern provide essential functions in the developmental life history of fish life. These habitats include:

- (i) Spawning areas for forage fish;
- (ii) Settlement and nursery areas for juvenile rockfish and lingcod;
- (iii) Migration, rearing, and feeding areas for juvenile salmon;
- (iv) Settlement areas for native shellfish;
- (v) Areas of native aquatic and riparian vegetation that support fish life; and
- (vi) Feeder bluffs that form and maintain forage fish spawning beaches.

(b) The presence of saltwater habitats of special concern or adjacent areas with similar bed materials may restrict project type, design, location, and timing. Department staff or a department-trained biologist may conduct a site visit to determine the location of such habitats. In addition, the department may consider maps, publications, and other available information to determine the location.

(2) Fish life concerns:

(a) The nearshore zone represents three critical edge habitats; the edge between upland and aquatic environments, the edge between the shallow productive zone and deep water, and the edge between fresh and marine waters. Variations in wave energy, sediment delivery and movement, sunlight,

water depth, salinity, and location associated with nearshore edges create a broad range of physical conditions that support a wide diversity and abundance of fish life. Disruption of nearshore ecosystem processes and physical conditions can adversely affect ecological functions, which will in turn cause a loss of fish life.

(b) Hydraulic projects ranging from installing stairways across bluff faces to building docks and bulkheads to dredging may contribute to a loss of habitat in the nearshore zone. Ongoing activities increasingly fragment and degrade the remaining habitat. Saltwater habitats of special concern require a higher level of protection because they provide essential functions in the developmental life history of fish life.

(3) Saltwater habitats of special concern:

(a) A person may request information from the department about the location of saltwater habitats of special concern.

(b) Saltwater habitats of special concern are habitats that provide essential functions in the development of priority fish species, including the following:

(i) Pacific sand lance (*Ammodytes hexapterus*) spawning beds are located in the upper beach area in saltwater areas typically composed of sand and/or pea gravel;

(ii) Surf smelt (*Hypomesus pretiosus*) spawning beds are located in the upper beach area in saltwater areas typically composed of sand and/or small gravel and shell material;

(iii) Pacific herring (*Clupea pallasii*) spawning beds are located in lower beach areas and shallow subtidal areas in saltwater areas. Spawning substrate may consist of seagrass, macroalgae, and other structure such as subtidal worm tubes;

(iv) Lingcod (*Ophiodon elongatus*) settlement and nursery areas are located in beach and subtidal areas with sand, seagrass, subtidal worm tubes, and other materials;

(v) Rockfish (*Sebastes* spp.) settlement and nursery areas are located in kelp beds, seagrass beds, and pinnacles, boulders, and other structurally complex habitats;

(vi) Juvenile salmonid (family Salmonidae) migration corridors and rearing and feeding areas are common throughout estuarine, intertidal and shallow subtidal saltwater areas of the state;

(vii) Olympia oyster (*Ostrea conchaphila*) settlement areas are located in sheltered bays and estuaries near 0.0 feet MLLW;

(viii) Seagrasses (*Zostera marina*, *Ruppia maritima* and *Phyllospadix* spp.) beds;

(ix) Kelp (order Laminariales) beds;

(x) Intertidal wetland plant areas (except noxious aquatic weeds); and

(xi) Native riparian vegetation zones.

(4) Nearshore zone geomorphic processes that form and maintain saltwater habitats of special concern:

(a) Hydraulic projects should be located and constructed to avoid impacts to processes that create and maintain habitats (geomorphic processes) in the nearshore zone. This is because impacts to geomorphic processes are difficult to mitigate.

(b) The following are nearshore geomorphic processes that form and maintain saltwater habitats of special concern:

(i) Sediment supply and transport;

(ii) Beach and bluff erosion and sediment accretion;

(iii) Distributary channel migration; and

(iv) Tidal channel formation and maintenance.

NEW SECTION

WAC 220-660-330 Authorized work times in saltwater areas. (1) **Description:** The department applies timing windows to reduce the risk of impacts to fish life at critical life stages. In-water work is not allowed during critical periods of the year unless a person can take mitigation measures to eliminate risk during critical periods.

(2) **Fish life concerns:** Work in or near salt waters of the state can harm fish life at critical life stages including spawning, incubation, juvenile migration, rearing, and feeding. Therefore, work must occur at times of the year when the risk to fish life is reduced unless the risk can be avoided.

(3) **Authorized work times:** The department must specify authorized work times for hydraulic projects when it issues HPAs. The department will allow work waterward of the OHWL for the following times, areas, and species.

(a) Tidal Reference Areas 1 through 17; March 1 through October 15 for projects in or adjacent to documented Pacific sand lance spawning beds.

(b) Tidal Reference Areas 1 through 17; October 15 through May 15 for projects in or adjacent to juvenile lingcod settlement and nursery areas.

(c) Tidal Reference Areas 1 through 17; September 30 through March 15 for projects in or adjacent to juvenile rockfish settlement and nursery areas.

(d) Tidal Reference Area 14; October 1 through May 15 for projects in or adjacent to documented razor clam beds.

(e) Tidal Reference Areas 1 through 17; the authorized times and areas for protection of migrating juvenile salmonids in the nearshore, and for projects in documented Pacific herring spawning beds and in or adjacent to documented surf smelt are listed in the following table:

Table 3

Authorized Times for Protection of Juvenile Salmonid Migration, Feeding and Rearing Areas and Pacific Herring Spawning and Surf Smelt Spawning Beds

AUTHORIZED TIMES			
Tidal Reference Area	Juvenile Salmonid Migration, feeding and Rearing Areas	Surf Smelt Spawning Beds	Herring Spawning Beds
1	July 15 - February 15	(not present)	April 1 - January 15
2	July 15 - February 15	April 1 - June 30	April 1 - January 15

AUTHORIZED TIMES			
Tidal Reference Area	Juvenile Salmonid Migration, feeding and Rearing Areas	Surf Smelt Spawning Beds	Herring Spawning Beds
3	July 15 - February 15	May 1 - September 30	April 1 - January 15
4	August 1 - February 15 for all work except dredging. September 1 - February 15 for dredging.	April 15 - September 30	April 15 - January 15
5	August 1 - February 15 for all work except dredging. September 1 - February 15 for dredging in all areas except Duwamish Waterway. October 16 - February 15 for dredging in the Duwamish Waterway upstream of the East and West Waterways.	April 1 - August 31 in all areas except Eagle Harbor and Sinclair Inlet. In Eagle Harbor and Sinclair Inlet, authorization is conditional upon inspection because year-round spawning occurs.	May 1 - January 15
6	July 15 - February 15 for all work except dredging. September 1 - February 15 for dredging.	April 1 - August 31	(not present)
7	July 15 - February 15 for all work except dredging in Port Gardner and the Snohomish River. September 15 - February 15 for dredging in Port Gardner. September 1 - February 15 for dredging in the Snohomish River.	Authorization is conditional upon inspection because year-round spawning occurs.	April 15 - January 31
8	August 1 - February 15	Authorization is conditional upon inspection, because year-round spawning occurs.	April 15 - January 31
9	August 1 - February 15	Authorization is conditional upon inspection, because year-round spawning occurs.	April 15 - January 31 south of a line running due west from Governor's Point. June 15 - January 31 north of a line running due west from Governor's Point.
10	July 15 - February 15 July 15 - January 15 for all work from Tala Point to the Dungeness River. September 1 - March 1 San Juan Islands.	April 1 - July 31 except in the San Juan Islands where authorization is conditional upon inspection because year-round spawning occurs.	May 1 - January 15
11	July 15 - January 15	March 1 - September 15	April 1 - January 15
12	July 15 - January 15	March 1 - August 31	April 15 - February 15
13	July 15 - January 15	February 16 - July 31	April 15 - January 15
14	July 15 - February 15	October 1 - June 30	(not present)

AUTHORIZED TIMES			
Tidal Reference Area	Juvenile Salmonid Migration, feeding and Rearing Areas	Surf Smelt Spawning Beds	Herring Spawning Beds
15	July 15 - February 15	(not present)	February 1 - March 31
16	July 15 - February 15	(not present)	March 15 - January 31
17	July 15 - February 15	(not present)	March 15 - January 31

(f) If the surf smelt spawning season for the project location is six months or longer, the department may permit work outside of the authorized work times if an intertidal forage fish spawning bed surveys:

(i) A department trained biologist, following the department's intertidal forage fish spawning habitat survey protocol per WAC 220-660-370, conducts a spawning survey at the worksite;

(ii) The results of the inspection show that no spawning is occurring or has recently occurred; and

(iii) If the survey shows eggs are not present, the person may start work. The person must start work within seventy-two hours of a survey.

(g) In documented intertidal forage fish spawning areas, the department must not allow work during surf smelt spawning seasons shorter than six months or during the Pacific sand lance spawning season. The department will make exceptions for projects receiving emergency, imminent danger, and expedited HPAs.

(h) The department will require an intertidal forage fish spawning bed survey if the job site is adjacent to a documented forage fish spawning bed, the beach at the job site has bed materials similar to the documented beach, and the work will occur during the spawning season.

(i) When specifying authorized work times for hydraulic projects, the department must consider the construction techniques, mitigation measures proposed, location of the project, and characteristics of habitats potentially affected by the project. The department may inspect the work area to evaluate the habitat.

(j) During times when work in waters of the state is prohibited to protect nearshore juvenile salmonid migration, rearing, and feeding areas, the department may permit construction if the structure is located at or landward of the OHWL, and if all construction work is conducted from the landward side of the project.

(k) The department may apply additional timing restrictions to protect other important fish and shellfish habitat at a specific site.

NEW SECTION

WAC 220-660-340 Intertidal forage fish spawning bed surveys. (1) **Description:** The department uses intertidal forage fish spawning bed surveys to determine presence, absence, quantity, and timing of surf smelt (*Hypomesus pretiosus*) and Pacific sand lance (*Ammodytes hexapterus*) spawning. The department may require an applicant to hire a qualified, department-trained biologist to conduct an intertidal forage fish spawning survey before working in potential surf smelt and Pacific sand lance spawning habitat or in documented surf smelt spawning areas where the spawning sea-

son is six months or longer. The presence of eggs may restrict project type, design, location, and timing.

(2) **Fish life concerns:** Surf smelt and Pacific sand lance are important food for marine mammals, birds, and fish, including Pacific salmon. The department protects forage fish spawning beds by limiting construction activities on beaches when and where spawning is documented.

(3) Intertidal forage fish surveys:

(a) A biologist must complete the department's forage fish spawning beach survey training to be approved by the department to conduct intertidal forage fish spawning bed surveys.

(b) A biologist must follow the department-approved intertidal forage fish spawning protocol and use the standard department data sheets when conducting forage fish spawning beach surveys. The protocol and data sheets are available on the department's web site. The department may modify this protocol when only the presence or absence of surf smelt eggs needs to be determined.

(c) A biologist must submit the completed, standard department data sheets to the department within seventy-two hours of the survey.

NEW SECTION

WAC 220-660-350 Seagrass and macroalgae habitat surveys. (1) **Description:** The department has developed survey guidelines for seagrass and macroalgae habitat to improve protection of these important habitats in Puget Sound and coastal waters. The guidelines contain protocols for both preliminary and advanced surveys to help evaluate potential impacts to these habitats at project sites with various conditions. Because statistical considerations are an integral part of the advanced surveys, the guidelines include a sample size calculator to help determine the number of samples the diver/biologist must take. The guidelines are available on the department's web site.

(2) Fish life concerns:

(a) Seagrass and macroalgae such as kelp play a critical role in the nearshore zone ecosystem as primary producers, generating nutrients and substrate that form the base of the food chain. The dense and complex structure created by seagrass and macroalgae beds also provides refuge and foraging habitat for fishes, invertebrates, and other organisms.

(b) Direct impacts can occur on a local or site-specific scale from impacts to substrate and changes to light levels. Dredging, filling, or otherwise altering the substrate can make a site uninhabitable for seagrass and macroalgae and the species that depend on them. Boat propellers and anchors can physically damage plants, disturb sediments, and alter the habitat. Over-water structures such as piers, docks, and floats decrease the amount of light available. These habitat impacts

can cause a substantial reduction in the size and diversity of the plant community.

(3) Seagrass and macroalgae surveys:

(a) The department will require a person to submit a seagrass and macroalgae survey as part of an HPA application for the following work unless the department can determine the project will not impact seagrass and macroalgae:

(i) Constructing a new dock, mooring buoy, or other over-water structure;

(ii) Constructing a replacement over-water structure outside the previously allowed footprint;

(iii) New dredging, trenching, filling, or grading; and

(iv) Maintenance dredging, trenching, filling, or grading outside the previously allowed footprint.

(b) The department will use the preliminary survey to:

(i) Determine if seagrass or macroalgae are present at the proposed work area;

(ii) Evaluate if the applicant can locate and construct the project to avoid or minimize impacts to seagrass, kelp, or macroalgae; and

(iii) Establish a location for the project that will minimize impacts when avoidance is not possible.

(c) The department will use advanced surveys to estimate project impacts to seagrass and macroalgae in herring spawning beds. Advanced surveys must occur between June 1 and October 1 and are conducted to:

(i) Measure the project's impact to seagrass and macroalgae; and

(ii) Measure the performance of mitigation actions.

(d) The department must measure direct impacts by calculating the total area and density of seagrass and macroalgae affected by the project. The department uses this information to help calculate the size of the mitigation area required to compensate for seagrass and macroalgae loss.

(e) The department must measure mitigation success by comparing seagrass and macroalgae densities at a mitigation (or impact) site to those of a reference site. These comparisons must be statistically rigorous. The department has set monitoring standards for these surveys:

(i) $\alpha = 0.10$;

(ii) Power $(1 - \beta) = 0.90$; and

(iii) A difference of mean seagrass density of at least twenty percent. The department has developed survey guidelines for seagrass and macroalgae habitat. The department will consider other survey methods if they meet established monitoring standards.

(f) The divers/biologists who conduct the surveys must be qualified to identify the predominant seagrass and macroalgae species in the work area.

(g) If the department approves a monitoring and contingency plan, the department may require a qualified diver/biologist to monitor project impacts to determine seagrass or macroalgae loss and the required mitigation.

(h) Survey results and interpretation are subject to department approval.

NEW SECTION

WAC 220-660-360 Common saltwater construction provisions. (1) Description: Common saltwater construc-

tion provisions can apply to many hydraulic projects. However, only applicable common construction provisions will be applied to a specific hydraulic project. Common construction provisions include job site access, equipment use, construction materials, sediment and erosion control containment, and job site repair and revegetation.

(2) **Fish life concerns:** Construction and other work can negatively affect fish life. Some activities may kill or injure fish while others can cause behavioral changes that reduce fish growth and survival. Some activities can damage the habitat used for spawning and egg incubation, rearing, feeding, hiding from predators, and migration.

(3) **Staging areas:** Establish staging areas (used for activities such as equipment storage, vehicle storage, fueling, servicing, and hazardous material storage) at a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.

(4) Job site access:

(a) Clearly mark boundaries to establish the limit of work associated with site access and construction.

(b) Limit the removal of native to the minimum amount needed to construct the project. Woody vegetation greater than six inches diameter that must be removed must be marked in the field by the applicant and specifically approved for removal by the department. The department may require this large woody material to be placed on the beach after work is completed. A revegetation plan must be submitted to restore riparian vegetation removed as part of the project.

(c) Retain all natural habitat features on the beach larger than twelve inches in diameter including trees, stumps, logs, and large rocks. These natural habitat features may be moved during construction but they must be placed near the preproject location prior to demobilization.

(5) Equipment use:

(a) Use of equipment on the beach area must be held to a minimum and confined to specific access and work corridors.

(b) Check equipment daily for leaks and complete any required repairs before using the equipment in or near the water. Do not complete repairs on the beach.

(c) Equipment used in or near water must use vegetable-based lubricants.

(6) Vessel operation:

(a) Operate vessels in water deep enough to prevent impacts from grounding and propeller wash to seagrass and kelp beds.

(b) Do not deploy anchors or spuds in seagrass and kelp beds.

(c) Maintain anchor cable tension so anchor cables do not drag on the bed.

(7) Construction materials:

(a) Bed material, other than material excavated for bulkhead footings or placement of bulkhead base rock, must not be utilized for project construction or fills. The department may allow placement of dredged material in areas for beneficial uses such as beach nourishment or cleanup of contaminated sediments.

(b) Wet concrete must be prevented from entering waters of the state. Forms for any concrete structure must be con-

structed to prevent leaching of wet concrete. Impervious material must be placed over any exposed concrete not lined with forms that will come in contact with waters of the state. Forms and impervious material must remain in place until the concrete is cured.

(c) Do not use wood treated with oil-type preservatives (creosote, pentachlorophenol) in any hydraulic project. Wood treated with waterborne preservative chemicals (ACZA, ACQ) may be used provided the western wood preservers institute has approved the waterborne chemical for use in the aquatic environment. The manufacturer must follow the western wood preservers guidelines and the best management practices to minimize preservative migration from treated wood into aquatic environments. To minimize leaching, wood treated with a preservative by someone other than a manufacturer must follow the field treating guidelines. These guidelines are available at <http://www.wwpinstitute.org/>.

(8) Construction-related sediment, erosion and pollution containment:

(a) Project activities within the beach area must not occur when the project area, including the work corridor, is undated by tidal waters unless the work is occurring from a vessel or barge.

(b) Protect all disturbed areas from erosion. Maintain erosion and sediment control until demobilization and cleanup of the job site is completed.

(c) When using straw for erosion and sediment control, use only straw that has been certified as free of noxious weeds and their seeds.

(d) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials, from entering or leaching into waters of the state.

(e) Use tarps or other methods to completely contain treated wood sawdust, trimmings, and drill shavings.

(f) Deposit waste material from the project, such as construction debris, silt, excess dirt, or overburden, in an upland area above extreme high tide waters unless the material is authorized by the department for reuse in the project.

(g) Prevent transporting and introducing aquatic invasive species by thoroughly cleaning vessels, equipment, boots, waders, and other gear removing the gear from the worksite.

(9) Demobilization and cleanup:

(a) Reshape beach area depressions created during project activities to preproject beach level upon project completion.

(b) All debris or deleterious material resulting from construction must be removed from the beach area or bed and prevented from entering waters of the state.

(c) Do not burn wood treated with preservatives, trash, waste, or other deleterious materials not be burned below the OHWL.

(d) Restore the disturbed bed, bank, and riparian zones as close as possible to their preproject condition unless modified elevations and contours are authorized by the department in the approved construction drawings.

(e) Using a proven methodology, replace native riparian, aquatic, and wetland vascular plants (except noxious weeds)

damaged or destroyed by construction. The department may require a vegetation monitoring and contingency plan.

(f) The department must approve planting densities and maintenance requirements for replanting on a site-specific basis.

(g) Complete replanting during the first dormant season (late fall through late winter) after project completion. Maintain plantings for at least three years to ensure at least eighty percent of the plantings survive. Failure to achieve the eighty percent survival in year three will require that a person submit a plan with follow-up measures to achieve requirements or reasons to modify requirements.

(h) The department may waive the requirement to plant vegetation where the potential for natural revegetation is adequate.

(i) The department may require fencing or other structures to prevent livestock, wildlife, or unauthorized persons from accessing the replanted sites until the plantings are well established.

(j) Remove temporary erosion and sediment control methods after job site is stabilized.

(10) Required permittee notification: If a fish kill occurs or fish are observed in distress at the job site, immediately stop all activities causing harm. Immediately notify the department of the problem. If the likely cause of the fish kill or fish distress is related to water quality, also notify the Washington military department emergency management division at 1-800-258-5990. Activities related to the fish kill or fish distress must not resume until the department gives approval. The department may require additional measures to mitigate impacts.

NEW SECTION

WAC 220-660-370 Bank protection in saltwater areas. RCW 77.55.141 applies to single-family residence bank protection that will not result in a permanent loss of critical food fish and shellfish habitat. RCW 77.55.021 applies to nonsingle-family residence bank protection and single-family residence bank protection that does not comply with the criteria in RCW 77.55.141. Appropriate methods to design marine bank protection are available in the department's *Marine Shoreline Design Guidelines*, as well as other published manuals and guidelines.

(1) Description: A bank protection structure is a permanent or temporary structure constructed to protect or stabilize the bank. Bank protection methods are either hard or soft techniques. Soft approaches attempt to mimic natural processes by using biotechnical methods such as live plantings, rootwads and large woody material (LWM), and beach nourishment. Usually, soft approaches are designed to be less impacting to fish life. Hard approaches armor the bank with material such as rock, concrete, or wood intended to prevent erosion of the bank. Some projects use both hard and soft approaches, but to be considered soft, the total area of the project must consist of at least eighty-five percent in aerial extent naturally occurring materials used in ways that are consistent with the shore processes taking place in the vicinity of the project. The remaining fifteen percent of the total project area must not interrupt sediment delivery to the beach

(e.g., must not bulkhead a feeder bluff) and still be called soft. The total area extends cross-shore from MLLW to OHW, and long-shore from a line perpendicular to the shoreline at the beginning of one end of construction to the other end.

(2) **Fish life concerns:** Bank protection structures alter the beach and disrupt nearshore ecosystem processes and physical conditions. This alteration can cause a loss of the beach spawning habitat for Pacific sand lance and surf smelt and a loss of migration, feeding, and rearing habitat for juvenile salmon. To protect fish life, the department protects the beaches where critical food fish or shellfish habitat occur and the nearshore zone geomorphic processes that form and maintain this critical habitat.

(3) **Bulkheads and other bank protection design:**

(a) If the OHWL is changed since an existing bank protection structure was built, and OHWL reestablishes landward of a bulkhead protection structure, the department will consider this reestablished OHWL to be the existing OHWL for permitting purposes. If repairs to the existing structure are completed within three years of the breach, the bank protection structure may be repaired or replaced in the original footprint.

(b) Avoid or minimize adverse impacts to fish life by using the least impacting technically feasible alternative. The common alternatives below are in order from most preferred to least preferred:

- (i) Remove the bank protection structure;
- (ii) No action - Control upland drainage;
- (iii) Protect, enhance, and replace vegetation;
- (iv) Relocate improvements or structures;
- (v) Construct a soft structure by placing beach nourishment and large woody material;
- (vi) Construct upland retaining walls;
- (vii) Construct a hard structure such as bulkhead and rock revetment landward of the OHWL; and
- (viii) Construct a hard structure such as a bulkhead and rock revetments at the OHWL.

(c) Upon receipt of a complete application, the department will determine the applicable RCW under which to process the application.

(i) A new, replacement, or repaired single-family residence bulkhead in saltwater areas must not result in the permanent loss of critical food fish or shellfish habitat to be processed under RCW 77.55.141.

(ii) If a new, replacement, or repaired single-family residence bulkhead project in a saltwater area will result in the permanent loss of critical food fish or shellfish habitat, the department must instead process the application under RCW 77.55.021.

(d) An HPA application for new, replacement, or rehabilitated bulkhead or other bank protection work must include a site assessment, alternatives analysis and design rationale by a qualified professional (such as a coastal geologist, geomorphologist, etc.) for the proposed project and selected technique. The department may grant an exemption depending on the scale and nature of the project. In addition, this requirement does not apply to projects processed under RCW 77.55.141. This report must include:

- (i) An assessment of the level of risk to existing buildings, roads, or services being threatened by the erosion;
- (ii) Evidence of erosion and/or slope instability to warrant the stabilization work;
- (iii) Technical rationale specific to the design developed;
- (iv) An analysis of the benefits and impacts associated with the chosen protection technique; and
- (v) An explanation of the technique chosen, design parameters, types of materials, quantities, staging, and site rehabilitation.

(e) The department may require the design of bank protection projects to incorporate beach nourishment, large woody material or native vegetation as mitigation.

(4) **Single-family residence bulkhead projects processed under RCW 77.55.141:**

(a) Locate the waterward face of a new bulkhead at or above the OHWL. Where this is not possible because of geological, engineering, or safety concerns, the bulkhead may extend waterward of the OHWL the least distance needed to excavate for footings or place base rock, but no more than six feet waterward of the OHWL.

(b) Do not locate the waterward face of a replacement or repaired bulkhead further waterward than the structure it is replacing. Where removing the existing bulkhead will result in environmental degradation such as releasing deleterious material or problems due to geological, engineering, or safety concerns, the department will authorize the replacement bulkhead to extend waterward of, but directly abutting, the existing structure. In these instances, the design must use the least-impacting type of structure and construction method.

(5) **Bank protection projects processed under RCW 77.55.021:**

(a) Locate the waterward face of a new bulkhead at or above the OHWL. Where this is not possible because of geological, engineering, or safety concerns, the bulkhead may extend waterward of the OHWL the least distance needed to excavate for footings or place base rock, but no greater than six feet. Soft shoreline stabilization techniques that provide restoration of shoreline ecological functions may be permitted waterward of the OHWL.

(b) Do not locate the waterward face of a replacement or repaired bulkhead further waterward than the structure it is replacing. Where removing the existing bulkhead will result in environmental degradation such as releasing deleterious material or problems due to geological, engineering, or safety concerns, the department will authorize the replacement bulkhead to extend waterward of, but directly abutting, the existing structure. In these instances, the design must use the least-impacting type of structure and construction method.

(6) **Bulkhead and other bank protection construction:**

(a) The department may require a person to establish the horizontal distance of the structure from a permanent benchmark(s) (fixed objects) before starting work on the project. The benchmarks must be located, marked, and protected to serve as a post-project reference for ten years.

(b) A person must not conduct project activities when tidal waters cover the work area including the work corridor, except the area occupied by a grounded barge.

(c) No stockpiling of excavated materials containing silt, clay, or fine-grained soil is allowed below the OHWL.

(d) The department may allow stockpiling of sand, gravel, and other coarse material below the OHWL. Place this material within the designated work corridor waterward of the bulkhead footing or base rock. Remove all excavated or stockpiled material from the beach within seventy-two hours of construction.

(e) Backfill all trenches, depressions, or holes created during construction that are waterward of the OHWL before they are filled by tidal waters.

NEW SECTION

WAC 220-660-380 Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in saltwater areas. This section applies to the design and construction of permanent, seasonal or temporary docks, piers, ramps (gangways), floats, watercraft lifts, and mooring.

(1) **Description:** Docks are structures that are fixed to the shoreline but floating upon the water. Piers are fixed, pile-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. A ramp is a gangway that connects a pier or shoreline to a float and provides access between the two. Pilings that are usually associated with these structures are timber, steel, reinforced concrete, or composite posts that are driven or jacked into the bed. A watercraft lift is a structure that lifts boats and personal watercraft out of the water. A mooring buoy is a structure floating on the surface of the water that is used for private and commercial vessel moorage.

(2) **Fish life concerns:**

(a) Over-water and in-water structures can alter physical processes that create or maintain fish habitat. These include changing the light regime, hydrology, substrate conditions, and water quality. Light reduction is the main impact to fish life at critical life stages. Light reduction or shading by over-water or in-water structures reduces survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish, shellfish, and many other animals.

(b) Shallow water provides juvenile fish a refuge from predators like larger fish. Over-water and in-water structures can alter movement of juvenile salmon, steelhead and other fish species. Structures grounding on the bed can physically block migration and damage forage fish spawning beds. The light/dark contrast of shading/no shading caused by over-water and in-water structures can affect migration behavior. Fish respond by moving into deeper water which increases the risk of predation.

(3) **Residential and public recreational pier, ramp, float, watercraft lift and buoy design – Generally:**

(a) The department requires that new structures are designed with a pier and ramp to span the intertidal beach, if possible.

(b) Design and locate structures to avoid or minimize impacts to salt water habitats of special concern.

(i) Design and locate structures to avoid or minimize adverse impacts to juvenile salmonid mitigation, feeding and rearing areas.

(ii) Design and locate structures to avoid or minimize adverse impacts to documented Pacific herring, Pacific sand lance and surf smelt spawning beds and rockfish and lingcod settlement and nursery areas.

(iii) The department may require an eelgrass/macroalgae habitat survey for all new construction. A survey is not required for replacement of an existing structure within its original footprint.

(A) Structures must be located at least twenty-five feet (measured horizontally from the nearest edge of the structure) and four vertical feet away from seagrass and kelp at extreme low water.

(B) In documented herring spawning areas, located structures at least twenty-five feet (measured horizontally from the nearest edge of the structure) and four vertical feet from macroalgae beds away from algae species on which herring spawn at extreme low water.

(iv) If artificial nighttime lighting is used in the project, use low-intensity lights that are located and shielded to prevent light from attracting fish, unless there are safety constraints.

(c) The design must not include skirting including batter fencing constructed around piers, docks, or floats unless specifically approved in an HPA. The design should not use treated wood for the decking of the structure. The design may use treated wood for structural elements. Treated wood structural elements subject to abrasion by vessels, floats, or other objects must incorporate design features such as rub strips to minimize abrasion of the wood.

(d) The structure must have been usable at the site within the past twelve months of the time of application submittal to be considered a replacement structure.

(e) Replacement of more than thirty-three percent or two hundred fifty square feet of decking or replacement of decking substructure requires installation of functional grating. The grating must conform to the requirements in this section.

(4) **Pier and ramp design:**

(a) Design piers and floats to maximize height over the bed to improve light transmission. The bottom of the pier must be at least six feet above the bed at the landward end.

(b) Limit the width of residential piers to no more than six feet wide. Limit the width of recreational piers to the minimum width needed to accommodate the intended use.

(c) North/south oriented piers (338 to 22 degrees, or 158 to 202 degrees) greater than four feet in width must have a minimum of thirty percent of the entire deck surface covered in functional grating. The grating must be installed parallel to the length of the pier for the entire length of the pier.

(d) Northeast/southwest, northwest/southeast, and east/west oriented piers (23 to 157 degrees, 203 to 337 degrees) must have at a minimum of fifty percent of the entire deck surface covered in functional grating regardless of width. The grating must be installed parallel to the width of the pier, evenly spaced along the entire length of the pier.

(e) If only the minimum pier deck surface described in (c) or (d) of this subsection is covered, the grating material's open area must be a minimum of sixty percent open area

unless grating covers more than the minimum pier deck area of the pier. If the grating covers more than the minimum deck surface area, the grating material's open area can be reduced down to a minimum of forty percent open area. Limit the width of residential ramps to four feet wide. Limit the width of public recreational ramps to the minimum width needed to accommodate the intended use. Cover the entire ramp surface with grating.

(5) Float design (floats connected to a pier):

(a) If possible, place float so that the largest dimension is oriented north/south.

(b) Limit the width of residential floats to eight feet. Limit the width of public recreational floats to the minimum width needed to accommodate the intended use.

(c) If possible, limit the length of single-family dock floats to thirty feet and joint-use dock floats to sixty feet.

(d) If the design has a float positioned perpendicular to the ramp to serve as a ramp landing, this float must not be more than six feet wide and ten feet long.

(e) Design floats with stoppers or support pilings that keep the bottom of the floats at least one foot above the substrate so that the structure will not rest on the bottom.

(f) A float six feet wide or less must have a minimum of thirty percent of the entire deck surface covered in functional grating. A float between six and eight feet wide must have at least fifty percent of the entire deck surface covered in functional grating. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects on, above, or below the grating should not block light penetration. Flotation must be located under the solid decked area only.

(g) The grating material's open area must be at least sixty percent.

(h) Flotation for the structure must be fully enclosed and contained in a shell (tub). The shell or wrap must prevent breakup or loss of the flotation material into the water. The shell or wrap must not be readily subject to damage by ultraviolet radiation and abrasion.

(i) Helical screw or "duckbill" anchor(s), pilings (with stops), and float support/stub pilings may be used to hold floats in place.

(j) If a project uses anchors to hold the float in place, the anchor lines must not rest on the substrate at any time.

(6) Pile design:

(a) Use the minimum number of pilings required to construct a safe structure.

(b) Steel piles used to construct residential docks should not exceed twelve inches in diameter. Limit the diameter of steel piling used to construct public recreational docks to the minimum diameter needed to accommodate the intended use.

(c) The use of creosote or pentachlorophenol piling is prohibited. New and replacement piling can be steel, concrete, recycled plastic, or untreated or treated wood authorized by the department.

(d) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(e) All pilings must be fitted with devices to prevent perching by fish-eating birds.

(7) Watercraft lift/grid design:

(a) Design the watercraft lift/grid to minimize shading caused by the structure.

(b) The bottom of the watercraft lift/grid must be a minimum of one foot above the bed.

(c) Use the minimum number of piles needed to support the watercraft lift/grid.

(8) Buoy design:

(a) In waterbodies where buoy systems might damage submerged aquatic vegetation, locate and design the buoy system to minimize damage.

(i) When possible, use Helix or Manta Ray embedment style anchors.

(A) Eelgrass/macroalgae habitat surveys are not required if an embedment-style mooring anchor is installed. The department will require the diver/installer to locate the anchor so the mooring buoy system will not damage submerged aquatic vegetation.

(B) Eelgrass/macroalgae habitat surveys are required if a surface style mooring anchor is installed. The surveys are needed to ensure the mooring buoy system is installed at a location where submerged aquatic vegetation will not be damaged.

(ii) Place the buoy deep enough to prevent vessel grounding.

(iii) Locate the buoy to avoid damage from vessel propellers to submerged aquatic vegetation.

(iv) Design the buoy system with a mid-water float so that anchor lines do not drag.

(v) Adequately size the mooring to prevent the anchor from shifting or dragging along the bed.

(b) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

(c) The buoy must have a shell that is resistant to ultraviolet radiation (sunlight) and abrasion caused by rubbing against vessels, the bed, and/or waterborne debris.

(9) Replacement floating docks: The department will authorize replacement floating docks, provided:

(a) The area of replaced floating dock structure is not expanded;

(b) The replaced floating dock is not relocated within waters of the state without written authorization from the department. The replaced structure must be removed and disposed of upland such that it does not reenter state waters;

(c) Floats are designed with stoppers or support pilings that keep the bottom of the floats at least one foot above the substrate so that the structure will not rest on the bottom;

(d) A float six feet wide or less must have a minimum of thirty percent of the entire deck surface covered in functional grating. A float between six and eight feet wide must have at least fifty percent of the entire deck surface covered in functional grating. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects on, above, or below the grating should not block light penetration. Flotation must be located under the solid decked area only;

(e) The grating material's open area must be at least sixty percent;

(f) Flotation for the structure must be fully enclosed and contained in a shell (tub). The shell or wrap must prevent

breakup or loss of the flotation material into the water. The shell or wrap must not be readily subject to damage by ultra-violet radiation and abrasion.

(10) Residential and public recreational dock, pier, ramp, float, floating dock, watercraft lift, and buoy construction:

(a) Operate and anchor vessels and barges so that they do not adversely impact seagrass, kelp, or forage fish spawning beds.

(b) The dock centerline must be reestablished during construction using the same methodology used to establish the centerline during the eelgrass/macroalgae habitat survey.

(c) When installing steel piling, a vibratory hammer is preferred.

(d) If impact pile driving is used, set the drop height to the minimum needed to drive the piling.

(e) Use appropriate sound attenuation to minimize harm to fish from impact steel pile-driving noise.

(f) To avoid attracting fish to light at night, limit impact pile driving to daylight hours.

(g) The department may require the following during piling removal:

(i) Use of a vibratory system to dislodge piling when possible;

(ii) Placing the piling on a construction barge or other dry storage site after the piling is removed. The pile must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the pile;

(iii) If a treated wood pile breaks during extraction, remove the stump from the water column by fully extracting the stump or cutting it three feet below the substrate;

(iv) Fill holes left by piling extraction with clean sediment that matches the native material;

(v) When removing creosote piling:

(A) Containment booms and absorbent sausage booms (or other oil absorbent fabric) must be placed around the perimeter of the work area to capture wood debris, oil, and other materials released into marine waters as a result of construction activities to remove creosote pilings. All accumulated debris must be collected and disposed upland at an approved disposal site; and

(B) Creosote logs and timbers must be fully suspended during removal so no portion of the log drags through the water or onto the beach.

(h) Securely anchor dock, floats, and mooring buoys. Dispose of replaced piers, ramps, floats, docks, lines, chains, cables, or mooring anchors in an upland disposal site; and

(i) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.

NEW SECTION

WAC 220-660-390 Boat ramps and launches in salt-water areas. (1) Description: A boat ramp or launch is a sloping stabilized roadway or entry point constructed on the shoreline for launching boats from vehicular trailers or by hand for primitive boat launch designs. Ramps and launches extend into the water at a slope of typically twelve to fifteen percent and are typically oriented perpendicular to the shoreline. Ramp and launch widths vary with intended use, and the

length often depends on the slope of the shoreline and tidal amplitudes. Ramps and launches are usually constructed in protected areas with access to deep water close to shore. Construction materials commonly consist of gravel, concrete, or asphalt; they are often associated with marinas and parking lots. A railway-type boat launch consists of a pair of railroad tracks supported by pilings, and extends from the upland down to the beach.

(2) Fish life concerns: A boat ramp or launch removes seabed habitat from use by fish and shellfish. A large number of ramps or launches in a given area increases the amount of loss and fragments this habitat. Ramps and launches placed above beach grade can block sediment movement (littoral drift). Ramp and launch construction, maintenance and the associated vessel activity can damage or destroy aquatic vegetation and forage fish spawning beds.

(3) Boat ramp and launch design:

(a) Design and locate the boat ramp or launch to avoid adverse impacts to saltwater habitats of special concern.

(b) The department may require an eelgrass/macroalgae habitat survey for all new ramp or launch construction. A survey is not required for replacement of an existing structure within its original footprint.

(c) Design and locate boat ramps and launches to avoid and minimize excavation below the OHWL.

(d) Design boat ramps and launches to minimize impacts to tidal currents and littoral drift. Common alternatives are ordered from least to most impacting:

(i) Elevated railway-type launches;

(ii) Hoist or lift launches;

(iii) Elevated ramps; and

(iv) Ramps constructed at beach grade.

(e) The department will authorize boat ramps and launches on marine accretion shoreforms (such as barrier beaches, points, spits, and hooks) only if there will be no impact to natural physical processes that create and maintain shoreform habitats.

(f) Design and construct boat ramps and launches to prevent erosive undercutting or breaking of ramp edges.

(g) Ramps elevated above the beach grade must have side slopes no steeper than one and one-half feet horizontal to one foot vertical.

(h) Locate and design new boat ramps and launches to avoid or minimize the need for dredging. The department will allow dredging to maintain access to an existing boat ramp or launch if the access was dredged as part of the original project.

(i) Design boarding floats to minimize grounding on and shading of the bed and impacts to tidal currents and littoral drift.

(j) Use the smallest number of pilings required to construct a safe railway-type launch.

(k) The rails of a rail launching system must lie on and follow the grade of the existing bed and bank.

(4) Ramp and launch construction:

(a) Construct the ramp or launch when the work area is not covered by tidal water.

(b) Construct footings or the base of the ramp and launch below the preexisting grade of the beach to minimize undermining of the structure.

(c) To construct a concrete boat ramp below the OHWL, use precast concrete slabs or isolate the wet concrete from waters of the state until it is fully hardened.

(d) Securely anchor launching rails to the bed or support railway launch piling.

(5) **Ramp and hand launch maintenance:** If possible, sediment and woody material removed from ramps and launches must be placed at or below the OHWL downdrift of the structure.

NEW SECTION

WAC 220-660-400 Marinas and terminals in saltwater areas. This section applies to constructing, maintaining, repairing, and removing marinas and terminals in saltwater areas.

(1) **Description:**

(a) A marina is a public or private facility providing vessel moorage space, fuel, or commercial services. Commercial services include overnight or live-aboard vessel accommodations (RCW 77.55.011(13)).

(b) A terminal is a public or private commercial wharf located in the navigable waters of the state and used, or intended to be used, as a port or facility to store, handle, transfer, or transport goods, passengers, and vehicles to and from vessels (RCW 77.55.011(14)).

(2) **Fish life concerns:** Marinas and terminals can alter the physical processes that create or maintain fish habitat. Impacts may include altering the light regime, hydrology, substrate conditions, and water quality under and adjacent to structures. Marinas and terminals often have a larger impact area than residential docks and are often associated with heavy boat traffic and human use. Thus, the size and magnitude of the potential impacts to fish life may be greater than those from residential docks.

(3) **Marina and marine terminal design – Generally:**

(a) The department may require a person to provide physical modeling, numerical modeling, or other information that demonstrates adequate water exchange and circulation after construction.

(b) The department may require eelgrass/macroalgae habitat survey for a new construction. A survey is not required for replacement of an existing structure within its original footprint.

(c) When possible, locate new marinas and terminals in areas that will minimize impacts to fish life.

(i) Locate new marinas and terminals to avoid and minimize impacts to seagrass and kelp.

(ii) Locate new marinas and terminals in naturally deep areas to avoid or minimize dredging.

(iii) Locate new marinas and terminals in areas deep enough to avoid or minimize propeller wash impacts to the bed.

(iv) Locate new marinas and terminals in areas with existing low or impaired biological value.

(v) Design and construct marinas and terminals so that most over-water coverage is in the deepest water possible; this is necessary to allow light penetration to the intertidal and shallow subtidal areas.

(A) Minimize the amount of pier area that directly contacts the shoreline.

(B) Minimize the width of intertidal and shallow subtidal over-water and in-water structures.

(C) Design and construct piers and other above-water structures as high as possible to increase light transmission.

(D) When possible, maximize the amount of light-reflecting materials on the underside of above-water structures that are not grated.

(4) **Marina design:**

(a) The department prohibits constructing marinas on or over the following saltwater habitats of special concern: Pacific herring spawning beds and lingcod and rockfish settlement and nursery areas.

(b) Locate and construct new marinas to avoid and minimize adverse impacts to surf smelt, Pacific sand lance, seagrass, kelp and intertidal vascular plants.

(c) The department may require a marina design to include grating to minimize impacts to juvenile salmonid migration corridors and native aquatic vegetation.

(i) If grating is required, locate flotation under the solid decked area only.

(ii) Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects on, above, or below the grating should not block light penetration.

(iii) Grating material must have at least a sixty percent open area.

(d) If possible, place slips for smaller boats in shallower water and place slips for larger boats in deeper water.

(e) Locate new boathouses, houseboats, and covered moorages waterward of the phototrophic zone.

(f) Any replacement roof for covered moorage or a boat-house in landward of the phototrophic zone must use translucent materials or skylights in the roof.

(g) If artificial nighttime lighting is used in the design, use low-intensity lights that are located and shielded to prevent light from attracting fish, unless there are safety constraints.

(h) The following provisions apply to marina construction landward of the existing OHWL:

(i) A single entrance may be required; and

(ii) The entire inner shoreline must comply with bank protection provisions in WAC 220-660-370.

(i) The following provisions apply to marina construction waterward of the OHWL:

(i) If a person must protect the bank area inside the marina they must comply with bank protection provisions in WAC 220-660-370. Between the elevation of the toe of the bulkhead and MLLW, the beach slope must not exceed one and one-half feet horizontal to one foot vertical.

(ii) For a single entrance or breach marina, the breakwater structure may not exceed one and one-half feet horizontal to one foot vertical slope inside and outside the marina.

(j) The following provisions apply when a marina includes breaches that form shore breakwaters (jetties) and detached breakwaters:

(i) The toe of the shore breakwaters (jetties) may extend seaward to 0.0 feet MLLW, but may not extend seaward more than two hundred fifty feet from OHWL;

(ii) The shore breakwaters must have a slope of at least one and one-half feet horizontal to one foot vertical through-out;

(iii) The breaches between the shore breakwaters and the detached breakwaters must be at least twenty feet wide measured at the toe of the slope;

(iv) Removable, floating breakwaters or wave boards should be used whenever possible; and

(v) Avoid the use of continuous sheet piles whenever possible.

(5) Pile design:

(a) Use the smallest diameter and number of pilings needed to construct a safe structure.

(b) The use of creosote or pentachlorophenol piling is prohibited. New and replacement piling can be steel, concrete, recycled plastic, or untreated or department approved treated wood.

(c) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(d) If possible, all pilings must be fitted with devices to prevent perching by fish-eating birds.

(6) Marina and marine terminal construction:

(a) Operate and anchor vessels and barges so that they do not adversely impact seagrass or macroalgae species used as herring spawning substrate.

(b) The dock(s) centerline must be reestablished during construction using the same methodology used to establish the centerline during the eelgrass/macroalgae habitat survey.

(c) When installing steel piling, a vibratory hammer is preferred.

(d) If impact pile driving is used, set the drop height to the minimum needed to drive the piling.

(e) Use appropriate sound attenuation to minimize harm to fish from impact steel pile-driving noise.

(f) When possible, limit impact steel pile driving to daylight hours to avoid attracting fish to light at night.

(g) When removing piling:

(i) Use a vibratory system to dislodge piling, when possible;

(ii) After removal, place the piling on a construction barge or other dry storage site. The pile must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the pile;

(iii) If a treated wood pile breaks during extraction, remove the stump from the water column by fully extracting the stump or cutting it three feet below the substrate; and

(iv) Fill holes left by piling extraction with clean sediment that matches the native material;

(h) When removing creosote piling:

(i) Containment booms and absorbent sausage booms (or other oil absorbent fabric) must be placed around the perimeter of the work area to capture wood debris, oil, and other materials released into marine waters as a result of construction activities to remove creosote pilings. All accumulated debris must be collected and disposed upland at an approved disposal site; and

(ii) Creosote logs and timbers must be fully suspended during removal so no portion of the log drags through the water or onto the beach;

(i) Securely anchor floats and mooring buoys;

(j) Dispose of replaced piers, ramps, floats, docks, lines, chains, cables, or mooring anchors in an upland disposal site; and

(k) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.

(7) Marina and marine terminal maintenance:

(a) Upon request, the department must issue a renewable, five-year HPA for regular maintenance activities of a marina or marine terminal.

(b) In this section, regular maintenance activities may include the following work:

(i) Maintain or repair a boat ramp, launch, or float within its existing footprint;

(ii) Maintain or repair an existing over-water structure within its existing footprint;

(iii) Maintain or repair boat lifts or railway launches;

(iv) Maintain or repair pilings, including replacing bumper pilings;

(v) Dredge less than fifty cubic yards of material;

(vi) Maintain or repair shoreline armoring or bank protection;

(vii) Maintain or repair wetland, riparian zone, or estuarine habitat; and

(viii) Maintain or repair an existing outfall.

(c) A five-year permit must include a provision that a person give the department a fourteen-day notice before regular maintenance activities start.

NEW SECTION

WAC 220-660-410 Dredging in saltwater areas. (1)

Description: Dredging includes removing substrate to improve vessel navigation and to maintain navigation channels. Dredging is also used to cleanup contaminated sediments.

(2) **Fish life concerns:** Dredging may result in changes in bathymetry, habitat conversion, and changes to estuarine and nearshore zone ecosystem dynamics such as salinity intrusion. Dredging may convert intertidal and shallow subtidal habitat to deeper subtidal habitat. Dredging may affect the plant and animal communities that are uniquely adapted to the particular light, current, and substrate regimes of intertidal and shallow subtidal areas. In addition to changing the habitat, dredging equipment can injure or kill fish and shellfish during the uptake of sediments and water. Suspended sediments released into the water column by dredging can affect fish by interfering with breathing and feeding, and by changing predator-prey relationships.

(3) Dredging – Generally:

(a) The department may require hydrodynamic modeling to assess changes in salinity, turbidity, and other physiochemical regimes for new dredging projects and expansions.

(b) Design project to avoid dredging and expansions that convert intertidal to subtidal habitat.

(c) The department prohibits new dredging in sand lance, surf smelt, and herring spawning beds; rockfish and lingcod settlement and nursery areas; and Olympia oyster settlement areas.

(d) The department requires eelgrass/macroalgae habitat surveys for all new dredging. Surveys are not required for maintenance dredging within their original footprint.

(e) Dredging must avoid adverse impacts to seagrasses, kelp, macroalgae, intertidal vascular plants, and geoduck tracts.

(f) Limit the depth of the maintenance dredging to no deeper than the channel depth at the seaward end. The department may authorize dredging to depths deeper than the channel at the seaward end only in berthing areas and turning basins for commercial shipping.

(g) In addition to those timing limitations listed in WAC 220-660-320, the department may further restrict dredge timing to protect other fish life.

(4) Dredging construction:

(a) Conduct dredging with dredge types and methods that cause the least impacts to fish life.

(b) Operate a hydraulic dredge with the intake at or below the bed surface. Raise the intake up to three feet above the bed only for brief periods of purging or flushing the intake system.

(c) Operate a dragline or clamshell to minimize turbidity. During excavation, each pass with the clamshell or dragline bucket must be complete. Dredged material must not be stockpiled waterward of the OHWL.

(d) Dispose of dredged bed materials at an approved in-water disposal site or in an upland location so the materials do not reenter state waters. The department may allow dredged material placement for beneficial uses such as beach nourishment or capping of contaminated sediments.

(e) To minimize turbidity, hopper dredges, scows and barges used to transport dredged materials to the disposal or transfer sites must completely contain the dredged material.

(f) When possible, limit dredging operations to daylight hours to avoid attracting fish to lights.

NEW SECTION

WAC 220-660-420 Artificial aquatic habitat structures in saltwater areas. (1) Description: An artificial aquatic habitat structure is a structure that humans design and place to provide long-term alterations to saltwater bottom habitat. The structure is designed and located to contribute to fish and shellfish management. Examples include artificial reefs.

(2) **Fish habitat concerns:** Artificial aquatic habitat structures draw large numbers of fish for the same reasons natural habitat structures do: They provide shelter, food, and a place for some species to spawn. They have holes and crevices in which both predator and prey can hide. However, artificial aquatic habitat structures alter the seabed and change the natural habitat. This alteration can change the make-up of the fish community and displace fish that used the natural habitat. Because artificial aquatic habitat structures can draw large numbers of fish into one place, coordination with fisheries managers is critical to prevent overfishing at these sites.

(3) Artificial aquatic habitat structure design:

(a) Artificial aquatic habitat structures must meet one or more of the following needs:

(i) Enhance fish viewing opportunity at a specific location;

(ii) Enhance or conserve aquatic resources; or

(iii) Mitigate for impacted fish habitat.

(b) Resource benefits must outweigh negative impacts caused by construction and placement of the structure.

(c) The department may require compensatory mitigation for unavoidable construction impacts to fish, shellfish, and their habitat.

(d) Artificial aquatic habitat structures must fill a habitat need identified in (a) of this subsection. HPA applications must include the target fish species, species groups, or life stages that a person wants to enhance or rebuild. The critical habitat and environmental requirements of those species must be identified.

(e) A complete application to construct an artificial aquatic habitat structure must include the results of approved preconstruction surveys, a statement of the fishery or habitat need for the proposed structure, ongoing maintenance needs, if any, and a plan for quarterly monitoring for two years after construction.

(f) The department will require at least four preconstruction surveys:

(i) Preconstruction surveys must be conducted during each seasonal quarter prior to the start of the project (January through March, April through June, July through September, and October through December);

(ii) Post-construction quarterly monitoring must follow department-approved biological protocols. A person must submit results of completed surveys to the department annually; and

(iii) The department may require additional surveys.

(4) Artificial aquatic habitat structure construction:

(a) Locate the structure a minimum of two hundred yards away from other areas of hard-rock habitat to reduce the probability of an aquatic invasive species infestation.

(b) Locate the structure where it will least disturb adjacent shorelines.

(c) Construct the structures with high-density materials that are nontoxic and inert in sea water.

(d) Use clean materials to construct the structure. A person must not use materials that would leach metals, petroleum products, or other hazardous materials.

(e) At least ninety-five percent of the construction materials must be larger than one foot in diameter.

(f) Avoid using vertical walls. Structures must consist of piles of loose material or separate modules.

(g) Place the structure where it will cause the least impact to fish life and the habitat.

(h) Reef material must not cover more than fifty percent of the natural substrate within the permitted area.

(i) Any one rock pile or module must not cover more than ten percent of the total permitted area.

(j) Rock piles must be located at least fifty feet apart.

NEW SECTION

WAC 220-660-430 Outfall and tide and flood gate structures in saltwater areas. (1) Description: Outfalls move water from one place to another, typically to a body of

water. Outfalls may convey storm water, or other waste materials. Tide and flood gates are adjustable gates used to control water flow in estuary, river, stream, or levee systems.

(2) **Fish life concerns:** Outfalls can increase erosion of a bed and bank, trap sediment, and cause a direct loss of beach and bank riparian habitat.

(3) **Limit of department authority over storm water outfall and tide and floodgate projects:**

(a) The department may not provision HPAs for storm water discharges in locations covered by a National Pollution Discharge Elimination System municipal storm water general permit for water quality or quantity impacts. An HPA is required only for the actual construction of any storm water outfall or associated structures.

(b) In locations not covered by a National Pollution Discharge Elimination System municipal storm water general permit, the department may issue HPAs that contain provisions to protect fish life from the direct hydraulic impacts of the discharge, such as scouring or erosion of the waterbody bed. Before issuing an HPA under this subsection, the department must:

(i) Find that the discharge from the outfall will cause harmful effects to fish life;

(ii) Send the findings to the applicant and to the city or county where the project is being proposed; and

(iii) Allow a person to use local ordinances or other ways to avoid the adverse effects resulting from the direct hydraulic discharge. The forty-five day requirement for HPA issuance under RCW 77.55.021 is suspended when the department is meeting the requirements of this subsection.

(c) After following the procedures set forth in (b) of this subsection, the department may issue an HPA that prescribes the discharge rates from an outfall structure to prevent adverse effects to the bed or flow of the waterway. The department may recommend, but not specify, the measures required to meet these discharge rates. The department may not require changes to the project design waterward of the mean higher high-water mark of marine waters.

(d) The department may not require a fishway on a tide gate, flood gate, or other associated human-made agricultural drainage facilities as a provision of a permit if such a fishway was not originally installed as part of an agricultural drainage system existing on or before May 20, 2003. The department may require a fishway on a tide or flood gate as part of a non-agricultural drainage system and on agricultural drainage systems existing after May 20, 2003.

(4) **Outfall design:**

(a) To prevent scouring, protect the shoreline bank and bed at the point of discharge using bioengineering methods or other department-approved methods.

(b) Design and locate outfalls so that the outflow or any associated energy dissipaters do not cause loss of fish and shellfish habitat. The department may require that energy be dissipated using one or more of the following methods, or other effective method proposed by a person and approved by the department:

(i) Existing natural habitat features (such as large logs, root wads, natural large rocks, or rock shelves) without degrading the habitat function or value of these features;

(ii) Pads of native plants (shrubs and grasses) and biodegradable fabric;

(iii) Imported fish habitat components (large woody material);

(iv) Manufactured in-line energy dissipaters, such as a tee diffuser;

(v) Rounded rock energy dissipation pads; or

(vi) Angular rock energy dissipation pads, if the department determines other options are not possible.

(c) An outfall pipe or other structural element that crosses a beach must be buried deep enough to avoid interrupting the along-shore sediment drift.

(d) To minimize impacts to saltwater habitats of special concern, the department may require that the outlet of submerged outfall piping not protrude above grade landward of minus thirty feet MLLW.

(e) The department may require an eelgrass/macroalgae habitat survey for new construction. A survey is not required for replacement of an existing structure within its original footprint.

(5) **Outfall construction:**

(a) To protect critical food fish or shellfish habitats, the department may apply timing constraints to proposed projects. The department must consider the construction techniques, location of the project, and characteristics of habitats potentially affected by the project. The department may inspect the work area to evaluate the habitats near the project.

(b) During times when work in waters of the state is prohibited to protect nearshore juvenile salmonid migration, rearing, and feeding areas, the department may permit construction if the outfall is located at or landward of the OHWL, and if all construction work is conducted from the landward side of the project.

(c) The department may require a person to establish structure elevations relative to permanent benchmarks before starting work on the project. The benchmarks must be located, marked, and protected to serve as a post-project reference for ten years.

(d) A person must not conduct project activities when tidal waters cover the work area including the work corridor, except the area occupied by a grounded barge.

(e) If a preconstruction seagrass and macroalgae habitat survey was performed, the conveyance pipe centerline must be reestablished during construction using the same methodology used to establish the centerline during the seagrass and macroalgae habitat survey.

NEW SECTION

WAC 220-660-440 Utility crossings in saltwater areas. (1) **Description:** Utility crossings are cables and pipelines that transport gas, telecommunications, fiber optics, power, sewer, oil, or water underneath waterbodies.

(2) **Fish life concerns:** Utility crossings pose a risk to fish and fish habitat because of potential changes of substrates, destabilization of marine shoreline and distributary channels, loss of riparian vegetation zone, and loss of aquatic vegetation. Trenching through banks and beaches alters habitat, substrate characteristics, and therefore their productivity.

(3) **Utility crossing design:** A person must locate utility crossings to avoid impacts to saltwater habitats of special concern.

(4) **Utility crossing construction:**

(a) A person must excavate for and install cables, sewer lines, and other utilities using equipment and techniques that minimize adverse impacts to fish and shellfish and their habitats.

(b) The department may require an eelgrass/macroalgae habitat survey for new construction. A survey is not required for replacement of an existing structure within its original footprint.

(c) If a preconstruction seagrass and macroalgae habitat survey was performed, reestablish the utility line centerline during construction using the same methodology used to establish the centerline during the seagrass and macroalgae habitat survey.

(d) A person must not excavate trenches within the beach area when tidal waters cover the work area. The department may allow stockpiling of sand, gravel, and other coarse material below the OHWL. Place this material within the designated work corridor waterward of the OHWL. Remove all excavated or stockpiled material from the beach within seventy-two hours of the end of construction.

(e) No stockpiling of excavated materials containing silt, clay, or fine-grained soil or bed material is allowed below OHWL.

(f) Backfill all construction-related trenches, depressions, or holes that are waterward of the OHWL before they are filled by tidal waters.

NEW SECTION

WAC 220-660-450 Test boring in saltwater areas. (1)

Description: Boring is used to obtain information about the physical properties of the bed. This information is often needed to design foundations for proposed structures and to repair existing structures. Test boring is also commonly used to gather information about the contamination levels of sediment proposed for dredging.

(2) **Fish life concerns:** Boring-related impacts to fish life are usually minor and short term. Short-term impacts from the project include increased turbidity and noise levels and small vibrations created mainly from the drill rig.

(3) **Boring construction:** While boring, a person must:

(a) Take samples only within the proposed footprint of the hydraulic project;

(b) Conduct boring in a way that minimizes turbidity and discharge of silt to the water column as follows:

(i) Completely contain each boring and cone penetration action within the casing;

(ii) Do not discharge turbid or slurry laden process water into state waters;

(iii) Minimize suspending sediment while collecting samples. Place all excess sediment and water derived during coring activities in proper containers, labeled, characterized, and disposed of by the operators in accordance with the appropriate guidelines; and

(iv) Deposit all waste material such as drill spoils and cuttings, construction debris, silt, excess dirt, excess gravel,

or overburden resulting from this project in an upland location so that it does not enter waters of the state;

(c) After geotechnical or sediment information has been logged, seal the bore hole and substrate surface with the appropriate material including bentonite grout, pellets, and/or chips; and

(d) Check drilling equipment daily for leaks and maintain it in good repair to prevent lubricants, grease, and any other deleterious materials from entering state waters.

NEW SECTION

WAC 220-660-460 Informal appeal of administrative actions. (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.

(a) 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.

(b) Any person with legal standing may request an informal appeal of the following department actions:

(i) The issuance, denial, provisioning, or modification of an HPA; or

(ii) An order imposing civil penalties.

(3) 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.

(4) A request for informal appeal must be:

(a) Mailed to the:

HPA Appeals Coordinator
Department of Fish and Wildlife
Habitat Program
600 Capitol Way N.
Olympia, Washington 98501-1091;

(b) E-mail: HPAapplications@dfw.wa.gov;

(c) Fax: 360-902-2946; or

(d) Hand-delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(5) The request must be plainly labeled as "Request for Informal Appeal" and must include the following:

(a) The appellant's name, address, e-mail 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, e-mail 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.

(6) Upon receipt of a valid request for an informal appeal, the department may initiate a review of the department action. 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.

(7) If a resolution is not reached through the informal conference process, the appellant is not the person who applied for the HPA, or the appeal involves an order imposing civil penalties, 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.

(8) 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.

NEW SECTION

WAC 220-660-470 Formal appeal of administrative actions. The department recommends that a person aggrieved by the issuance, denial, provisioning, or modifica-

tion 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.

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.

(1) 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.

(2) 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.

(3) 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.

(4) Service on the department must be:

(a) Mailed to:

HPA Appeals Coordinator
Department of Fish and Wildlife
Habitat Program
600 Capitol Way N.
Olympia, Washington 98501-1091;

(b) E-mail: HPAapplications@dfw.wa.gov;

(c) Fax: 360-902-2946; or

(d) Hand-delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(5) The request for formal appeal must contain the information required by WAC 371-08-340. 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.

(6) 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.

(7) If there is no timely request for an appeal, the department action will be final and nonappealable.

NEW SECTION

WAC 220-660-480 Compliance with HPA provisions. (1) **Department program:** The department will develop programs to encourage voluntary compliance with HPA provisions by providing technical assistance consistent with statutory requirements. The programs must provide technical assistance visits, printed information, information and assistance by telephone, training meetings, and other appropriate methods. In addition, the department must provide upon request a list of organizations, including private companies that provide technical assistance. This list must be compiled by the department from information submitted by the organizations and does not constitute an endorsement by the department of any organization.

(2) Technical assistance visit:

(a) For the purposes of this chapter, a technical assistance visit is a visit by the department to a project site or other location that:

(i) Has been requested or is voluntarily accepted; and

(ii) The department declares to be a technical assistance visit at the start of the visit.

(b) During a technical assistance visit, or within a reasonable time thereafter, the department must inform the person of any violations of law or department rules identified by the department as follows:

(i) A description of what is not in compliance and the text of the specific section or subsection of the applicable state law or rule;

(ii) A statement of what is required to achieve compliance;

(iii) The date by which the project must achieve compliance;

(iv) Notice of the means to obtain any technical assistance services provided by the department or others;

(v) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department; and

(vi) A technical assistance notice is not a formal enforcement action and is not subject to appeal.

(3) Notice of correction:

(a) If during any inspection or visit that is not a technical assistance visit, the department becomes aware of conditions that do not comply with applicable laws and rules enforced by the department and are not subject to penalties as provided for in subsection (4) of this section, the department may issue a notice of correction to the responsible party that must include:

(i) A description of what is not in compliance and the text of the specific section or subsection of the applicable state law or rule;

(ii) A statement of what is required to achieve compliance;

(iii) The date by which the department requires compliance to be achieved;

(iv) Notice of the means to contact any technical assistance services provided by the department or others; and

(v) Notice of when, where, and to who in the department a person may file a request to extend the time to achieve compliance for good cause.

(b) A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(c) If the department issues a notice of correction, it must not issue a civil penalty for the violations identified in the notice of correction unless the responsible party fails to comply with the notice.

(4) Civil penalties:

(a) The department may issue a civil penalty provided for by law without first issuing a notice of correction if:

(i) The person has previously been subject to an enforcement action for the same or similar type of HPA violation, or has been given previous notice of the same or similar type of HPA violation;

(ii) Compliance is not achieved by the date set by the department in a previously issued notice of correction, if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date;

(iii) The violation has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars; or

(iv) The violation was committed by a business that employed fifty or more employees on at least one day in each of the preceding twelve months.

(b) The department may impose a civil penalty of up to one hundred dollars per day for a violation of any provisions of chapter 77.55 RCW or chapter 220-660 WAC. The department must impose the civil penalty with an order in writing delivered by certified mail or personal service to the person who is penalized. The notice must describe the violation, identify the amount of the penalty, identify how to pay the penalty, and identify the process for informal and formal appeals of the penalty. If the violation is an ongoing violation, the penalty may accrue for each additional day of violation.

(c) If a civil penalty order is not appealed in a timely way under WAC 220-660-460 or 220-660-470, the civil penalty order is final and nonappealable. If appealed, the civil penalty becomes final upon issuance of a final order not subject to any further administrative appeal. When a civil penalty order becomes final, it is due and payable. If the civil penalty is not paid within thirty days after it becomes due and payable, the department may seek enforcement of the order under RCW 77.55.291 and 34.05.578.

(d) The penalty imposed is due and payable thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter is filed, the penalty is due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(e) If the amount of any penalty is not paid within thirty days after it is due and payable, the attorney general, upon the request of the director, must bring an action in the name of the state of Washington in the superior court of Thurston County or of any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence must be the same as an ordinary civil action. All penalties recovered under this section must be paid into the state's general fund.

(f) The department must comply with the requirements of RCW 34.05.110 before issuing a civil penalty to a small business as defined in that statute.

(5) **Time for compliance:** The department must provide for a reasonable time to achieve compliance. Any person receiving a notice of correction under subsection (3) or (4) of this section may request an extension of time for good cause to achieve compliance. The person must request an extension from the department in writing and follow the procedures specified by the department in the notice. The department must respond in writing within ten calendar days.

(6) **Criminal penalty:** Under RCW 77.15.300, it is a gross misdemeanor to construct any form of hydraulic project or perform other work on a hydraulic project without having first obtained an HPA from the department, or to violate any requirements or conditions of the HPA for such construction or work.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 220-110-010	Purpose.	WAC 220-110-140	Gravel removal.
WAC 220-110-020	Definitions.	WAC 220-110-150	Large woody material removal or repositioning.
WAC 220-110-030	Hydraulic project approvals—Procedures.	WAC 220-110-160	Felling and yarding of timber.
WAC 220-110-031	Pamphlet hydraulic project approvals—Procedures.	WAC 220-110-170	Outfall structures.
WAC 220-110-032	Modification of technical provisions.	WAC 220-110-180	Pond construction.
WAC 220-110-035	Miscellaneous hydraulic projects—Permit requirements and exemptions.	WAC 220-110-190	Water diversions.
WAC 220-110-040	Freshwater technical provisions.	WAC 220-110-200	Mineral prospecting.
WAC 220-110-050	Bank protection.	WAC 220-110-201	Mineral prospecting without timing restrictions.
WAC 220-110-060	Construction of freshwater docks, piers, and floats and the driving or removal of piling.	WAC 220-110-202	Mineral prospecting with timing restrictions.
WAC 220-110-070	Water crossing structures.	WAC 220-110-206	Authorized work times and mineral prospecting equipment restrictions by specific state waters for mineral prospecting and placer mining projects.
WAC 220-110-080	Channel change/realignment.	WAC 220-110-223	Freshwater lake bulkheads.
WAC 220-110-085	Integration of hydraulic project approvals and forest practices applications.	WAC 220-110-224	Freshwater boat hoists, ramps, and launches.
WAC 220-110-100	Conduit crossing.	WAC 220-110-230	Saltwater technical provisions.
WAC 220-110-120	Temporary bypass culvert, flume, or channel.	WAC 220-110-240	Tidal reference areas.
WAC 220-110-130	Dredging in freshwater areas.	WAC 220-110-250	Saltwater habitats of special concern.
		WAC 220-110-270	Common saltwater technical provisions.
		WAC 220-110-271	Prohibited work times in saltwater areas.
		WAC 220-110-280	Bulkheads and bank protection in saltwater areas (nonsingle family residence).
		WAC 220-110-285	Single-family residence bulkheads in saltwater areas.
		WAC 220-110-290	Saltwater boat ramps and launches.
		WAC 220-110-300	Saltwater piers, pilings, docks, floats, rafts, ramps, boathouses, houseboats, and associated moorings.
		WAC 220-110-310	Utility lines.
		WAC 220-110-320	Dredging in saltwater areas.
		WAC 220-110-330	Marinas in saltwater areas.
		WAC 220-110-331	Aquatic plant removal and control technical provisions.
		WAC 220-110-332	Hand removal or control.
		WAC 220-110-333	Bottom barriers or screens.
		WAC 220-110-334	Weed rolling.
		WAC 220-110-335	Mechanical harvesting and cutting.
		WAC 220-110-336	Rotovation.
		WAC 220-110-337	Aquatic plant dredging.
		WAC 220-110-338	Water level manipulation.

- WAC 220-110-340 Informal appeal of administrative actions.
- WAC 220-110-350 Formal appeal of administrative actions.
- WAC 220-110-360 Penalties.

WSR 14-14-135
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed July 2, 2014, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-04-132 on February 5, 2014.

Title of Rule and Other Identifying Information: WAC 220-52-01901 Commercial geoduck harvest license and new section WAC 220-52-01904 Commercial geoduck harvest—License application and issuance process for 2015 geoduck diver licenses.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on August 8-9, 2014, at 8:30 a.m.

Date of Intended Adoption: On or after August 15, 2014.

Submit Written Comments to: Joanna Eide, WDFW Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by August 1, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by August 1, 2014, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule change is to establish an equitable license application and issuance process for geoduck diver licenses to comply with changes to state law to limit geoduck diver licenses to seventy-seven per year beginning January 1, 2015. These proposed rule changes also address additional application eligibility requirements for geoduck diver licenses as required by RCW 77.65.410. New WAC 220-52-01904 will operate on a temporary type basis to allow the department to issue licenses for first right of refusal applicants as established in section 2 of HB [2SHB] 1764. WAC 220-52-01904 will be repealed after January 1, 2015, as it will no longer be needed. A separate rule making to establish another more permanent rule for use after January 1, 2015, (new WAC 220-52-01905) is being done in tandem with this rule making. The department is also amending WAC 220-52-01901 to add geoduck diver licenses to rule provisions as only geoduck fishery licenses were provided for in that rule and a person may harvest geoduck under both a geoduck fishery license and a geoduck diver license.

Reasons Supporting Proposal: HB [2SHB] 1764 was passed by the Washington state legislature in 2013. This bill limited the geoduck diver licenses issued by the department to seventy-seven licenses per calendar year beginning in 2015 and imposed new application eligibility requirements.

The department needs these rules to establish an equitable process the department will follow to comply with changes to state law to limit geoduck diver licenses to seventy-seven per year beginning January 1, 2015, and to address new application requirements for geoduck diver licenses. The rule changes promote clarity and establish a clear process for issuing geoduck diver licenses.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.12.047, and 77.65.410.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.12.047, and 77.65.410.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Frank Hawley, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2453; and Enforcement: Steve Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

These proposed rule changes will allow the equitable issuance of seventy-seven geoduck diver licenses and will allow the department of fish and wildlife (WDFW) to address the limitation of seventy-seven geoduck diver licenses issued per calendar year by the Washington state legislature in HB [2SHB] 1764.

The right of first refusal applicants that meet the stated qualifications received by WDFW by January 28, 2014, will be given the first right of refusal for up to seventy-seven licenses. The applicants must provide proof that they were included on a department of natural resources (DNR) harvest agreement plan of operation in 2011, 2012, 2013, or 2014. These requirements are already effective in state law. The proposed rule changes in this rule making are administrative in nature and detail the process WDFW will follow in complying with changes to state law to limit geoduck diver licenses to seventy-seven per year.

Other than providing the information required for an application for a geoduck diver license, such as proof of a DNR harvest agreement and proof of diver safety completion, there are no additional reporting and record keeping requirements.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements:

These rules provide the process WDFW will use to implement state law limiting the number of geoduck diver licenses to seventy-seven per calendar year. There are no anticipated professional services required to comply with these rule changes.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:

The proposed rule limits the number of geoduck diver licenses to seventy-seven licenses per year as required by HB [2SHB] 1764 and detail the process

WDFW will use to ensure the equitable issuance of geoduck diver licenses due to the license limitation. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs as the rules are administrative in nature. Therefore, there are no expected additional costs to comply with the proposed rules.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rules do not affect the harvestable numbers of geoducks available to nontreaty businesses. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

Since the rules address the limitation of the number of geoduck diver licenses WDFW may issue to seventy-seven licenses per year as required by statute, it is possible that this limitation may impact the ability of a business to engage in geoduck harvest if the business is unable to obtain a license. However, this license limitation is required by statute and these proposed rules simply implement the process WDFW will use to ensure compliance with that limitation.

5. Cost of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales:

None - The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. The application fees remain unchanged. Additional costs may be incurred by businesses to meet the qualifications required to be eligible for a license, however, those costs are not determined by these rules and are required by current state law.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: Most businesses affected by these rules are small individual contractors for small and large businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions WDFW has required in past geoduck seasons. Therefore, these rules will not directly impose new costs on small businesses.

Because the geoduck diver license limitation is already effective via statute, WDFW is unable to reduce costs to small businesses due to that license limitation. These proposed rules are administrative in nature.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: DNR and WDFW interacted with and received input from the Geoduck Diver Association in passing the underlying legislation (HB [2SHB] 1764) for these rule changes. These meetings allowed the Geoduck Diver Association to participate in formulating the bill that made these rule changes necessary. WDFW will also share the rule language and proposed process for applications for geoduck diver licenses with affected businesses and receive input from those individuals as part of this rule making. Affected businesses will also have an opportunity to provide public comment during the public hearing on these rule changes.

8. A List of Industries That Will Be Required to Comply with the Rule: All individuals wishing to obtain a geo-

duck diver license will be required to comply with these rules. In general, businesses affected by these rules are small individual contractors for small and large businesses engaged in the seafood processing, wholesale, and retail industry.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: These rules are administrative in nature and detail the process WDFW will use to comply with the limitation of geoduck diver licenses to seventy-seven per calendar year by HB [2SHB] 1764, passed by the legislature in 2013. This limitation is required by statute. These rules simply detail WDFW's process and do not affect that license limitation. Therefore, the rules will not have an impact on job creation or job loss.

A copy of the statement may be obtained by contacting Joanna Eide, WDFW Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2403, fax (360) 902-2155, e-mail Rules.Coordinator@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. This rule change does not affect hydraulics.

July 2, 2014
Joanna M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-23-016, filed 11/9/12, effective 12/10/12)

WAC 220-52-01901 Commercial geoduck harvest license. (1) It is unlawful to commercially harvest geoducks unless the harvester possesses a valid, director-issued geoduck fishery license or geoduck diver license. A geoduck fishery license card is a "license card" under WAC 220-69-270.

(2) Only persons holding current geoduck harvest agreements from the department of natural resources or their agents may apply for a geoduck fishery license((s)). An application for a geoduck fishery license must be fully completed on a form provided by the department and accompanied by a copy of the geoduck harvest agreement for which the license is sought.

(3) Each geoduck fishery license authorizes the use of two water jets or other units of geoduck harvest gear. Commercial geoduck harvesting gear must meet the requirements of WAC 220-52-019.

(4) Holders of geoduck fishery licenses and geoduck diver licenses must comply with all applicable commercial diving safety regulations adopted by the Federal Occupational Safety and Health Administration established under the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et. seq. Some of these regulations appear at 29 C.F.R. Part 1910, Subpart T.

(a) The director may suspend or revoke a geoduck fishery license or geoduck diver license used in violation of commercial diving safety regulations, including 29 C.F.R. Part 1910, Subpart T, adopted under the Occupational Safety and Health Act of 1970. The procedures of chapter 34.05 RCW apply to these suspensions or revocations.

(b) If there is a substantial probability that a violation of commercial diving safety regulations could result in death or

serious physical harm to a person harvesting geoducks, the director may immediately suspend the license until the violation is corrected. If the violator fails to correct the violation within ten days of notice of the violation, the director may revoke the violator's geoduck fishery or geoduck diver license. The director may not revoke a geoduck fishery or geoduck diver license if the holder of the harvesting agreement corrects the violation within ten days of receiving written notice of the violation.

NEW SECTION

WAC 220-52-01904 Commercial geoduck harvest— License application and issuance process for 2015 geoduck diver licenses. To ensure compliance with RCW 77.65.410 and chapter 204, section 2, Laws of 2013 (2SHB 1764), and the equitable issuance of geoduck diver licenses, the department adopts the following provisions to address the limitation of geoduck diver licenses to 77 licenses in 2015:

(1) Effective January 1, 2015, no more than 77 geoduck diver licenses may be issued per calendar year.

(2) Individuals who had first right of refusal for a 2015 geoduck diver license as provided in chapter 204, section 2, Laws of 2013 (2SHB 1764), and indicated his or her intent to purchase a geoduck diver license by January 28, 2014, must apply for a 2015 geoduck diver license prior to 5:00 p.m. on December 1, 2014.

(a) If more than 77 qualified applicants who had first right of refusal apply for a 2015 geoduck diver license prior to 5:00 p.m. on December 1, 2014, the department will conduct a random drawing to determine the applicants who will be issued one of the 77 available geoduck diver licenses.

(b) If the department receives less than 77 applications from qualified "first right of refusal" applicants by December 1, 2014, the department will consider applications to renew licenses as provided in RCW 77.65.410. Those who held a geoduck diver license in 2014 and who were listed on a department of natural resources geoduck harvest plan in 2014, but who did not indicate their intent to exercise a first right of refusal by January 28, 2014, may apply to renew after December 1, 2014, and the department will process those applications on a daily basis, in the order received, up to the renewal deadline of December 31, 2014, until the cap of 77 geoduck diver licenses has been reached. If the department receives more than one application to renew a geoduck diver license in a calendar day, and issuing licenses to all applicants received in that calendar day would exceed 77 geoduck diver licenses, the department will conduct a random drawing among the applications received that calendar day to determine which of the applicants will receive a renewed geoduck diver license for 2015.

(c) If the number of geoduck diver licenses issued to both "first right of refusal" applicants and "renewal" applicants is still less than 77 on January 1, 2015, the department will issue licenses for qualified applicants for a 2015 geoduck diver license in the order the applications are received. However, if the department receives more than one application in a calendar day and issuing licenses to all applicants received in that calendar day would exceed 77 geoduck diver licenses, the department will conduct a random drawing among the

applications received that calendar day to determine which of the applicants will receive a geoduck diver license for 2015.

(3) For the purposes of this section, a "qualified applicant" is a person who submits the following when applying for a geoduck diver license:

(a) A complete, legible, and signed application form;

(b) A copy of a department of natural resources (DNR) geoduck harvest agreement plan of operation that lists the applicant on the agreement. The copy of the harvest agreement plan of operation can be from 2011, 2012, 2013, or 2014 for "first right of refusal" applicants, but must be from 2014 for "renewal" applicants;

(c) The application and license fees as provided in RCW 77.65.440; and

(d) For any application received on or after January 1, 2015, proof of completion of the DNR geoduck diver safety program.

WSR 14-14-136

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed July 2, 2014, 11:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-04-132 on February 5, 2014.

Title of Rule and Other Identifying Information: New section WAC 220-52-01905 Commercial geoduck harvest— Geoduck diver license application and issuance process.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on August 8-9, 2014, at 8:30 a.m.

Date of Intended Adoption: On or after August 15, 2014.

Submit Written Comments to: Joanna Eide, WDFW Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by August 1, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by August 1, 2014, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule change is to establish an equitable license application and issuance process for geoduck diver licenses to comply with changes to state law to limit geoduck diver licenses to seventy-seven per year beginning January 1, 2015. These proposed rule changes also address additional application eligibility requirements for geoduck diver licenses as required by RCW 77.65.410.

Reasons Supporting Proposal: HB [2SHB] 1764 was passed by the Washington state legislature in 2013. This bill limited the geoduck diver licenses issued by the department to seventy-seven licenses per calendar year beginning in 2015 and imposed new application eligibility requirements. The department needs these rules to establish an equitable process the department will follow to comply with changes to state law to limit geoduck diver licenses to seventy-seven per

year beginning January 1, 2015, and to address new application requirements for geoduck diver licenses.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.12.047, and 77.65.410.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.12.047, and 77.65.410.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Frank Hawley, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2453; and Enforcement: Steve Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

These proposed rule changes will allow the equitable issuance of seventy-seven geoduck diver licenses and will allow the department of fish and wildlife (WDFW) to address the limitation of seventy-seven geoduck diver licenses issued per calendar year by the Washington state legislature in HB [2SHB] 1764.

The right of first refusal applicants that meet the stated qualifications received by WDFW by January 28, 2014, will be given the first right of refusal for up to seventy-seven licenses. The applicants must provide proof that they were included on a department of natural resources (DNR) harvest agreement plan of operation in 2011, 2012, 2013, or 2014. These requirements are already effective in state law. The proposed rule changes in this rule making are administrative in nature and detail the process WDFW will follow in complying with changes to state law to limit geoduck diver licenses to seventy-seven per year.

Other than providing the information required for an application for a geoduck diver license, such as proof of a DNR harvest agreement and proof of diver safety completion, there are no additional reporting and record keeping requirements.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: These rules provide the process WDFW will use to implement state law limiting the number of geoduck diver licenses to seventy-seven per calendar year. There are no anticipated professional services required to comply with these rule changes.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The proposed rule limits the number of geoduck diver licenses to seventy-seven licenses per year as required by HB [2SHB] 1764 and detail the process WDFW will use to ensure the equitable issuance of geoduck diver licenses due to the license limitation. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs as the rules are administrative

in nature. Therefore, there are no expected additional costs to comply with the proposed rules.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rules do not affect the harvestable numbers of geoducks available to nontreaty businesses. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

Since the rules address the limitation of the number of geoduck diver licenses WDFW may issue to seventy-seven licenses per year as required by statute, it is possible that this limitation may impact the ability of a business to engage in geoduck harvest if the business is unable to obtain a license. However, this license limitation is required by statute and these proposed rules simply implement the process WDFW will use to ensure compliance with that limitation.

5. Cost of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales:

None - The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. The application fees remain unchanged. Additional costs may be incurred by businesses to meet the qualifications required to be eligible for a license, however, those costs are not determined by these rules and are required by current state law.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: Most businesses affected by these rules are small individual contractors for small and large businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions WDFW has required in past geoduck seasons. Therefore, these rules will not directly impose new costs on small businesses.

Because the geoduck diver license limitation is already effective via statute, WDFW is unable to reduce costs to small businesses due to that license limitation. These proposed rules are administrative in nature.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: DNR and WDFW interacted with and received input from the Geoduck Diver Association in passing the underlying legislation (HB [2SHB] 1764) for these rule changes. These meetings allowed the Geoduck Diver Association to participate in formulating the bill that made these rule changes necessary. WDFW will also share the rule language and proposed process for applications for geoduck diver licenses with affected businesses and receive input from those individuals as part of this rule making. Affected businesses will also have an opportunity to provide public comment during the public hearing on these rule changes.

8. A List of Industries That Will Be Required to Comply with the Rule: All individuals wishing to obtain a geoduck diver license will be required to comply with these rules. In general, businesses affected by these rules are small individual contractors for small and large businesses engaged in the seafood processing, wholesale, and retail industry.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: These rules are administrative in nature and detail the process WDFW will use to comply with the limitation of geoduck diver licenses to seventy-seven per calendar year by HB [2SHB] 1764, passed by the legislature in 2013. This limitation is required by statute. These rules simply detail WDFW's process and do not affect that license limitation. Therefore, the rules will not have an impact on job creation or job loss.

A copy of the statement may be obtained by contacting Joanna Eide, WDFW Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2403, fax (360) 902-2155, e-mail Rules.Coordinator@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. This rule change does not affect hydraulics.

July 2, 2014
Joanna M. Eide
Rules Coordinator

mine which of the applications received in that calendar day will be issued a geoduck diver license.

NEW SECTION

WAC 220-52-01905 Commercial geoduck harvest— Geoduck diver license application and issuance process.

(1) The department will not consider incomplete applications for a geoduck diver license. The following information is required to apply for or renew a geoduck diver license:

- (a) A complete, legible, and signed application form;
- (b) The application and license fees as provided in RCW 77.65.440;
- (c) Proof of completion of the department of natural resources (DNR) geoduck diver safety program; and
- (d) For applications to renew only, a copy of a DNR geoduck harvest agreement plan of operation that lists the applicant on the agreement during the applicable current calendar year.

(2) No more than 77 geoduck diver licenses may be issued per calendar year.

(3) Applicants may submit applications to the department:

- (a) By mailing to 600 Capitol Way N., Olympia, WA 98501-1091;
- (b) By faxing to 360-902-2945; or
- (c) In person at the WDFW licensing front desk, first floor, natural resources building at 1111 Washington St. S.E., Olympia, WA 98501.

(4) The department must receive applications to renew a geoduck diver license by December 31st of the year the licensee's current geoduck diver license expires. If less than 77 geoduck diver licenses have been issued after the department approves all qualifying applications to renew a geoduck diver license, the department will issue additional licenses, up to the 77 geoduck diver license limit, to qualified applicants in the order they are received. If the department receives more than one application for a geoduck diver license in a calendar day, and issuing licenses to all applicants received in that calendar day would exceed 77 geoduck diver licenses, the department will conduct a random drawing among the applications received that calendar day to deter-