

WSR 15-11-072
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed May 19, 2015, 11:12 a.m.]

May 15, 2015
 Katherine I. Vasquez
 Rules Coordinator

Chapter 388-829 WAC

**Community Residential Service Business Training
 Requirements**

SECTION I - PURPOSE AND DEFINITIONS

NEW SECTION

WAC 388-829-0001 What is the purpose of this chapter? The purpose of this chapter is to describe the following:

- (1) Training and certification requirements that apply to community residential service businesses (CRSB) beginning on January 1, 2016;
- (2) Curricula and instructor requirements; and
- (3) Curricula and instructor approval process.

NEW SECTION

WAC 388-829-0005 To whom do the training and certification requirements apply? (1) Long-term care workers and volunteers working for community residential service businesses (CRSB), including supported living services, DDA group homes, group training homes, and licensed staffed residential homes must follow the training requirements of this chapter.

(2) DDA group homes, also licensed as adult family homes or assisted living facilities, must also meet home care aide certification requirements described in WAC 388-112-0106 and WAC 388-112-0108. Long-term care workers in all other CRSB settings must comply with the training and curricula requirements of this chapter, but are exempt from home care aide certification through the department of health.

(3) Adult family homes and assisted living facilities not contracted as a community residential service business must follow training, curricula and certification requirements described in chapter 388-112 WAC.

NEW SECTION

WAC 388-829-0010 What definitions apply to this chapter? "Activities of daily living (ADL)" means the same as defined in WAC 388-106-0010.

"Agency orientation" is training provided to introduce a new employee to the agency.

"AL TSA" refers to the aging and long-term support administration.

"Approved training" is training that has been submitted to and approved by DSHS as evidenced by a curriculum number.

"Attestation" means to bear witness to the authenticity of a document or documents by signing one's name to it to affirm it is genuine.

"Basic training" includes seventy hours of required training: forty hours of DDA residential training and thirty hours of topics outlined in WAC 388-829-0100(b).

"Certified home care aide" means a person who has a current home care aide certification through the department of health.

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-18-086.

Title of Rule and Other Identifying Information: Chapter 388-829 WAC, Community residential service business training requirements.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on July 7, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 8, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., July 7, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by June 23, 2015, phone (360) 664-6092 or TTY (360) 664-6178, e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new chapter of WAC is proposed to adopt rules as required per chapter 74.39A RCW related to training for supported living businesses and their staff in a separate chapter of developmental disabilities administration (DDA) rules. These new rules will help reduce confusion between the various requirements for supported living businesses and their staff, and those related to residential long-term care contained in chapter 388-112 WAC.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Statute Being Implemented: RCW 74.39A.074, 74.39A.-341, 74.39A.351, 18.88B.041.

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: Jan Sprow, DDA, P.O. Box 45310, Olympia, 98504-5310, (360) 725-3432.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and determined that they do not impose more than minor costs on affected small businesses or small nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant rule, as defined in RCW 34.05.328 (5)(b)(iii), rules adopting or incorporating Washington state statutes by reference without material change.

"Challenge test" means a competency test taken for training without first taking the class for which the test is designed.

"Community residential service business" (CRSB) has the same meaning as defined in RCW 74.39A.009.

"Competency" or "core competency" means the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.

"Competency testing" including challenge testing, is evaluating a student to determine if they can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning objectives of a particular course.

"DD" refers to developmental disability.

"DDA" refers to the developmental disabilities administration.

"Direct care" services rendered by direct support professionals which includes not only those services defined by "personal care services", but also those which promote habilitation and further life-long independence, growth, and development opportunities for individuals.

"Direct support professional" means a paid individual who provides direct, personal, care services and support to one or more persons with developmental disabilities requiring long-term care.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or has been exempted from the basic training requirements, is on the premises, and is quickly available to the direct support professional.

"DOH" refers to the department of health.

"DSHS" or "department" refers to the department of social and health services.

"Enhancement" means additional time provided for skills practice and additional training materials or classroom activities that help a worker to thoroughly learn the course content and skills. Enhancements can include new student materials such as, videos or DVDs, online materials, and/or additional student activities.

"Entity representative" means the individual designated by a community residential service business (CRSB) provider who is or will be responsible for the daily operations of a community residential service business (CRSB).

"Guardian" means a legal representative as defined in chapter 11.88 RCW.

"Habilitation" means services defined to assist participants in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in home and community-based settings.

"Home" means the place where a person lives.

"Home care aid-certified (HCA-C)" means a person who has holds a current certificate issued by the department of health.

"Indirect supervision" means oversight by a person who has demonstrated competency in the basic training, or who has been exempted from the basic training requirements, and who is quickly and easily available to the long-term care worker, but not necessarily on-site.

"Individual" means a person who has a developmental disability as defined in RCW 71A.10.020(5) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW. Other terms commonly used include "client" and "resident".

"Individual specific" means topics that are unique to an individual.

"Learning objectives" means measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing.

"Letter of exemption" means a letter provided during the calendar year 2015 which exempts CRSB staff from the seventy-five hours of training as required by Initiative 1163 for staff hired prior to January 1, 2016.

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

"Mental health specialist" has the same meaning as defined in WAC 388-865-0200

"Peer mentor/coach" means a person who has been trained in twelve hours of coaching skills and who works with new employees to coach them on working with individuals and their support needs. This coaching is a method of transferring knowledge about the individual to the new employee while building a positive relationship with the new employee and encouraging a positive relationship between the new employee and the individual they support.

"Personal care services" means physical or verbal assistance with activities of daily living, and instrumental activities of daily living which is provided to meet an individual's support needs.

"Population specific" refers to topics such as developmental disabilities, autism, and gerontology that are applicable to a group of people.

"Provider" means any person or entity who is contracted by the department to operate a community residential service business, or certified by the department to provide instruction and support services to meet the needs of persons receiving services under Title 71A RCW.

"Revised fundamentals of care" (RFOC) refers to the basic training curriculum provided by trainers under aging and long-term support administration (AL TSA).

"Routine interaction" means contact with an individual that happens regularly.

"Support team" means the individual and persons involved in his or her care. The support team may include family, friends, doctors, nurses, long-term care workers, social workers and vocational vendors. The role of the support team is to support the well-being of the individual; however, the individual directs the service plan when able.

"Training entity" means an organization, including an independent contractor, who is providing or may provide training under this section using approved curriculum. Training entities must only deliver DSHS approved curriculum to CRSB staff.

NEW SECTION

WAC 388-829-0015 What are the training certification requirements for long-term care workers in a CRSB and volunteers? The following chart provides a summary of the training and certification requirements. The remainder of the rules under this chapter contains a more detailed description of the requirements.

Who	Agency orientation	LTCW orientation and safety	Residential training	Peer coaching and/or population specific and/or specialty training	Seventy-five hour certificate	Specialty training	Continuing education	HCA-C
A LTCW who was employed between January 1, 2015 and January 1, 2016 with continuous employment from date of hire to 1/1/2016 and has completed the basic training requirements in effect on the hire date, with exemption letter .							R	
A LTCW who was employed between Jan 1, 2015 and January 1, 2016 with continuous employment from date of hire to 1/1/2016 and has started the basic training requirements in effect on the hire date transferring to a different agency , with exemption letter .	R					*	R	
Employed in CRSB hired on or after January 1, 2016 and meets definition of LTCW in WAC 388-829-0005.		R	R	R	R		R	
Employed in CRSB and begins to work for a new agency or moves from an assisted living agency or adult family home, meets the definition of a LTCW and has a HCA-certificate .	R					*	R	R
LTCW with a letter of exemption dated for 2015 with: An intermittent break in service after 1/1/16 of less than three continuous years' time; Uncompleted CEs (<i>has option to complete all delinquent CE's prior to most recent date of hire within three years of termination of last employment</i>)		R	R*	R	R		R	
LTCW with a letter of exemption dated between 1/1/2012 and 12/31/2015.							R	
An unpaid person providing direct care (volunteer).		R		R	N/A			
Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW; Nursing assistants-certified under chapter 18.88A RCW; A home health aide who is employed by a medicare-certified home health agency and has met the requirements of 42 C.F.R., Part 483.35; and An individual with special education training and an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010.	R*					R*	R	

Key:

R means required

Blank means not required

* Means see WAC text for information

Note: Other trainings that may be required and not considered to be part of the seventy-five hour certificate are not listed in tables above. Includes but is not limited to:

- (1) First aid and CPR WAC 388-101-3290;
- (2) Nurse delegation WAC 388-101-3375; and
- (3) Blood borne pathogens.

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

NEW SECTION

WAC 388-829-0025 When do the training requirements go into effect? (1) The long-term care worker training requirements described in this chapter go into effect January 1, 2016.

(2) The long-term care worker training requirements that were in effect on or before December 31, 2015 apply to those individuals who:

- (a) Were hired on or before December 31, 2015; and
- (b) Complete(d) training requirements in existing rules at time of hire by February 29, 2016.

NEW SECTION

WAC 388-829-0030 Who is exempt from the CRSB seventy-five hours of training requirements? Exempt individuals as of January 1, 2016 include:

(1) Staff hired January 1, 2015 through December 31, 2015, with no break in service to January 1, 2016 and hold a letter of exemption. Letters of exemption are portable from agency to agency:

- (a) For staff with continuous employment; and
- (b) For staff with intermittent work over a three year period who have completed their annual continuing education credits; or
- (c) For staff who made up the twelve hours of continuing education prior to their date of hire and are current with all required CE credits.

(2) The HCA-C replaces the requirements for the training under the seventy-five hour certificate.

(a) Staff holding a HCA-C must complete agency orientation.

(b) Staff who obtained an HCA-C and took the revised fundamentals of care giving (RFOC) training through ALISA prior to January 1, 2016, must also take the eighteen hour DDA specialty training.

(3) A home health aide who is employed by a medicare-certified home health agency and has met the requirements of 42 C.F.R., Part 483.35.

(4) An individual with special education training and an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010.

(5) Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW; Nursing assistants-certified under chapter 18.88A RCW.

SECTION II - SEVENTY-FIVE HOUR CERTIFICATE

NEW SECTION

WAC 388-829-0040 What is the seventy-five hour certificate? The seventy-five hour certificate is a combination of trainings and certifications that when complete add up to seventy-five hours. The certificate covers:

- (1) Five hour orientation and safety (Section III);
- (2) Forty hour residential (Section IV); and
- (3) Thirty hour peer coaching and other provider requirements.

In addition to the seventy-five hour certificate, twelve hours of continuing education credits are required each calendar year. HCA-C staff will follow the schedule for CEs as described in WAC 246-980-110.

NEW SECTION

WAC 388-829-0045 Who must complete the seventy-five hour certificate? The following people must complete the seventy-five hours of training as described:

- (1) Non exempt employees hired as a new employee to work for CRSB agencies as a LTCW.
- (2) Anyone who wants to complete the home care aid certification.

NEW SECTION

WAC 388-829-0050 What is orientation training? There are two types of orientation training: long-term care worker (LTCW) orientation training and agency orientation training.

(1) LTCW orientation.

Orientation is two hours of DDA developed and approved training regarding the LTCW's role and the applicable terms of employment as described in WAC 388-829-0055. DDA's curriculum is the only approved LTCW training for CRSB. There is no test for this training.

(2) Agency orientation.

Agency orientation is of varied length and provides basic introductory information appropriate to the residential care setting and population served and covers agency specific information. The department does not approve this specific orientation program, materials, or trainers, and there is no test for this orientation.

This orientation must include:

- (a) Current individual instruction and support plans of each client with whom the employee works;
- (b) Emergency procedures for clients;
- (c) The reporting requirements for abuse and neglect under chapter 74.34 RCW; and
- (d) Client confidentiality.

NEW SECTION

WAC 388-829-0055 What content must be included in long-term care worker (LTCW) orientation? For those individuals working in a CRSB:

(1) Long-term care worker orientation must be taught by an approved trainer and follow the DDA approved two hour orientation curriculum which includes the following topics:

- (a) The care setting and the agency mission;
 - (b) The characteristics and special needs of the population served;
 - (c) Fire and life safety, including:
 - (i) Emergency communication (including phone system if one exists);
 - (ii) Evacuation planning (including fire alarms and fire extinguishers);
 - (iii) Ways to handle individual injuries, falls or other accidents; and
 - (iv) Potential risks to individuals or staff (for instance, aggressive individual behaviors and how to handle them)
 - (d) The location of home policies and procedures.
 - (e) Communication skills and information, including:
 - (i) Methods for supporting effective communication among the individual/guardian/family, staff, and DDA staff;
 - (ii) Use of verbal and nonverbal communication; and
 - (iii) Review of written communication and/or documentation required for the job, including the individual's ISP.
 - (f) Expectations about communication with other direct support staff;
 - (g) Whom to contact about problems and concerns.
 - (h) Proper body mechanics;
 - (i) What staff should do if they are ill;
 - (j) Individual rights, including:
 - (i) The individual's right to confidentiality of information about the individual;
 - (ii) The individual's right to participate in making decisions about the individual's care, and to refuse care;
 - (iii) Staff's duty to protect and promote the rights of each individual, and assist the individual to exercise his or her rights;
 - (iv) How and to whom staff should report any concerns they may have about an individual's decision concerning the individual's care;
 - (v) Staff's duty to report any suspected abuse, abandonment, neglect, or exploitation of an individual;
 - (vi) Advocates that are available to help individuals (LTC ombudsmen, organizations);
 - (vii) Complaint lines, hot lines, and individual grievance procedures; and
 - (viii) Working in an individual's home compared to working in agency facility or adult family home.
- (2) LTCW orientation is the first part of the five hour certificate.

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 388-829-0060 Who must take LTCW orientation? (1) People hired to work in a CRSB who do not have a valid seventy-five hour certificate.

(2) LTCWs who were exempt in 2012 or 2015 with a break in service of three or more years will be treated as a

new hire and will require the full seventy-five hours of training.

(3) Volunteers who will have indirect supervision during direct support duties.

NEW SECTION

WAC 388-829-0065 What content must be included in the agency orientation for LTCWs who begin working for a new agency? The purpose of this training is to orient the staff to the agency. Some topics of agency orientation may be covered in LTCW orientation but due to individual support needs, must be trained outside of LTCW orientation.

Agency orientation must include but is not limited to:

- (1) The setting and the agency mission;
- (2) The characteristics and special needs of the population served;
- (3) Fire and life safety, including:
 - (a) Emergency communication (including phone system if one exists);
 - (b) Evacuation planning (including fire alarms and fire extinguishers);
 - (c) Ways to handle individuals' injuries, falls and other accidents; and
 - (d) Potential risks to individuals or staff (for instance, aggressive individual behaviors and how to handle them);
- (4) The location of policies and procedures;
- (5) Communication skills and information, including:
 - (i) Methods for supporting effective communication among the individual/guardian/family, staff, and DDA staff;
 - (ii) Use of verbal and nonverbal communication; and
 - (iii) Review of written communications and/or documentation required for the job, including the individual's IISP;
- (6) Expectations about communication with other home staff;
- (7) Whom to contact about problems and concerns;
- (8) Rules for working in someone's home as opposed to agency facility; and
- (9) Respect for individual's property including their food, home, water, electricity or anything paid for out of the individual's account.

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

NEW SECTION

WAC 388-829-0070 Who must take a particular agency's orientation? Staff who have never worked for a particular agency or who have not worked for the agency for more than one year must complete the agency orientation.

NEW SECTION

WAC 388-829-0075 What is safety training, who must complete it and when must it be completed? Safety training is part of the long-term care worker requirements and must be provided by approved instructors. It is three hours of training developed by DDA and includes basic safety precau-

tions, emergency procedures, and infection control. There is no test for safety training.

NEW SECTION

WAC 388-829-0077 Who must take agency orientation? The following individuals must complete safety training before providing care under indirect supervision:

- (1) All non-exempt LTCWs hired after Dec 31, 2015 who do not currently hold a safety certificate as described in RCW 18.88B.041,
- (2) Volunteers who will have direct support duties.

NEW SECTION

WAC 388-829-0080 What content must be included in safety training? Safety training must include:

- (1) Safety planning and accident prevention, including but not limited to:
 - (a) Proper body mechanics;
 - (b) Fall prevention;
 - (c) Fire safety;
 - (d) In home hazards;
 - (e) Call prevention;
 - (f) Long-term care worker safety; and
 - (e) Emergency and disaster preparedness.
- (2) Standard precautions and infection control, including but not limited to:
 - (a) Proper hand washing;
 - (b) When to wear gloves and how to correctly put them on and take them off;
 - (c) Basic methods to stop the spread of infection;
 - (d) Protection from exposure to blood and other body fluids;
 - (e) Appropriate disposal of contaminated/hazardous articles;
 - (f) Reporting exposure to contaminated articles; and
 - (g) What to do when the worker or the individual is sick or injured, including to whom to report illness or injury.
 - (h) Safe food handling information must be provided to all staff, prior to handling food for individuals.

Long-term care workers who complete a DSHS-approved safety training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

- (3) Basic emergency policies and procedures, including but not limited to:
 - (a) Medical emergencies;
 - (b) Response to fire;
 - (c) Natural disasters or other community emergencies;
 - (d) Location of any advance directives if available;
 - (e) Missing individuals;
 - (f) Unmanageable individual behavior; and
 - (g) Individuals involved with law enforcement.

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.

SECTION IV - BASIC TRAINING

NEW SECTION

WAC 388-829-0100 What is basic training? (1) Basic training is in addition to the orientation and safety training totals seventy hours of training: Basic training is made up of two components; the forty hour residential training and thirty hours of additional topics as defined by subsection 1(b) of this section.

(a) DDA residential training - forty hours

- (i) The core competencies and skills that long-term care workers need in order to provide personal care services effectively and safely;
- (ii) Practice and demonstration of skills;
- (iii) DD history;
- (iv) Positive behavior support plan;
- (v) Residential guidelines;
- (vi) Individual instruction and support plan (IISP);
- (vii) Effective communication;
 - (A) Between staff;
 - (B) With family;
 - (C) With individuals;
- (viii) Nutrition and dietary guidelines;
- (ix) Healthcare/health management;
- (x) Medication management;
- (xi) Abuse and neglect;
- (xii) Confidentiality;
- (xiii) Emergency procedures;
- (xiv) Staff roles, self-care, boundaries; and
- (xv) Grief and loss.

(b) Additional topics - thirty hours.

- (i) Peer coaching as defined in RCW 74.39A.331 for on the job training.
 - (ii) Population specific if appropriate.
 - (iii) Individual specific.
 - (2) The core competencies requirement for DDA must be met by completing:
 - (a) The DDA developed forty-hour residential training;
- or**
- (b) The DSHS approved revised fundamentals of caregiving (RFOC) (or the approved curriculum by DSHS) and the eighteen hour DD specialty training.
 - (3) Additional training will be required:
 - (i) Individual specific training; and
 - (ii) If changing agencies, the agency orientation;
 - (4) The long-term care worker must be able to ask the instructor questions during the training.
 - (5) There is no challenge test for 2a or b.

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

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

NEW SECTION

WAC 388-829-0105 What topics must be taught in the core competencies of basic training for long-term care

workers? Basic training for LTCWs in a CRSB must include the DDA forty hour residential training. Competencies within this DSHS/DDA approved curriculum includes but is not limited to:

- (1) Fall prevention;
- (2) Food preparation and handling;
- (3) Communication skills;
- (5) Individual rights and maintaining dignity;
- (6) Abuse, abandonment, neglect, financial exploitation and mandatory reporting;
- (7) Individual directed care;
- (8) Cultural sensitivity;
- (9) Skin and body care;
- (10) Long-term care worker roles and boundaries;
- (11) Supporting activities of daily living;
- (12) Medication assistance;
- (13) Long-term care worker self-care;
- (14) Problem solving;
- (15) Grief and loss; and
- (16) Building positive relationships.

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

NEW SECTION

WAC 388-829-0115 What documentation is required to show completion of the seventy-five hour training? (1) LTCW training must be documented by the following:

- (a) Agency orientation, LTCW orientation and safety:
 - (i) The training and documentation must be issued by the service provider familiar with the agency. Proof must be documented with:
 - (A) Original sign in sheets, dated with name of training and instructor; or
 - (B) Original check lists used to ensure all training was completed; or
 - (C) Personnel records that provide proof of completion.
 - (ii) If certificates are used for agency orientation, LTCW orientation and safety the certificates must have:
 - (A) The name of the student;
 - (B) The name of the training;
 - (C) The number of hours of the training;
 - (D) The name of the training entity giving the training;
 - (E) The instructor's name, printed and signature;
 - (F) The training completion date;
 - (G) The student's date of hire; and
 - (H) The date(s) of the training.
- (b) Basic training:
 - (i) Documentation for basic training is the same as subsection (1)(a)(i) in this section.
 - (ii) Certificates for basic training must include all of subsection (1)(a)(ii) in this section and the name and identification number of the basic training instructor.
- (c) Agency training for the thirty hours of training:
 - (i) Documentation of the thirty hours is a certificate developed by DDA showing all of the requirements were completed for this training. Documentation must include but is not limited to:

(A) Training checklists signed by a supervisor or an approved peer coach and the trainee;

(B) Other certificates from department approved population specific training; and

(C) Other certificates from department specialty training.

(d) Seventy-five hour certificate:

(i) A single seventy-five hour training certificate may be issued by a training entity, in lieu of individual certificates if that training entity was wholly responsible for providing all seventy-five of the training hours.

(ii) The last training entity responsible for providing instruction to a long-term care worker will be responsible for providing the seventy-five hour certificate.

(iii) The last training entity must see the other documents if they were provided by a training program, community instructor or other entity outside of the agency where the staff is currently employed:

(A) The seventy-five hour certificate template was developed by DDA and no other form may be used.

(B) The certificate must be an original.

(C) The issuer of the seventy-five hour certificate must maintain a copy of the seventy-five hour certificate and all supporting document for six years from the date of issue.

(D) Issuer of the certificate must be approved by the department.

(iv) The LTCW must be given the original seventy-five hour certificate(s) for proof of completion of the training and retain for their own records.

(v) To take the HCA-C exam using the DDA seventy-five hour certificate, the certificate must indicate:

(A) DDA residential curriculum for 15 chapters, or

(B) DDA residential curriculum AND a certificate for Residential Services Curriculum chapter 15 separately, or

(C) DDA residential curriculum and a CE certificate for Residential Services Curriculum chapter 15 taken within the first two years of hire and before the end of two years of employment in the field.

(2) LTCWs who are exempt from the seventy-five hours of training, hired prior to January 1, 2016, and not in a different professional exemption category, must have a letter of exemption indicating their training for the year of 2015 is current and met the requirements of working for the CRSB in lieu of a certificate.

(a) Letters of exemption must include:

(i) Name of the agency;

(ii) Name of the staff;

(iii) Date of hire;

(iv) Language regarding completion of current training requirements in 2015;

(v) Date of termination if appropriate;

(vi) Signature and printed name of agency administrator; and

(vii) Date letter was signed.

(b) Letters of exemption expire when the staff does not work in the field for three years.

(c) Letters of exemption expire when staff who work intermittently do not maintain the twelve CEs required annually.

(i) Intermittent workers may complete the CE requirements (twelve per year) prior to hire and continue to use their exemption letter.

(ii) Intermittent workers who do not complete their CE requirements over a three year span forfeit their letter of exemption.

(iii) Staff who forfeit their letter of exemption must start training as a new hire and complete all seventy-five hours of training.

A copy of the exemption letter must remain in the personnel file for six years. The original letter is the responsibility of the staff.

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

NEW SECTION

WAC 388-829-0120 How long are the training certificates valid? Basic training and LTCW orientation and safety training certificates remain valid as long as the staff maintains their twelve hours of continuing education annually. Certificates are portable from one agency to another.

For the purpose of becoming a HCA-C, the seventy-five hour certificates expire after two years. If CRSB staff choose to take the HCA-C exams for certification; their seventy-five hour certificate must meet the DOH requirements as outlined in WAC 246-980-060. Costs incurred for the testing and certification are the sole responsibility of the staff person taking them.

NEW SECTION

WAC 388-829-0130 Who is required to complete basic training, and when? The following individuals must complete basic training requirements:

(1) Long-term care workers in CRSB within one hundred twenty days of date of hire. Until basic training has been completed, long-term care workers can only provide direct care with indirect supervision.

(2) Exempted employees hired after December 31, 2015, returning to work after a three year break in service must complete the seventy-five hours of training as if a new employee to the field.

(3) Exempted employees hired after December 31, 2015 with intermittent work must:

(a) Maintain or complete the CEs to meet the annual requirements prior to hiring date; or

(b) Must complete the seventy-five hours of training as if a new employee to the field.

(4) Volunteers who will provide direct support services with indirect supervision. Family members are not considered to be volunteers.

NEW SECTION

WAC 388-829-0140 Who may instruct basic training for a CRSB and what documentation is required by the agency and the instructor? Entities wanting to instruct staff on the DDA forty hour residential curriculum and meet the requirements of WAC 388-829-0380 must take the train the

trainer course offered through DDA. Instructors may be approved through AL TSA or DDA and will have only one instructor code. Certificates for the train the trainer course will be required as proof of taking this training and completing the course. Instructors are responsible to maintain their original certificates and may be asked to show them as proof of attendance at the train the trainer. Agencies hiring community instructors or other training programs must maintain a copy of the trainer's original certificate for their records.

NEW SECTION

WAC 388-829-0145 (1) Staff hired after January 7, 2012 who work in a DDA group home licensed as an adult family home or an assisted living facility are required to obtain home care aide certification through the department of health (DOH).

(2) All other CRSB staff are required to meet the training requirements of this chapter, but are exempt from home care aide certification through DOH.

(3) Any staff working for a CRSB who completes the seventy-five hour training described in this chapter, and the HCA-C supplemental training chapter may pursue certification as a home care aide through the DOH.

NEW SECTION

WAC 388-829-0150 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification? (1) Successful completion of seventy-five hours of training must be documented on a DSHS seventy five hour training certificate, signed by an approved training entity verifying that a total of seventy-five hours of approved training have occurred. For DDA developed or approved training, the seventy five hour training certificate issued must indicate "HCA-C Approved."

(2) An approved training entity issuing and signing a DSHS seventy five hour training certificate must verify that the LTCW has the certificates required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and seventy hours of DSHS-approved basic training, as described in this chapter. The department of health will only accept a seventy-five hour training certificate that has been issued by the department or the training partnership for home care aide certification.

(3) For home care aide recertification, successful completion of twelve hours of DSHS-approved continuing education training must be documented on a certificate(s) or transcript(s) issued by a DSHS-approved training entity.

(4) The LTCW and certified home care aide must retain any twelve hour training certificates or transcripts for as long as they are employed.

SECTION V - POPULATION-SPECIFIC

NEW SECTION

WAC 388-829-0160 What is the population specific training component of basic training? (1) The DDA forty hour residential curriculum required for all CRSB staff hired

on or after January 1, 2016 includes DD population specific information.

(2) Staff trained using the DDA forty hour residential curriculum are not required to take the eighteen hour DD specialty training course.

SECTION VI - SPECIALTY TRAINING

NEW SECTION

WAC 388-829-0200 What is specialty training? Specialty or "special needs" training provides instruction in care giving skills that meet the special needs of people living with mental illness, dementia, or developmental disabilities. Specialty trainings are different for each population served and are not interchangeable. Specialty training may be integrated with basic training if the complete content of each training is included. DSHS must approve specialty training curricula for long-term care workers.

Specialty training includes:

- (1) Mental health training;
- (2) Dementia training;
- (3) Eighteen hour DD specialty training; and
- (4) Other specialty training as identified as required by the population being supported.

NEW SECTION

WAC 388-829-0205 Who is required to take specialty training? (1) Specialty training requirements are described in WAC 388-112-0110.

(2) Staff with a current HCA-C hired by a CRSB on or after January 1, 2016 must complete the eighteen hour DD specialty training or DDA forty hour residential curriculum within ninety days of working with individuals unless;

- (a) They provide proof of prior completion of this training or
- (b) Have taken the DDA forty hour residential curriculum training.

SECTION VII - NURSE DELEGATION CORE TRAINING

NEW SECTION

WAC 388-829-0210 What is nurse delegation core training? Nurse delegation training is coursework regarding assisting a person with support needs in the area of taking medications and other delegated tasks. Nurse delegation core training is required before a nursing assistant certified or nursing assistant registered or certified home care aide can be delegated a nursing task. DSHS approves instructors for nurse delegation core training.

Nurse delegation training is not approved for use under the seventy-five hour certificate but may be used for continuing education following the first one hundred twenty days of employment. Nurse delegation is described in WAC 388-112-0170 through 388-112-0197.

SECTION VIII - CONTINUING EDUCATION

NEW SECTION

WAC 388-829-0220 What is continuing education?

(1) Continuing education (CE) is annual training designed to increase a support staff's knowledge and skills. DSHS must approve continuing education curricula and instructors. The same continuing education course cannot be repeated for credit unless it is a new or more advanced training on the same topic. The exceptions to this are:

- (a) Blood-borne pathogens;
- (b) CPR training;
- (c) First aid training;
- (d) Food handling training (thirty minutes allowed); and
- (e) When the agency can demonstrate a need for retraining.

(2) Nurse delegation core and nurse delegation specialized diabetes training may be used to count towards continuing education.

NEW SECTION

WAC 388-829-0225 Who is required to complete continuing education training, and how many hours of continuing education are required each year? Effective January 1, 2016, CRSB staff who provide direct support must complete twelve hours of continuing education per calendar year. Training must be taken from a DSHS approved instructor with DSHS approved curriculum.

NEW SECTION

WAC 388-829-0226 Can a CRSB employee receive continuing education credit for training approved by another state agency? CRSB staff may complete their CE by taking any class with curriculum approved through DSHS DDA or AL TSA home and community services (HCS).

NEW SECTION

WAC 388-829-0230 When must a long-term care worker complete continuing education? (1) Effective January 1, 2016, all long-term care workers who work for a CRSB must complete twelve hours of continuing education as described in WAC 388-829-0220 by the end of each calendar year.

(2) For CRSB staff hired on or after January 1, 2016:

- (i) CEs must not be credited during the first one hundred twenty days of employment.
- (ii) Staff who hold the HCA-C must follow the rules for their certification and complete CE's based on DOH rules per chapter 246-980 WAC.

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

NEW SECTION

WAC 388-829-0235 What topics may be covered in continuing education? Continuing education must be on a

topic relevant to the care needs of individuals in their support setting, or long-term care worker career development. Trainers must be DSHS approved. Topics or courses may include but are not limited to:

- (1) Individual rights, such as freedom from abuse, neglect, abandonment and financial exploitation;
- (2) Personal support/care services;
- (3) Mental illness;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive individual behavior support;
- (10) Developing or improving individual centered activities;
- (11) Dealing with wandering or aggressive individual behaviors;
- (12) Medical conditions;
- (13) Staff career development;
- (14) Safe food handling;
- (15) CPR and first aid;
- (16) Nurse delegation core training; and
- (17) Nurse delegation specialized diabetes.

NEW SECTION

WAC 388-829-0240 Can specialty training be used to meet continuing education requirements? Specialty training, except if completed through a challenge test, may be used to meet continuing education requirements.

(1) When hours from a specialty training are counted toward basic training requirements, the hours may not be counted toward continuing education.

(2) Additional hours not used to meet the basic training requirement may be applied toward the continuing education requirement.

(3) Eighteen hour DD specialty training taken separately from the forty hour curriculum may be used as CEs. Twelve hours count towards the current year and six hours may be carried over to the following year for this training only.

NEW SECTION

WAC 388-829-0245 What are the documentation requirements for continuing education? The training entity must maintain written documentation of department approved continuing education for six years:

(1) Training provided by a DSHS approved agency or community instructor.

(a) Original or electronic copy of sign-in sheets with the name of the instructor, training and date.

(2) Training curriculum approval form/letter from DDA or AL TSA.

(3) Trainer approval form/letter from DDA or AL TSA.

NEW SECTION

WAC 388-829-0246 What information must be on certificates for continuing education? Certificates must contain the following information:

- (1) Name of the student;
- (2) Title of the training;
- (3) Number of hours of the training;
- (4) Assigned curriculum approval code;
- (5) Instructor's name, printed and signature;
- (6) Printed name of the training entity giving the training;
- (7) Entity program code; and
- (8) Date(s) of training.

NEW SECTION

WAC 388-829-0250 What is CPR training? When is CPR training required? Cardiopulmonary resuscitation (CPR) is an emergency procedure performed in an effort to manually preserve intact brain function until further measures are taken to restore spontaneous blood circulation and breathing in a person who is in cardiac arrest. CPR training must be provided by an approved CPR instructor. Trainees must successfully complete the CPR course and receive a certificate.

CPR is required to be taken within the first sixty days of hire.

SECTION IX - CURRICULUM APPROVAL

NEW SECTION

WAC 388-829-0300 Which trainings require department approval of the curriculum and instructor? (1) The department must preapprove the curriculum and instructors for all LTCW orientation, safety, basic, and continuing education taught as part of the requirements of this chapter.

(2) Training entities must use only the DSHS curriculum for the following;

- (i) Nurse delegation core and diabetes training;
- (ii) DDA LTCW orientation and safety (five hours);
- (iii) DDA residential training (forty hours); and
- (iv) DDA peer coaching (varied time length).

(3) Approval for all other trainings will be based on curriculum review, as described in WAC 388-829-0305.

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

NEW SECTION

WAC 388-829-0305 What must be submitted to DDA for continuing education curriculum approval? Application forms must be submitted at least forty five days in advance of the training date. Approvals must be dated prior to delivery of training. The following must be submitted before the curriculum will be reviewed:

(1) CE curriculum delivery models will only be lead by a DSHS approved instructor. All learners, including online learners, must have access to an approved instructor.

(a) For instructor lead curriculum, developed by the training entity submit a DDA CE approval application that includes all of the information requested on the form, and:

- (i) A summary that includes:
 - (A) The topic; and

(B) A description of how the training is relevant to the support setting, care needs of individuals, or long-term care worker career development.

- (ii) A course outline;
- (iii) The number of training hours;
- (iv) The learning objectives;
- (v) A bibliography listing resources used to develop the curriculum;
- (vi) The trainee evaluation; and
- (vii) The DDA trainer approval form indicating which trainer will be offering the course with attestation language completed.

(b) For online training courses:

- (i) Everything in subsection 1(a) in this section; and
- (ii) On-line course which meet the on-line standards provided at this link: <http://www.altsa.dshs.wa.gov/Professional/training/CE/OnlineCEStandards.htm>

(c) For curriculum developed by a professional curriculum developer who is not the training entity:

- (i) Everything listed in subsection 1(a) in this section; and
- (ii) A bill of sale or letter granting the training entity permission to use the curriculum.

Department developed curriculum does not require submission to the department for approval unless otherwise modified.

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

NEW SECTION

WAC 388-829-0310 What is the curriculum approval process for continuing education? (1) After review of the curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum.

(2) Reasons for denial will be identified and revised curriculum may be resubmitted for review.

(3) If revised curriculum is not approved and resolution is not reached, the submitter may seek a review of the nonapproval decision from the DDA assistant secretary or designee. The assistant secretary's review decision shall be the final decision of DSHS.

XI - INSTRUCTOR APPROVAL

NEW SECTION

WAC 388-829-0350 What are the training entity's responsibilities? The training entity is responsible for:

- (1) Coordinating and teaching classes;
- (2) Assuring the curriculum used is taught as designed;
- (3) Assuring the trainer is approved for this curriculum;
- (4) Verifying the curriculum is approved and has been assigned a code;
- (5) Selecting qualified guest speakers where applicable;
- (6) Establishing a method whereby the long-term care worker can ask the instructor questions;

(7) Administering or overseeing the administration of DSHS competency and challenge tests when appropriate;

(8) Maintaining training records including long-term care worker attendance records for a minimum of six years;

(9) Reporting training data to DSHS when requested by the department;

(10) Issuing or reissuing training certificates to long-term care workers; and

(11) Maintaining documentation as stated in this chapter.

NEW SECTION

WAC 388-829-0360 Must training entities and their instructors be approved by DSHS? (1) For all DSHS contracted training entities:

(a) DSHS must approve and/or contract with a training entity and their instructor(s) to conduct LTCW orientation, safety, basic, population specific, long-term care worker specialty, nurse delegation core and specialized diabetes training, and continuing education.

(b) DSHS may select training entities using any applicable contracting procedures. Contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through the contracting procedure.

(2) Agencies conducting their own training programs using the training curricula developed by DSHS or another curricula approved by DSHS must ensure and attest that their instructors meet the minimum qualifications for instructors under this chapter.

(3) DSHS must approve all other training entities and their instructor(s) not described in subsection (1) and (2) of this section.

(a) Community instructors who contract with DSHS for continuing education may be utilized for CEs at CRSBs.

(b) Approved community instructors who wish to provide basic training in a CRSB must take the DDA residential train the trainer course and notify the agency they work with of their certification.

NEW SECTION

WAC 388-829-0365 Can DSHS deny or terminate a contract or rescind approval of an instructor or training entity? (1) DSHS may deny a person or organization seeking a contract with, or approval by, DSHS to conduct training.

(2) DSHS may terminate an existing training contract in accordance with the terms of the contract. The contractor's remedies shall be limited to those specified in the contract.

(3) DSHS may terminate an existing training approval of a person or entity to conduct training.

NEW SECTION

WAC 388-829-0370 What is a guest speaker, and what are the minimum qualifications to be a guest speaker? (1) A guest speaker is a person selected by an approved instructor to teach a specific topic. A guest speaker:

(a) Must have demonstrated background and expertise on the topic;

(b) Must not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the primary instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.

(2) The approved instructor:

(a) Must select guest speakers based on the guest speaker's knowledge and experience in the specific topic;

(b) Maintain documentation of the guest speaker's qualifications and/or experience;

(c) Supervise and monitor the guest speaker's performance in person to ensure required content is taught; and

(d) Signs and provides the CE certificate.

(3) DSHS does not approve guest speakers.

NEW SECTION

WAC 388-829-0380 What are the minimum qualifications for an instructor for basic, and population specific training? An instructor for basic and population specific training must meet the following minimum qualifications:

(1) Twenty-one years of age or older;

(2) Has not had a professional health care, CRSB, agency, or social services license or certification revoked in Washington state; and

(3) Has the following education and work experience upon initial approval or hire:

(a) Have a bachelor's degree and work experience with persons with disabilities requiring long-term support in a community setting within the last five years; or

(b) Have an associate degree or higher degree in the field of health or human services and six months professional or support experience within the last five years in a community based setting, CRSB through DDA, or home care setting; or

(c) Have a high school diploma, or equivalent, and at least one year of professional or care giving experience within the last five years in a CRSB setting through DDA, or home care setting.

(4) Has the following teaching experience:

(a) Must have one hundred hours of experience teaching adults in an appropriate setting on topics directly related to the basic training; or

(b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class on adult education which includes content, student practice, and evaluation of student skills by the instructor in:

(1) Adult education theory and practice principles;

(2) Instructor facilitation techniques;

(3) Facilitating learning activities for adults;

(4) Working with adults with special training needs (for example, English as a second language or learning and literacy issues); and

(5) The instructor must be experienced in care giving practices and capable of demonstrating competency with respect to teaching the course content or units being taught.

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

NEW SECTION

WAC 388-829-0385 What are the minimum qualifications for an instructor for LTCW orientation, safety, and continuing education? An instructor for LTCW orientation, safety, and continuing education must have specific knowledge, training, and work experience in the provision of direct, personal support or other relevant services to persons with disabilities requiring long-term support.

NEW SECTION

WAC 388-829-0390 What are the minimum qualifications for instructors for long-term care worker mental health specialty training? The minimum qualifications for long term-care worker mental health specialty are defined in WAC 388-112-0385.

NEW SECTION

WAC 388-829-0395 What are the minimum qualifications for instructors for long-term care worker dementia specialty? The minimum qualifications for instructors for long term-care worker dementia specialty are defined in WAC 388-112-0390.

NEW SECTION

WAC 388-829-0400 What are the minimum qualifications for instructors for long-term care worker developmental disabilities specialty? The minimum qualifications for instructors for long term-care worker developmental disabilities specialty are defined in WAC 388-112-0395.

SECTION XII - PHYSICAL RESOURCES AND STANDARD PRACTICES FOR TRAINING

NEW SECTION

WAC 388-829-0420 What physical resources are required for classroom training and testing? Classroom facilities and sites must be accessible to students and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning. Appropriate supplies and equipment must be provided for teaching and practice of skills in the class being taught.

NEW SECTION

WAC 388-829-0425 What standard training practices must be maintained for classroom training and testing? The following training standards must be maintained for classroom training and testing:

(1) Training must not exceed eight hours within one day not including breaks and meals;

(2) Training provided in short time segments must include an entire unit, skill or concept;

(3) Training must include regular breaks; and

(4) Long-term care workers attending a classroom training must attend the entirety of the training to receive credit.

WSR 15-12-014
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed May 21, 2015, 2:26 p.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 182-501-0055 How the department determines coverage of services for its health care programs using health technology assessments, 182-501-0100 Subrogation, 182-501-0163 Health care coverage—Process for submitting a valid request for authorization, 182-501-0165 Medical and dental coverage—Fee-for-service (FFS) prior authorization—Determination process for payment, 182-501-0169 Health care coverage—Limitation extension, 182-501-0180 Health care services provided outside the state of Washington—General provisions, 182-501-0182 Health care provided in another state of U.S. territory—Nonemergency, 182-501-0184 Health care services provided outside of the United States and U.S. territories or in a foreign country, 182-501-0200 Third-party resources, and 182-501-0213 Case management services.

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 July 7, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 8, 2015.

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 July 7, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 29, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These are house-keeping rule changes to correct agency names, program names, rule numbers, and to make other clarifications that do not change the effect of the rules.

Reasons Supporting Proposal: These changes will provide the reader with correct information and improve clarity.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Melinda Froud, Olympia, Washington 98504-2716, (360) 725-1408.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed filing is exempt from the small business economic impact statement requirement under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

May 21, 2015
Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0055 Health care coverage—How the ((department)) agency determines coverage of services for its health care programs using health technology assessments. (1) The ((department)) medicaid agency uses health technology assessments ((in determining)) to determine whether a new technology, new indication, or existing technology approved by the Food and Drug Administration (FDA) is a covered service under ((department)) agency health care programs. The ((department)) agency only uses health technology assessments when coverage is not mandated by federal or state law. A health technology assessment may be conducted by or on behalf of:

(a) The ((department)) agency; or

(b) The health technology assessment clinical committee (HTACC) ((according to)) under RCW 70.14.080 through 70.14.140.

(2) The ((department)) agency reviews available evidence relevant to a medical or dental service or health care-related equipment and uses a technology evaluation matrix((in order)) to:

(a) Determine its efficacy, effectiveness, and safety;

(b) Determine its impact on health outcomes;

(c) Identify indications for use;

(d) Identify potential for misuse or abuse; and

(e) Compare to alternative technologies to assess benefit vs. harm and cost effectiveness.

(3) The ((department)) agency may determine the technology, device, or technology-related supply is:

(a) Covered (see WAC ((388-501-0060)) 182-501-0060 for the scope of coverage ((for department medical assistance)) under Washington apple health (WAH) programs((:));

(b) Covered with authorization (see WAC ((388-501-0165)) 182-501-0165 for the process on how authorization is determined((:));

(c) Covered with limitations (see WAC ((388-501-0169)) 182-501-0169 for how limitations can be extended((:)); or

(d) Noncovered (see WAC ((388-501-0070)) 182-501-0070 for ((the)) noncovered services ((determined to be non-covered))((:)).

(4) The ((department)) agency may periodically review existing technologies, devices, or technology-related supplies and reassign authorization requirements as necessary ((according to)) using the ((same)) provisions ((as outlined above)) in this section for new technologies, devices, or technology-related supplies.

(5) The ((department)) agency evaluates the evidence and criteria ((presented by)) from HTACC to determine

whether a service is covered (~~(in accordance with WAC 388-501-0050)~~) under WAC 182-501-0050 (9) and (10) and this section.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0100 Subrogation. (1) For the purpose of this section, "**liable third party**" means:

(a) The tort-feasor, or insurer of the tort-feasor, or both; and

(b) Any person, entity or program that is or may be liable to provide coverage for the illness or injuries for which the ~~((department))~~ medicaid agency is providing assistance or residential care.

(2) As a condition of medical care eligibility, a client must assign to the state any right the client may have to receive payment from any liable third party for medical expenses, assistance, or residential care.

(3) To the extent authorized by a contract executed under RCW 74.09.522, a managed health care plan has the rights and remedies of the ~~((department as provided in))~~ agency under RCW 43.20B.060 and 74.09.180.

(4) The ~~((department))~~ agency is not responsible for medical care payment(s) for a client whose personal injuries are caused by the negligence or wrongdoing of another. However, the ~~((department))~~ agency may provide the medical care required as a result of an injury or illness to the client if the client is otherwise eligible for medical care.

(5) The ~~((department))~~ agency may pursue its right to recover the value of medical care provided to an eligible client from any liable third party or third-party settlement or judgment as a subrogee, assignee, or by enforcement of its public assistance lien ~~((as provided))~~ under RCW 43.20B.040 through 43.20B.070, ((RCW)) 74.09.180, and 74.09.185.

(6) Notice to the ~~((department))~~ agency and determining the reimbursement amount:

(a) The client or the client's legal representative must notify the ~~((department))~~ agency in writing ~~((at the time of))~~ when filing any claim against a third party, commencing an action at law, negotiating a settlement, or accepting an offer from the liable third party. ~~((Written))~~ Send notices ~~((to the department))~~ under this section ~~((should be sent))~~ to:

Health ~~((and Recovery Services Administration))~~ Care Authority

COB Casualty Unit
P.O. Box 45561
Olympia, WA 98504-5561
Fax: ~~((+))~~360~~((+))~~753-3077

(b) The client or the client's legal representative must ~~((provide the department with))~~ give the agency documentation proposing allocation of damages, if any, to be used for settlement or to be proven at trial.

(c) Where damages, including medical damages, have not been designated in the settlement or judgment, the client or the client's legal representative must contact the ~~((department))~~ agency to determine the appropriate reimbursement amount for payments the ~~((department))~~ agency made for the client's benefit.

(d) If the client and the ~~((department are unable to reach an agreement as to))~~ agency cannot agree upon the appropriate reimbursement amount, any party may bring a motion in ~~((the))~~ superior court for a hearing to determine the amount of reimbursement to the ~~((department))~~ agency from settlement or judgment proceeds.

(7) The ~~((secretary of the department))~~ agency director or the ~~((secretary's))~~ director's designee must consent in writing to any discharge or compromise of any settlement or judgment of a lien created under RCW 43.20B.060. The ~~((department))~~ agency considers the compromise or discharge of a medical care lien only as authorized by federal regulation at 42 C.F.R. 433.139.

(8) The doctrine of equitable subrogation does not apply to defeat, reduce, or prorate any recovery made by the ~~((department that is))~~ agency based on its assignment, lien, or subrogation rights.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0163 Health care coverage—Process for submitting a valid request for authorization. (1) The

~~((department))~~ medicaid agency requires providers to obtain authorization for certain health care services ~~((in accordance with))~~ under this section, chapters ~~((388-501 and 388-502))~~ 182-501 and 182-502 WAC, other applicable ~~((department))~~ agency rules, current published ~~((department))~~ agency billing instructions, and ~~((or))~~ numbered memoranda. For the purposes of this section, health care services include treatment, equipment, related supplies, and drugs.

(a) For health care services that require prior authorization (PA), a provider (as defined in WAC ~~((388-500-0005))~~ 182-500-0085) must submit a written, electronic, or telephonic request to the ~~((department))~~ agency. To be a valid request for ~~((prior authorization))~~ PA, the provider must ~~((submit))~~ send the request and ~~((conform to))~~ follow the ~~((department's))~~ agency's current published program billing instructions, numbered memoranda, and any additional requirements in Washington Administrative Code (WAC) and ~~((or))~~ Revised Code of Washington (RCW).

(b) For expedited prior authorization (EPA), a provider must certify that the client's clinical condition meets the appropriate EPA criteria outlined in the ~~((department's))~~ agency's current published program billing instructions, numbered memoranda, and any additional requirements in WAC and ~~((or))~~ RCW. The provider must use the ~~((department assigned))~~ agency-assigned EPA number when submitting a claim for payment to the ~~((department))~~ agency.

(c) The ~~((department))~~ agency requires ~~((prior authorization))~~ PA for covered health care services when the applicable ~~((expedited prior authorization))~~ EPA criteria are not met.

(d) Upon request, a provider must ~~((submit))~~ send documentation to the ~~((department))~~ agency showing how the client's condition meets the required criteria for PA or EPA.

(2) ~~((Department))~~ Agency authorization requirements for covered health care services are not a denial of service.

(3) The ~~((department))~~ agency returns invalid requests to the provider and takes no further action unless the request for

authorization is resubmitted. The return of an invalid request is not a denial of service.

(4) Failure of a provider to request authorization for a health care service that requires it or a provider's failure to do so properly is not a denial of service.

(5) The ~~((department's))~~ agency's authorization of health care ~~((service(s)))~~ services does not guarantee payment. See WAC ~~((388-501-0050))~~ 182-501-0050 for other general requirements that must be satisfied before payment can be made for a health care service requested and authorized under this section.

(6) The ~~((department))~~ agency evaluates a request for ~~((an))~~ authorization of a health care service that exceeds identified limitations~~(s;))~~ on a case-by-case basis and ~~((in accordance with WAC 388-501-0169))~~ under WAC 182-501-0169.

(7) The ~~((department))~~ agency may recoup any payment made to a provider if the ~~((department))~~ agency later determines the health care service was not properly authorized or did not meet EPA criteria. ~~((Refer to))~~ See chapters ((388-502 and 388-502A)) 182-502 and 182-502A WAC.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0165 Medical and dental coverage—Fee-for-service (FFS) prior authorization—Determination process for payment. (1) This section applies to fee-for-service (FFS) requests for medical or dental services and medical equipment that:

(a) Are identified as covered services or ~~((EPSDT))~~ early and periodic screening, diagnosis, and treatment services; and

(b) Require prior authorization by the ~~((department))~~ medicaid agency.

(2) The following definitions and those found in ~~((WAC 388-500-0005))~~ chapter 182-500 WAC apply to this section:

"Controlled studies" - Studies in which defined groups are compared with each other to reduce bias.

"Credible evidence" - Type I-IV evidence or evidence-based information from any of the following sources:

- Clinical guidelines
- Government sources
- Independent medical evaluation (IME)
- Independent review organization (IRO)
- Independent technology assessment organizations
- Medical and hospital associations
- Policies of other health plans
- Regulating agencies ~~((e.g.))~~ for example, the Federal Drug Administration or Department of Health

- Treating provider

- Treatment pathways

"Evidence-based" - The ordered and explicit use of the best evidence available (see "hierarchy of evidence" in subsection (6)(a) of this section) when making health care decisions.

"Health outcome" - Changes in health status (mortality and morbidity) which result from the provision of health care services.

"Institutional review board (IRB)" - A board or committee responsible for reviewing research protocols and determining whether:

(1) The rights and welfare of human subjects are adequately protected;

(2) The risks to ~~((individuals))~~ people are minimized and are not unreasonable;

(3) The risks to ~~((individuals))~~ people are outweighed by the potential benefit to them or by the knowledge to be gained; and

(4) The proposed study design and methods are adequate and appropriate in the light of stated study objectives.

"Independent review organization (IRO)" - A panel of medical and benefit experts intended to provide unbiased, independent, clinical, evidence-based reviews of adverse decisions.

"Independent medical evaluation (IME)" - An objective medical examination of the client to establish the medical facts.

"Provider" - The ~~((individual))~~ person who is responsible for diagnosing, prescribing, and providing medical, dental, or mental health services to ~~((department))~~ agency clients.

(3) The ~~((department))~~ agency authorizes, on a case-by-case basis, requests described in subsection (1) of this section when the ~~((department))~~ agency determines the service or equipment is medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-070. The process the ~~((department))~~ agency uses to assess medical necessity is based on:

(a) The evaluation of submitted and obtainable medical, dental, or mental health evidence as described in subsections (4) and (5) of this section; and

(b) The application of the evidence-based rating process described in subsection (6) of this section.

(4) The ~~((department))~~ agency reviews available evidence relevant to a medical, dental, or mental health service or equipment to:

- (a) Determine its efficacy, effectiveness, and safety;
- (b) Determine its impact on health outcomes;
- (c) Identify indications for use;
- (d) Evaluate pertinent client information;
- (e) Compare to alternative technologies; and
- (f) Identify sources of credible evidence that use and report evidence-based information.

(5) The ~~((department))~~ agency considers and evaluates all available clinical information and credible evidence relevant to the client's condition. ~~((At the time of request,))~~ The provider responsible for the client's diagnosis ((and/)), or treatment, or both, must submit with the request credible evidence specifically related to the client's condition((s)) including, but not limited to:

(a) A ~~((client-specific))~~ physiological description of the client's disease, injury, impairment, or other ailment;

(b) Pertinent laboratory findings;

(c) Pertinent X-ray and/or imaging reports;

(d) Individual patient records pertinent to the case or request;

(e) Photographs ~~((and/)),~~ or videos ((when)), or both, if requested ((by the department)); and

(f) Objective medical/dental/mental health information such as medically/dentally acceptable clinical findings and diagnoses resulting from physical or mental examinations.

(6) The ~~((department))~~ agency uses the following processes to determine whether a requested service described in subsection (1) is medically necessary:

(a) **Hierarchy of evidence - How defined.** The ~~((department))~~ agency uses a hierarchy of evidence to determine the weight given to available data. The weight of medical evidence depends on objective indicators of its validity and reliability including the nature and source of the evidence, the empirical characteristics of the studies or trials upon which the evidence is based, and the consistency of the outcome with comparable studies. The hierarchy (in descending order with Type I given the greatest weight) is:

(i) Type I: Meta-analysis done with multiple, well-designed controlled studies;

(ii) Type II: One or more well-designed experimental studies;

(iii) Type III: Well-designed, quasi-experimental studies such as nonrandomized controlled, single group pre-post, cohort, time series, or matched case-controlled studies;

(iv) Type IV: Well-designed, nonexperimental studies, such as comparative and correlation descriptive, and case studies (uncontrolled); and

(v) Type V: Credible evidence submitted by the provider.

(b) **Hierarchy of evidence - How classified.** Based on the quality of available evidence, the ~~((department))~~ agency determines if the requested service is effective and safe for the client by classifying it as an "A," "B," "C," or "D" level of evidence:

(i) **"A" level evidence:** Shows the requested service or equipment is a proven benefit to the client's condition by strong scientific literature and well-designed clinical trials such as Type I evidence or multiple Type II evidence or combinations of Type II, III or IV evidence with consistent results (An "A" rating cannot be based on Type III or Type IV evidence alone).

(ii) **"B" level evidence:** Shows the requested service or equipment has some proven benefit supported by:

(A) Multiple Type II or III evidence or combinations of Type II, III or IV evidence with generally consistent findings of effectiveness and safety (A "B" rating cannot be based on Type IV evidence alone); or

(B) Singular Type II, III, or IV evidence in combination with ~~((department-recognized))~~ agency-recognized:

(I) Clinical guidelines; ~~((or))~~

(II) Treatment pathways; or

(III) Other guidelines that use the hierarchy of evidence in establishing the rationale for existing standards.

(iii) **"C" level evidence:** Shows only weak and inconclusive evidence regarding safety ~~((and))~~, or efficacy ~~((such as))~~, or both. For example:

(A) Type II, III, or IV evidence with inconsistent findings; or

(B) Only Type V evidence is available.

(iv) **"D" level evidence:** Is not supported by any evidence regarding its safety and efficacy, for example that which is considered investigational or experimental.

(c) **Hierarchy of evidence - How applied.** After classifying the available evidence, the ~~((department))~~ agency:

(i) Approves "A" and "B" rated requests if the service or equipment:

(A) Does not place the client at a greater risk of mortality or morbidity than an equally effective alternative treatment; and

(B) Is not more costly than an equally effective alternative treatment.

(ii) Approves a "C" rated request only if the provider shows the requested service is the optimal intervention for meeting the client's specific condition or treatment needs, and:

(A) Does not place the client at a greater risk of mortality or morbidity than an equally effective alternative treatment; ~~((and))~~

(B) Is less costly to the ~~((department))~~ agency than an equally effective alternative treatment; and

(C) Is the next reasonable step for the client in a well-documented tried-and-failed attempt at evidence-based care.

(ii) Denies "D" rated requests unless:

(A) The requested service or equipment has a humanitarian device exemption from the Food and Drug Administration (FDA); or

(B) There is a local institutional review board (IRB) protocol addressing issues of efficacy and safety of the requested service that satisfies both the ~~((department))~~ agency and the requesting provider.

(7) Within fifteen days of receiving the request from the client's provider, the ~~((department))~~ agency reviews all evidence submitted and:

(a) Approves the request;

(b) Denies the request if the requested service is not medically necessary; or

(c) Requests the provider submit additional justifying information. The ~~((department))~~ agency sends a copy of the request to the client at the same time.

(i) The provider must submit the additional information within thirty days of the ~~((department's))~~ agency's request.

(ii) The ~~((department))~~ agency approves or denies the request within five business days of the receipt of the additional information.

(iii) If the provider fails to provide the additional information, the ~~((department))~~ agency will deny the requested service.

(8) When the ~~((department))~~ agency denies all or part of a request for a covered service~~((s))~~ or equipment, the ~~((department))~~ agency sends the client and the provider written notice, within ten business days of the date the information is received, that:

(a) Includes a statement of the action the ~~((department))~~ agency intends to take;

(b) Includes the specific factual basis for the intended action;

(c) Includes reference to the specific WAC provision upon which the denial is based;

(d) Is in sufficient detail to enable the recipient to:

(i) Learn why the ~~((department's))~~ agency's action was taken; and

(ii) Prepare an appropriate response.

(e) Is in sufficient detail to determine what additional or different information might be provided to challenge the ~~((department's))~~ agency's determination;

(f) Includes the client's administrative hearing rights;

(g) Includes an explanation of the circumstances under which the denied service is continued or reinstated if a hearing is requested; and

(h) Includes examples(s) of "lesser cost alternatives" that permit the affected party to prepare an appropriate response.

(9) If an administrative hearing is requested, the ~~((department))~~ agency or the client may request an independent review organization (IRO) or independent medical examination (IME) to provide an opinion regarding whether the requested service or equipment is medically necessary. The ~~((department will))~~ agency pays for the independent assessment if the ~~((department))~~ agency agrees that it is necessary, or an administrative law judge orders the assessment.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0169 Health care coverage—Limitation extension. This section addresses requests for limitation extensions regarding scope, amount, duration, and ~~((of))~~ frequency of a covered health care service. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. The ~~((department))~~ medicaid agency does not authorize or pay for any covered health care services exceeding identified limitations unless authorization is obtained ~~((prior to))~~ before the client ~~((receiving))~~ receives the service.

(1) No limitation extension of covered health care services ~~((will be))~~ is authorized when prohibited by specific program rules.

(2) When a limitation extension is not prohibited by specific program rules, the client's provider may request a limitation extension.

(3) The ~~((department))~~ agency evaluates requests for limitation extensions as follows:

(a) For a fee-for-service client, the process described in WAC ~~((388-501-0165))~~ 182-501-0165.

(b) For a managed care enrollee, the client's managed care organization (MCO) evaluates requests for limitation extensions according to the MCO's prior authorization process.

(c) Both the ~~((department))~~ agency and MCO consider the following in evaluating a request for a limitation extension:

(i) The level of improvement the client has shown to date related to the requested health care service and the reasonably calculated probability of continued improvement if the requested health care service is extended; and

(ii) The reasonably calculated probability the client's condition will worsen if the requested health care service is not extended.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0180 Health care services provided outside the state of Washington—General provisions.

WAC ~~((388-501-0180 through 388-501-0184))~~ 182-501-0180 through 182-501-0184 apply only to services payable on a fee-for-service basis for Washington ~~((state medical assistance))~~ apple health (WAH) clients.

(1) Subject to the exceptions and limitations in this section, WAC ~~((388-501-0182 and 388-501-0184))~~ 182-501-0182, and 182-501-0184, the ~~((department))~~ medicaid agency covers emergency and nonemergency out-of-state health care services provided to eligible ~~((Washington state medical assistance clients))~~ WAH recipients when the services are:

(a) Within the scope of the client's health care program as specified under chapter ~~((388-501))~~ 182-501 WAC;

(b) Allowed to be provided outside the state of Washington by specific program WAC; and

(c) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070.

(2) The ~~((department))~~ agency does not cover services provided outside the state of Washington under the Involuntary Treatment Act (chapter 71.05 RCW and chapter 388-865 WAC), including designated bordering cities.

(3) When the ~~((department))~~ agency pays for covered health care services furnished to an eligible ~~((Washington state medical assistance))~~ WAH client outside the state of Washington, its payment is payment in full according to 42 C.F.R. 447.15.

(4) The ~~((department))~~ agency determines coverage for transportation services provided out of state, including ambulance services, according to chapter ~~((388-546))~~ 182-546 WAC.

(5) With the exception of designated bordering cities (see WAC ~~((388-501-0175))~~ 182-501-0175), if the client travels out of state expressly to obtain health care, the service ~~((s))~~ must be prior authorized by the ~~((department))~~ agency. See WAC ~~((388-501-0182))~~ 182-501-0182 for requirements related to out-of-state nonemergency treatment and WAC ~~((388-501-0165))~~ 182-501-0165 for the ~~((department's))~~ agency's medical necessity determination process.

(6) The ~~((department))~~ agency does not cover health care services provided outside the United States and U.S. territories, ~~((with the exception of))~~ except in British Columbia, Canada. See WAC ~~((388-501-0184))~~ 182-501-0184 for limitations on coverage of, and payment for, health care provided to ~~((medical assistance))~~ WAH clients in British Columbia, Canada.

(7) See WAC ~~((388-502-0120))~~ 182-502-0120 for provider requirements for payment of health care provided outside the state of Washington.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0182 Health care provided in another state or U.S. territory—Nonemergency. (1) This rule applies to nonemergency treatment situations occurring in another state or U.S. territory. Applicable situations include, but are not limited to:

(a) Health care services ~~((that))~~ the ~~((department))~~ medicaid agency has prior authorized for a client; and

(b) Health care services obtained by the client, independent of the ~~((department))~~ agency, while traveling or visiting.

(2) ~~((In accordance with))~~ Under the prior authorization process described in WAC ~~((388-501-0165))~~ 182-501-0165, except as specified in subsection (3) of this section, the ~~((department))~~ agency pays for covered nonemergency health care services provided to an eligible Washington ~~((state medical assistance client))~~ apple health (WAH) recipient in another state or U.S. territory to the same extent that it pays for covered nonemergency services provided within the state of Washington when the ~~((department))~~ agency determines that:

(a) Services are medically necessary and the client's health will be endangered if the client ~~((is required to))~~ must travel to the state of Washington to receive the needed care;

(b) Medically necessary services are not available in Washington state or designated bordering cities (see WAC ~~((388-501-0175))~~ 182-501-0175) and are more readily available in another state; or

(c) It is general practice for clients in a particular Washington state locality to use medically necessary resources in a bordering state.

(3) The ~~((department))~~ agency pays for covered non-emergency health care services ~~((furnished to))~~ for an eligible ~~((Washington state medical assistance client))~~ WAH recipient in another state or U.S. territory, unless the out-of-state provider ~~((is unwilling to))~~ will not accept the ~~((department's))~~ agency's payment as payment in full ~~((according to))~~ under 42 C.F.R. 447.15. The ~~((department))~~ agency does not pay when the provider refuses to accept the ~~((department's))~~ agency's payment as payment in full.

(4) The ~~((department))~~ agency does not pay for medically necessary, nonsymptomatic treatment (i.e., preventive care) furnished outside the state of Washington unless it is furnished in a designated bordering city, which is considered the same as an in-state city for the purposes of health care coverage (see WAC ~~((388-501-0175))~~ 182-501-0175). Covered nonemergency services requiring prior authorization, when provided in the state of Washington, also require prior authorization, when provided in a designated bordering city (see WAC ~~((388-501-0165))~~ 182-501-0165 for the ~~((department's))~~ agency's medical necessity determination process).

(5) See WAC ~~((388-501-0180))~~ 182-501-0180 for additional information regarding health care services provided outside the state of Washington.

(6) The ~~((department's health and recovery services administration's (HRSA) assistant secretary))~~ agency's director or designee reviews all exception to rule (ETR) requests.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0184 Health care services provided outside of the United States and U.S. territories or in a foreign country. For the purposes of this section, the term "health care services" does not include the diagnosis and treatment for alcohol ~~((and/or))~~, substance abuse, and mental health services.

(1) The provisions of WAC ~~((388-501-0182))~~ 182-501-0182 apply to this section.

(2) The ~~((department))~~ medicaid agency does not pay for health care services furnished in a foreign country, except for medical services furnished in the province of British Columbia, Canada, under ~~((the conditions specified in))~~ this section. The ~~((department))~~ agency pays for medical services furnished in British Columbia, Canada, to ~~((the following))~~ Washington ~~((state medical assistance))~~ apple health (WAH) clients only when those clients:

(a) ~~((Those who))~~ Reside in Point Roberts, Washington;

(b) ~~((Those who))~~ Reside in Washington communities along the border with British Columbia, Canada (see subsection (3) of this section for further clarification); ~~((and))~~ or

(c) Are members of the Canadian First Nations who live in Washington state.

(3) For ~~((those medical assistance))~~ WAH clients identified in subsection (2) of this section, the ~~((department))~~ agency covers emergency and nonemergency medical services provided in British Columbia, Canada, when the services are:

(a) Within the scope of the client's health care program as specified in chapter ~~((388-504))~~ 182-501 WAC;

(b) Allowed to be provided outside the United States and U.S. territories by specific program WAC; and

(c) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070.

(4) For ~~((those medical assistance))~~ WAH clients identified in subsection (2) of this section, the ~~((department))~~ agency covers nonemergency medical services in British Columbia, Canada, only when:

(a) It is general practice for ~~((Washington state medical assistance))~~ WAH clients ~~((residing in these particular localities))~~ to use medically necessary resources across the Canadian border; or

(b) The medical services in British Columbia, Canada, are closer or more readily accessible to the client's Washington state residence. As applied to nonemergency medical services, the phrase "closer or more readily accessible to the client's Washington state residence" means:

(i) There is not a United States provider for the ~~((same))~~ service within twenty-five miles of the client's Washington state residence; and

(ii) The closest Canadian provider of the service is closer than the closest U.S. provider of the service.

(5) The ~~((department))~~ agency does not cover services provided in British Columbia, Canada, under the Involuntary Treatment Act (chapter 71.05 RCW and chapter 388-865 WAC).

(6) ~~((When the department pays))~~ The agency's payment for covered medical services furnished to a ~~((Washington state medical assistance))~~ WAH client in British Columbia, Canada, ~~((its payment))~~ is payment in full according to 42 C.F.R. 447.15.

(7) A British Columbia, Canada, provider who furnished health care services ~~((and/or))~~ covered items to a ~~((medical assistance))~~ WAH client ~~((will))~~ receives payment from the ~~((department))~~ agency only when:

(a) ~~((Such))~~ The reimbursement is made to a financial institution or entity located within the United States in U.S. dollars; and

(b) The participating British Columbia, Canada, provider:

- (i) Has signed a core provider agreement with the ~~((department))~~ agency;
- (ii) Satisfies all medicaid conditions of participation;
- (iii) Meets functionally equivalent licensing requirements; and
- (iv) Complies with the same utilization control standards as in-state providers.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0200 Third-party resources. (1) The ~~((department))~~ medicaid agency requires a provider to seek timely reimbursement from a third party when a client has available third-party resources, except as described under subsections (2) and (3) of this section.

(2) The ~~((department))~~ agency pays for medical services and seeks reimbursement from ~~((the))~~ a liable third party when the claim is for any of the following:

- (a) Prenatal care;
- (b) Labor, delivery, and postpartum care (except inpatient hospital costs) for a pregnant woman; or
- (c) Preventive pediatric services as covered under the ~~((EPSDT))~~ early and periodic screening, diagnosis and treatment program.

(3) The ~~((department))~~ agency pays for medical services and seeks reimbursement from any liable third party when both of the following apply:

- (a) The provider submits to the ~~((department))~~ agency documentation of billing the third party and the provider has not received payment after thirty days from the date of services; and
- (b) The claim is for a covered service provided to a client on whose behalf the office of support enforcement is enforcing an absent parent to pay support. For the purpose of this section, "is enforcing" means the absent parent either:
 - (i) Is not complying with an existing court order; or
 - (ii) Received payment directly from the third party and did not pay for the medical services.

(4) The provider may not bill the ~~((department))~~ agency or the client for a covered service when a third party pays a provider the same amount as or more than the ~~((department))~~ agency rate.

(5) When the provider receives payment from ~~((the))~~ a third party after receiving reimbursement from the ~~((department))~~ agency, the provider must refund to the ~~((department))~~ agency the amount of the:

- (a) Third-party payment when the payment is less than the ~~((department's))~~ agency's maximum allowable rate; or
- (b) The ~~((department))~~ agency payment when the third-party payment is equal to or ~~((greater))~~ more than the ~~((department's))~~ agency's maximum allowable rate.

(6) The ~~((department is not responsible to))~~ agency does not pay for medical services ~~((when the))~~ if third-party benefits are available to pay for the client's medical services ~~((at the time))~~ when the provider bills the ~~((department))~~ agency, except ~~((as described))~~ under subsections (2) and (3) of this section.

(7) The client is liable for charges for covered medical services that would be paid by the third-party payment when the client either:

- (a) Receives direct third-party reimbursement for ~~((such))~~ the services; or
- (b) Fails to execute legal signatures on insurance forms, billing documents, or other forms necessary to receive insurance payments for services rendered. See WAC ~~((388-505-0540))~~ 182-503-0540 for assignment of rights.

(8) The ~~((department))~~ agency considers an adoptive family to be a third-party resource for the medical expenses of the birth mother and child only when there is a written contract between the adopting family and either the birth mother, the attorney, the provider, or the adoption service. The contract must specify that the adopting family will pay for the medical care associated with the pregnancy.

(9) A provider cannot refuse to furnish covered services to a client because of a third-party's potential liability for the services.

(10) For third-party liability on personal injury litigation claims, the ~~((department))~~ agency is responsible for providing medical services ~~((as described))~~ under WAC ~~((388-501-0100))~~ 182-501-0100.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0213 Case management services. (1) The ~~((department shall))~~ medicaid agency provides case management services to ~~((medical assistance))~~ Washington apple health recipients:

- (a) By contract with providers of case management services.
- (b) Limited to target groups of clients as determined by the contract.
- (c) Limited to services as determined by the contract.

(2) Case management services are services which will assist clients in gaining access to needed medical, social, educational, and other services.

WSR 15-12-019
PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed May 22, 2015, 9:44 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 136-167-040 Lapsing of RATA allocation for approved projects.

The county road administration board (CRAB) may in its discretion grant an additional extension for lapsing of RATA allocation for approved projects.

Hearing Location(s): CRAB Offices, 2404 Chandler Court S.W., Suite 280, Olympia, WA 98504-0913, on July 16, 2015, at 2:00 p.m.

Date of Intended Adoption: July 16, 2015.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, e-mail karen@crab.wa.gov, fax (360) 350-6094, by July 10, 2015.

Assistance for Persons with Disabilities: Contact Karen Pendleton by July 10, 2015, TTY (800) 833-6384 or (360) 753-5989.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: CRAB may in its discretion determine that for the public safety, health or general welfare, CRAB may grant an additional extension in some cases for rural arterial program projects if deemed necessary.

Statutory Authority for Adoption: Chapter 36.78 RCW.

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

Name of Proponent: CRAB, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Randy Hart, Thurston, (360) 753-5989; and Enforcement: Jay Weber, Thurston, (360) 753-5989.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

May 20, 2015
Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

WAC 136-167-040 Lapsing of RATA allocation for approved projects. To encourage timely development and construction of approved projects, all projects for which RATA funds have been allocated must meet certain project development milestones. Failure to meet the milestones will result in action by the county road administration board to withdraw RATA funds from the project.

(1) For the purposes of this section, a project will be subject to lapsing and withdrawal of its RATA allocation if:

(a) The project has not begun the preliminary engineering within one year of project approval by the county road administration board; or

(b) The project has not begun construction within six years of the date of project approval by the county road administration board.

(2) A project shall be considered in preliminary engineering if RATA funds have been expended or evidence that non-RATA funds have been expended for preliminary engineering as provided for in RCW 36.75.050. A project shall be considered in construction if:

(a) The construction contract for the work has been advertised for bids as provided for in RCW 36.77.020;

(b) A contract has been awarded under the provisions of the small works roster contract award process; or

(c) If done by county forces, the work has commenced.

(3) If an approved project does not meet a required project development milestone, the county road administration board will, at its next regular meeting, withdraw RATA funds from the project.

(4) At any time up to ten days before such meeting, the county may, in writing, request an extension of the lapse date. The county road administration board may grant such an extension if it finds that the delay in project development was for reasons that were both unanticipated and beyond the control of the county, and subject to the following:

(a) A project extension will be granted one time only and will be no more than two years in length; and

(b) The county can demonstrate that the project was actively pursued for completion within the original CRAB/county contract terms and can be completed within a two year extension; and

(c) The request for an extension is based on unforeseeable circumstances that the county could not have anticipated at the time the project was submitted for RATA funding; and

(d) An approved time extension will not be grounds for the county to request an increase in the RATA funding of the project; and

(e) The executive director will determine a new lapse date, and all of the requirements listed above under subsections (1) and (2) of this section will apply except that further extensions will not be granted.

(5) The CRABoard may in its discretion determine that for the public safety, health or general welfare, an additional extension is necessary. If such a determination is made, the CRABoard may grant an additional extension and set the duration thereof.

(6) The CRABoard may at any time place a moratorium on lapsing of projects that are delayed due to CRAB initiated rescheduling and establish a new lapsing date to fit the CRABoard's programming needs. For those projects given a lapsing moratorium, section four shall be held in abeyance until the new lapsing date.

WSR 15-12-022
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed May 22, 2015, 1:40 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-918-990 Physician assistants fee and renewal cycle, the department is proposing amendments to add retired active renewal and late renewal penalties for physician assistants. The department also proposes addition of a late renewal penalty for the active license renewal, and clarification of when the HEAL-WA and/or Washington physician health program surcharges are required.

Hearing Location(s): Washington State Department of Health, Point Plaza East, 310 Israel Road, Room 152, Tumwater, WA 98501, on July 29, 2015, at 9:15 a.m.

Date of Intended Adoption: August 5, 2015.

Submit Written Comments to: Sherry Thomas, P.O. Box 47850, Olympia, WA 98504-7850, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by July 29, 2015.

Assistance for Persons with Disabilities: Contact Sherry Thomas by July 22, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amends existing fee rules to establish renewal and late penalties for a retired active license category for physician assistants. It also adds a late penalty for the active renewal, which is consistent with other health profession credentials. The medical quality assurance commission has adopted rules for obtaining and renewing a retired active license for this profession. RCW 18.130.250 directs the secretary of health to adopt fees for this credential. RCW 43.70.280(1) requires uniform application of late renewal penalties for health professions.

Reasons Supporting Proposal: RCW 43.70.250 requires the department to charge sufficient fees to cover the costs of administering each profession. The proposed fees meet this requirement by enacting sufficient fees to cover the new retired active license status. Addition of the active renewal late penalty makes this profession's fees consistent with other health professions. The proposed fees have been determined through fee analysis to support the costs of the new credential status.

Statutory Authority for Adoption: RCW 18.130.250, 43.70.250, 18.130.186, 43.70.280.

Statute Being Implemented: RCW 18.130.250, 43.70.-250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sherry Thomas, 111 Israel Road S.E., Tumwater, WA 98504, (360) 236-4612; and Enforcement: Daidria Pittman, 111 Israel Road S.E., Tumwater, WA 98504, (360) 236-2727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

May 22, 2015

Dennis E. Worsham
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

WAC 246-918-990 Physician assistants fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The applicant or licensee must pay the following nonrefundable fees:

Title of Fee	Fee
Physician assistants:	
Application (annual)*	\$116.00
<u>Active license renewal</u>	
Two-year renewal*	202.00
<u>Late renewal fee</u>	<u>50.00</u>
Expired license reissuance	50.00
<u>Retired active license renewal</u>	
<u>Two-year renewal**</u>	<u>135.00</u>
<u>Late renewal fee</u>	<u>35.00</u>
Duplicate license	15.00

* ((The application or renewal fee)) Includes the Washington physician health program surcharge (RCW 18.71A.020(3)) assessed at \$50.00 per year, and the University of Washington (UW) HEAL-WA web portal access fee (RCW 43.70.110) assessed at \$16.00 per year.

** Includes the Washington physician health program surcharge assessed at \$50.00 per year.

WSR 15-12-024

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed May 26, 2015, 10:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-07-027.

Title of Rule and Other Identifying Information: WAC 308-66-152 Unlawful practices; adding new language regarding motor vehicle rebate advertising to subsection (4).

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard S.W., Building #2, Conference Room #2105, Olympia, WA 98502 (check in at front counter), on July 9, 2015, at 10 a.m.-noon.

Date of Intended Adoption: July 10, 2015.

Submit Written Comments to: Heidi Graham, P.O. Box 9039, Olympia, WA 98507-9039, e-mail hgraham@dol.wa.gov, fax (360) 586-6703, by July 8, 2015.

Assistance for Persons with Disabilities: Contact Heidi Graham by July 8, 2015, TTY (360) 664-0116 or (360) 664-6455.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Add new subsections to WAC 308-66-152 specifying further examples of unlawful statements or representations within the meaning of RCW 46.70.180(1) and clarifies how rebates must be advertised.

Reasons Supporting Proposal: Statute lacks language specific to rebate advertising. Industry stakeholders have requested this language.

Statutory Authority for Adoption: RCW 19.86.020 and 46.70.160.

Statute Being Implemented: RCW 46.70.180.

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

Name of Proponent: Department of licensing, business and professions division, dealer and manufacturer services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lewis Dennie, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-6451.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the rule will not impose any additional costs on the affected businesses under the provisions of RCW 19.85.030 (1)(a).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

May 26, 2015
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-16-090, filed 8/3/04, effective 9/3/04)

WAC 308-66-152 Unlawful practices. (1) Examples of unlawful acts or practices, as defined by RCW 46.70.180 (1)(a), include, but are not limited to representations such as "no down payment," "a dollar down," "five dollars down," "take-over payments," "no cash out of your pocket," "no cash needed," and others of similar nature if either secondary financing or initial payment of any amount, including factory rebates in excess of that represented, is required from the purchaser. A dealer's plan to have all or a portion of the lease or selling price financed by a third party does not relieve the dealer of an obligation to refrain from this prohibited type of advertising. When any of these representations are made a payment disclosure shall be made as contained in subsection (6) of this section.

(2) Examples of unlawful acts or practices as defined by RCW 46.70.180 (1)(b), include, but are not limited to representations such as "one hundred percent financing" if the terms of the purchase or lease involve more than one security agreement and payments to more than one financing institution. When collateral in addition to the vehicle is required, it must be listed on the security agreement containing the vehicle's description, not on a separate agreement.

(3) It shall be considered false, deceptive or misleading, and thereby unlawful, to advertise with words, phrases, or initials which are not clear and conspicuous and easily comprehended by persons other than those closely allied with the vehicle industry.

(a) Clear and conspicuous within an advertisement shall mean:

(i) In the case of a television advertisement, the information required to be disclosed shall be completely disclosed audibly, visually, or a combination thereof.

(A) If made visually, shall be made in a type size sufficiently large to be read with reasonable ease; shall appear on the television screen for at least seven seconds; shall be in print type of a color or shade that contrasts readily with the

background; shall not be obscured by other words or images appearing on the television screen; and

(B) If made audibly, shall be spoken with sufficient deliberateness, clarity, and volume so as to be understood by the average television listener; shall not be obscured by sounds which interfere with or distract from the disclosures being made.

(ii) In the case of a radio advertisement, the information required to be disclosed shall be spoken with sufficient deliberateness, clarity, and volume so as to be understood by the average radio listener; shall not be obscured by sounds which interfere with or distract from the disclosures being made.

(iii) In the case of a printed advertisement, the information required to be disclosed shall be made in a type size which shall be sufficiently large to be read with reasonable ease and shall be made in relatively close proximity to each of the terms which require that the disclosures be made; disclosures shall be made in such color and contrast so as not to be obscured by other words or pictures appearing in the advertisement.

(b) Examples of words, phrases, or initials which are not easily comprehended by persons other than those closely allied with the vehicle industry, and that may not be used without explaining their meaning in the same advertisement, include but are not limited to: Executive; capitalized cost reduction, o.a.c., c.f., f.o.b. The words annual percentage rate may be abbreviated to read A.P.R. or apr.

(4) Examples of false, deceptive or misleading, and thereby unlawful statements or representations within the meaning of RCW 46.70.180(1) include, but are not limited to:

(a) Advertising a used vehicle for sale that is not available at the time the advertisement is placed;

(b) Advertising a new vehicle as available for immediate delivery if it is available only on order;

(c) Advertising any offer in connection with the sale of a vehicle or model or type of vehicle without disclosing any material limitations, including, but not limited to, the time limit, or that there is no time limit on the offer;

(d) Advertising using a picture:

(i) Of a new vehicle which does not substantially show the same vehicle offered for sale; or

(ii) Of a used vehicle which is not the same vehicle offered for sale;

(e) Causing an advertisement to be placed by a dealer or dealer representative that does not identify the dealer by its complete business name, or by the word "dealer" or abbreviation "DLR";

(f) Incorporating in the dealer's name any term or designation which would have a tendency to mislead others as to the true nature of the business, such as the use of "wholesale," when a dealer's business is substantially retail, or "discount" when the price and policy of a dealer does not provide substantial discounts;

(g) Advertising a vehicle manufactured fewer than two years prior to the date of the advertisement without designating the vehicle as "used," "demo," or "demonstrator." For purposes of adequate disclosure, the appropriate quoted term must be employed. Other descriptive words, such as "executive," "lease," or "rental" may be used in conjunction there-

with, but not so as to create ambiguity as to whether the vehicle is new, used, or a demonstrator.

(h) Advertising a "rebuilt vehicle" for sale with knowledge as defined in RCW 46.70.101 (1)(b)(xi) that the vehicle is rebuilt, without clearly and conspicuously disclosing "rebuilt" in the advertisement;

(i) Advertising a specific price for a specific vehicle or model or type of vehicle without designating the number of vehicles available at that price, and;

(i) Without clearly identifying the vehicles available by complete vehicle identification number, license plate number; or

(ii) Without clearly and conspicuously stating in the advertisement that such vehicle identification or license plate number for each advertised vehicle is available from the dealer upon request, and requiring that the dealer using this method of identifying vehicles keep the media advertising copy along with the vehicle identification number or license plate number of each advertised vehicle offered for a specific price. Such records shall be retained for one year following the advertisement. Dealers shall also date and post a written copy of the advertisement text and list of vehicle identification numbers or license plate numbers in a conspicuous public area at their place of business for the duration of the vehicle's availability at the advertised price: Provided, however, That a dealer need not designate the number of vehicles available or identify the vehicles available or state in the advertisement that the identification of advertised vehicles is available upon request if, in fact, an unlimited supply of such vehicles are available for immediate delivery;

(j) Selling a particular vehicle at a higher price than advertised, regardless of trade-in allowance;

(k) Adding charges, costs, or items to the advertised price, except those allowed by statute, other than the selling price of additional equipment ordered by the purchaser, sales tax, and license fees. "Additional equipment ordered by the purchaser" shall not include options already installed on the vehicle at the time of advertising;

(l) Expressing "advertised price" as a combination of:

(i) Dollar figures and words unless all component figures and the total dollar figure is expressed; or

(ii) Dollar figures and dollar figures unless all component figures and the total dollar figure is expressed;

(m) Advertising that a new vehicle or model or type of vehicle will be leased or sold for a certain amount above or below invoice or cost without:

(i) Disclosing the actual dollar amount being referred to as "invoice";

(ii) Stating the final, total price for each vehicle, which may exclude sales taxes and license fees; and

(iii) Computing invoice as the actual cost to the dealer to get each vehicle from the manufacturer.

In computing "invoice" the dealer may include the actual cost of transportation of the vehicle from the manufacturer to the dealer, but must exclude dealer holdbacks, other manufacturer incentives, optional advertising fees, dealer overhead expenses, and other similar expenses;

(n) Advertising that a new or used vehicle is reduced in price from a former price, or that the advertised price is a percentage of dollar amount savings from a former price, or

words to that effect, unless the seller actually recently advertised or has records showing that vehicle has been offered for sale at the former price;

(o) Advertising or offering:

(i) Any rebate that is not ~~((an authorized manufacturer's rebate paid directly))~~ payable to the consumer, which the consumer may apply to the purchase; ~~((and))~~

(ii) Any ~~((manufacturer's))~~ rebate ~~((for which the manufacturer))~~ that requires any financial participation by the dealer, without also clearly and conspicuously stating the following disclosure: "Dealer participation in this rebate program may increase vehicle price before rebate";

(iii) Any rebate without clearly and conspicuously stating the specific vehicle(s) or model(s) to which the rebate applies and all material limitations on and conditions of the rebate;

(iv) Multiple rebates that are applicable to the same vehicle(s) or model(s) but are not available in combination in any manner that implies that the rebates are available in combination, such as by adding them together;

(v) Any rebate other than a rebate offered by the dealer's franchise manufacturer or a financial institution that is affiliated by ownership or agreement with the dealer's franchise manufacturer;

(vi) A sum total of multiple rebates or a vehicle price that incorporates any rebate, unless each incorporated rebate meets the following requirements:

(A) For a rebate offered by a dealer's franchise manufacturer, more than fifty percent of individuals who acquired vehicles in the state of Washington from the manufacturer's franchise dealers in the preceding twelve months would have qualified for the rebate; and

(B) For a rebate offered by a financial institution that is affiliated by ownership or agreement with the dealer's manufacturer, more than fifty percent of individuals in the state of Washington who applied in the preceding twelve months to the financial institution for financing for the acquisition of a vehicle produced by the franchise manufacturer would have qualified for the rebate.

(p) Advertising that "any written price quote will be beaten," "any deal will be accepted," or that a dollar amount is guaranteed on any "push, pull or drag," trade-in, or words to that effect unless the dealer can clearly show through the records of the dealership that such is the case;

(q) Advertising a vehicle or model or type of vehicle as being available at "lowest cost," "best deal" or other words to that effect unless the dealer can clearly show through the records of the dealership that such is the case;

(r) Advertising an interest rate that is adjustable without clearly and conspicuously disclosing that the interest rate is adjustable;

(s) Advertising a vehicle or model or type of vehicle for sale at a financing rate which has been bought down by the dealer, without disclosing the actual annual percentage rate.

(5) No advertisement to aid, promote, or assist directly or indirectly any extension of credit may state:

(a) That a specific amount of credit or installment amount can be arranged unless the creditor usually and customarily arranges or will arrange credit amounts or installments for that period and in that amount; or

(b) That no down payment or that a specified down payment will be accepted in connection with any extension of credit unless the creditor usually and customarily accepts or will accept down payment in that amount.

(6) No advertisement to aid, promote, or assist directly or indirectly any credit sale of a vehicle shall state the amount or percentage of the down payment required, or that no down payment is required, the amount of any payment or the number of payments or the period of repayment, the amount of any finance charge or that there is no charge for credit, unless it states clearly and conspicuously all of the following terms:

(a) The cash price or the amount of the loan as applicable;

(b) The amount or percentage of the down payment required, or that no down payment is required, as applicable;

(c) The number, amount, and frequency of payments scheduled to repay the indebtedness if the credit is extended;

(d) The amount of the finance charge expressed as an annual percentage rate;

(e) The deferred payment price or the sum of the payments as applicable;

(f) The specific model or type of vehicle(s) to which the advertised offer applies; and

(g) Any other conditions material to the advertised offer.

(7) Any advertisement to aid, promote, or assist directly or indirectly a consumer lease must state clearly that the advertisement offers a lease rather than a vehicle sale.

(8) No advertisement to aid, promote, or assist directly or indirectly any consumer lease of a vehicle shall state the amount of any monthly payment, or state a capitalized cost reduction or other payment required prior to or at consummation/delivery, unless it also states the following terms:

(a) That the transaction advertised is a lease;

(b) The total amount due prior to or at consummation/delivery;

(c) The number, amount, and due dates or period of scheduled payments under the lease;

(d) A statement of whether or not a security deposit is required; and

(e) A disclosure of the lessee's liability at the end of an open-end lease.

WSR 15-12-042

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed May 27, 2015, 2:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-048.

Title of Rule and Other Identifying Information: New chapter 365-191 WAC, Voluntary stewardship program approval procedures.

Hearing Location(s): Washington State Department of Commerce, 1011 Plum Street S.E., Building 5, Columbia River Room 110, Olympia, WA, on July 8, 2015, at 2:00 p.m.

Date of Intended Adoption: August 4, 2015.

Submit Written Comments to: Scott Kuhta, Growth Management Services, Washington State Department of

Commerce, P.O. Box 42525, Olympia, WA 98504-2525, e-mail wacupdate@commerce.wa.gov, fax (360) 586-8440, by July 8, 2015, at 5 p.m.

Assistance for Persons with Disabilities: Contact Scott Kuhta by July 7, 2015, TTY (360) 586-0772 or (509) 795-6884.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To draft a new WAC chapter to implement commerce's role in the voluntary stewardship program, as directed by RCW 36.70A.735(3).

The rule (chapter 365-191 WAC) provides the framework for local government to submit development regulations protecting critical areas in areas use[d] for agriculture for commerce certification. It also provides a framework for local governments to submit a watershed work plan to commerce for approval.

Reasons Supporting Proposal: To adopt rules as required by the voluntary stewardship program, RCW 36.70A.735.

Statutory Authority for Adoption: RCW 36.70A.190 and 36.70A.735.

Statute Being Implemented: Chapter 36.70A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Scott Kuhta, 10 North Post Street, Suite 445, Spokane, WA 99201, (509) 795-6884; Implementation: Jeff Wilson, P.O. Box 42525, Olympia, WA 98504-2525, (360) 725-3055; and Enforcement: No enforcement authority.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposed changes reflect direct statutory requirements that impose no direct obligations. Chapter 365-191 WAC establishes an alternative process for counties to meet their obligations under chapter 36.70A RCW to protect critical areas and to protect and enhance the viability of agriculture. County's [Counties] have a range of options to address the protection of critical areas. Counties may consider these rules, but they are not binding unless they choose to be subject to them. In choosing how to implement development regulations or watershed work plans that protect critical areas in areas used for agriculture, counties may revise their development regulations and voluntarily request certification or approval by the department of commerce. The rules only apply if counties voluntarily seek commerce's approval or certification. If counties do not follow the rules, they are not subject to any penalty or sanction nor do the rules establish standards for the issuance of a license.

Thus, it can be determined that the rules do not impose more than minor costs on businesses in an industry, and a small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The department of commerce is not listed as one of the agencies to which this section applies and does not wish to make this section voluntarily applicable to the rule per subsection (5)(a)(ii). Therefore, unless subsection (5)(a)(ii) is invoked by the joint administrative rules review committee after the filing of the CR-102, no-cost benefit analysis needs to be prepared for this rule.

May 27, 2015
 Nick Demerice
 Assistant Director
 External Relations

Chapter 365-191 WAC
VOLUNTARY STEWARDSHIP PROGRAM
APPROVAL PROCEDURES

PART ONE
GENERAL CONSIDERATION

NEW SECTION

WAC 365-191-010 Purpose and authority. (1) Chapter 360, Laws of 2011 establishes the voluntary stewardship program as an alternative approach for counties to protect critical areas on agricultural lands. The voluntary stewardship program is not limited to designated agricultural lands of long-term commercial significance. The program is administered by the conservation commission.

(2) A county that chooses to participate in the program is required to develop work plans to protect critical areas while maintaining the viability of agriculture through voluntary, incentive-based measures.

(3) If a watershed is subject to RCW 36.70A.735(2) then a county is given eighteen months to take one of four actions.

(4) The purpose of this chapter is to adopt rules to implement procedures for two of those four options: Department approval of a watershed work plan under RCW 36.70A.735 (1)(a); and department certification of development regulations under RCW 36.70A.735 (1)(c).

(5) This chapter is established pursuant to RCW 36.70A.735(3).

NEW SECTION

WAC 365-191-020 Definitions of terms as used in this chapter. (1) "Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.

(2) "Commission" means the state conservation commission as defined in RCW 89.08.030.

(3) "Department" means the department of commerce.

(4) "Director" means the executive director of the state conservation commission.

(5) "Enhance" or "enhancement" means to improve the processes, structure, and functions existing, as of July 22, 2011, of ecosystems and habitats associated with critical areas.

(6) "Protect" or "protecting" means to prevent the degradation of functions and values existing as of July 22, 2011.

PART TWO
WATERSHED WORK PLAN SUBMITTAL

NEW SECTION

WAC 365-191-200 County duties if a work plan is not approved, fails, or is unfunded. If a watershed work plan falls under RCW 36.70A.735(2), and the county chooses

to develop, adopt, and implement a watershed work plan as described in RCW 36.70A.735 (1)(a), then the county will fall under one of these scenarios:

(1) Work plan not approved by commission: This section applies if the director did not approve a work plan submitted by the county.

(2) Work plan goals and benchmarks have not been met: This section applies if, within five years after receipt of funding, the watershed group finds that goals and benchmarks have not been met, and the director does not approve an adaptive management plan submitted by the county to meet the goals and benchmarks.

(3) Adequate funding not received by county or state agencies with responsibilities: The commission has determined under RCW 36.70A.740 that the county, department, commission, or departments of agriculture, ecology, or fish and wildlife have not received adequate funding to implement a program in the watershed; or

(4) Adequate funding not received by the watershed: The commission has determined under RCW 36.70A.740 that the watershed has not received adequate funding to implement the program.

NEW SECTION

WAC 365-191-210 County submittal requirements.

(1) If a work plan is not approved by the director, then the county must submit the following information to the department:

(a) The work plan and any supporting documentation submitted to the commission;

(b) The revised work plan and a description of how the county has addressed any deficiencies or issues cited by the commission;

(c) Evidence of adequate public notice;

(d) Copies of all public, agency and tribal comments received, including a record of names and addresses of interested parties involved in the local government review process;

(e) Adopted resolutions of the county legislative body, if any; and

(f) Meeting minutes and public testimony for those meetings.

(2) Work plan goals and benchmarks not met:

(a) The approved work plan, including the goals and benchmarks;

(b) The adaptive management plan and any supporting documents submitted to the commission;

(c) A revised work plan, adaptive management plan, and a description of how the county has addressed any deficiencies or issues cited by the commission;

(d) Evidence of adequate public notice;

(e) Copies of all public, agency and tribal comments received, including a record of names and addresses of interested parties involved in the local government review process;

(f) Adopted resolutions of the county legislative body, if any; and

(g) Meeting minutes and public testimony for those meetings.

(3) Adequate funding not received by county or state agencies with responsibilities:

(a) The approved work plan and any supporting documentation submitted to the commission; and

(b) Determination by the commission that county or state agencies with responsibilities have not received adequate funding.

(4) The commission has determined that the watershed has not received adequate funding to implement the plan:

(a) The approved work plan and any other supporting documentation submitted to the commission; and

(b) Determination from the commission that adequate funding for the watershed is not available.

NEW SECTION

WAC 365-191-220 Process and criteria for department to review a county's watershed work plan. (1) A county choosing to develop, adopt, and implement a watershed work plan under RCW 36.70A.735 (1)(a) shall notify the department not less than one hundred twenty days prior to its submittal of their intent and which of the four scenarios under RCW 36.70A.735(2) it falls under.

(2) Prior to submitting the information as specified in WAC 365-191-210 to the department, the county shall conduct a public process consistent with locally adopted procedures.

(3) The department shall provide notice of the county submittal as follows:

- (a) *Washington State Register*;
- (b) Agency e-mail distribution list;
- (c) Agency web site; and
- (d) Commission.

(4) The department shall consult with the departments of agriculture, ecology, and fish and wildlife, the commission, and other relevant state agencies before approving or disapproving the proposed work plan. Thirty days will be provided to these agencies for review and comment.

(5) The department shall notify the county and parties providing written comment of its decision.

(6) The department's decision document shall include written findings and conclusions and shall specify the date in which the sixty-day appeal period commences.

(7) Criteria for review:

(a) Whether the watershed work plan is consistent with the elements of RCW 36.70A.720(1);

(b) Whether the submittal will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed; and

(c) Whether the consulted state agencies believe the submittal will address (a) and (b) of this subsection.

NEW SECTION

WAC 365-191-230 Appeals. (1) The department's decision is subject to appeal under RCW 36.70A.280 to the growth management hearings board.

(2) The sixty-day appeal of a petition for review of the department's decision must be filed with the growth management hearings board within sixty days of publication in the *Washington State Register*.

(3) Only those parties with standing under RCW 36.70A.280(2) may appeal the department's decision.

PART THREE DEVELOPMENT REGULATION SUBMITTAL

NEW SECTION

WAC 365-191-300 Local process to review and if necessary revise development regulations to be certified by the department as protective of critical areas in areas used for agricultural activities. (1) A county choosing to adopt development regulations under RCW 36.70A.735 (1)(c) must notify the department in writing of its intent to submit existing or amended regulations for certification prior to initiating the regulation adoption process. Early notice is encouraged and will allow for consultation with the department and other agencies. Reviewing agencies shall coordinate between each other and with counties to ensure a common understanding of issues and options to address concerns.

(2) Prior to submitting development regulations to the department for certification, a county must conduct a public process consistent with locally adopted procedures.

(3) A county may submit draft regulations to the department for precertification. Precertification means submittal of draft regulations to the department for review and a nonbinding determination whether the draft regulations could be certified or, if not, what changes would be necessary. The department will review the draft regulations and provide a written opinion whether the regulations meet the criteria specified in WAC 365-191-330.

(a) Precertification is offered to identify significant issues prior to submittal to the department for formal certification.

(b) Prior to making its precertification determination, the department must consult reviewing state agencies, including the departments of agriculture, ecology, fish and wildlife, and the commission, as specified in RCW 36.70A.735 (1)(c).

(c) Precertification does not guarantee the outcome of the final department certification decision.

NEW SECTION

WAC 365-191-310 Submittal of proposed regulations to the department for certification. (1) The department will provide a checklist of materials that must be included with the submittal of proposed regulations for certification. The checklist will not create new or additional requirements beyond the provisions of this chapter. At a minimum, the submittal must include the entire public record of the county development regulation adoption process, including:

- (a) Proposed regulations;
- (b) Evidence of adequate public notice;
- (c) Evidence of compliance with chapter 43.21C RCW, (SEPA);
- (d) Copies of all public written comments received, including a record of names and addresses of interested parties involved in the local government review process;
- (e) Planning commission findings and recommendations;

(f) Adopted resolutions, if any, of the county legislative body; and

(g) Meeting minutes and public testimony.

(2) Counties are encouraged to forward proposed regulations that have been reviewed and recommended by the planning commission, with subsequent review by the county legislative body. The county legislative body should review the planning commission recommendation and, by a vote of the county legislative body, must forward proposed regulations to the department for certification. A county should not forward regulations that have been formally adopted.

(3) The department will review the submittal and make a determination of completeness. The county will be notified in writing of incomplete submittals, with direction from the department concerning missing or inadequate materials. Once the department issues a determination of completeness, it has ninety days to either approve or deny certification.

NEW SECTION

WAC 365-191-320 Department process for certification of development regulations. (1) After making a determination of completeness, the department will notify reviewing agencies listed in WAC 365-191-300 (3)(b) of the county's submittal and the time frame for their formal review and comment.

(2) Reviewing agencies shall have thirty days to review and comment on the proposed regulations.

(3) The department shall provide notice of the county's request for certification as follows:

- (a) *Washington State Register*;
- (b) The department e-mail distribution list;
- (c) The department web site;
- (d) Local conservation districts.

(4) The department must notify the county and parties providing written comment of its certification decision.

(5) The department's certification decision document must include written findings and conclusions and the date in which the sixty-day appeal period commences.

(6) For compliance with RCW 36.70A.735 (1)(c), a county is encouraged to promptly adopt regulations certified by the department by ordinance, without substantial changes.

NEW SECTION

WAC 365-191-330 Review criteria. (1) The scope of the department's review shall be limited to a review of existing or proposed development regulations submitted for certification and whether the regulations address the protection of critical areas in areas used for agricultural activities.

(2) Counties may consider Clallam, Clark, King, or Whatcom county's critical area regulation, in effect on July 1, 2011, as example regulations that protect critical areas in areas used for agricultural activities. Counties may also consider development regulations of another local government as long as those regulations have been upheld by a growth management hearings board or court after July 1, 2011.

(3) Regulations shall support the continuation of existing and ongoing agricultural operations.

NEW SECTION

WAC 365-191-340 Procedures for amending development regulations after department certification. After initial certification under WAC 365-191-050, the department has no authority to certify future amendments proposed by counties.

NEW SECTION

WAC 365-191-350 Appeals. (1) The department's decision is subject to appeal under RCW 36.70A.280 to the growth management hearings board.

(2) The sixty-day appeal period shall commence upon the date the department's decision is published in the *Washington State Register*.

(3) Only those parties with standing under RCW 36.70A.280(2) may appeal the department's certification decision.

WSR 15-12-043

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed May 27, 2015, 2:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-17-005.

Title of Rule and Other Identifying Information: Chapter 365-199 WAC, Procedures for making a determination of compliance for jurisdictions seeking voluntary reversion to partial planning status.

Hearing Location(s): 6th Floor Conference Room, 10 North Post Street, Spokane, WA 99201, on July 23, 2015, at 10:30.

Date of Intended Adoption: August 23, 2015.

Submit Written Comments to: Dave Andersen, 10 North Post Street, Suite #445, Spokane, WA 99201, e-mail dave.andersen@commerce.wa.gov, by July 23, 2015.

Assistance for Persons with Disabilities: Contact Dave Andersen, by July 10, 2015, TTY (360) 586-0772.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide new procedural guidelines to reflect statutory changes adopted in 2014 that would allow eligible counties and cities within, to revert to partially planning obligations under the Growth Management Act (GMA), rather than fully planning requirements of the GMA.

Statutory Authority for Adoption: RCW 36.70A.060 [(1)](d).

Statute Being Implemented: RCW 36.70A.060 [(1)](d).

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dave Andersen, 10 North Post Street, Suite #445, Spokane, WA 99201, (509) 434-4491.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is procedural in

nature and does not adopt any substantive standards. Procedures are only applicable to actions of local governments and do not affect standards or procedures that must be followed by either school districts or small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The rule is procedural in nature and does not adopt any substantive standards. Procedures are only applicable to actions of local governments and do not affect standards or procedures that must be followed by either school districts or small businesses.

May 27, 2015
Nick Demerice
Assistant Director

Chapter 365-199 WAC

PROCEDURES FOR MAKING A DETERMINATION OF COMPLIANCE FOR JURISDICTIONS SEEKING VOLUNTARY REVERSION TO PARTIAL PLAN-NING STATUS

NEW SECTION

WAC 365-199-010 Purpose and authority. (1) The purpose of this chapter is to outline the procedures the department shall use when making a determination of compliance under RCW 36.70A.060 (1)(d).

(2) These rules are adopted under the authority of RCW 36.70A.060 (1)(d)(v).

NEW SECTION

WAC 365-199-020 Definitions. "Department" means department of commerce.

NEW SECTION

WAC 365-199-030 Review and application process.

(1) A county that is not in compliance with RCW 36.70A.-060, 36.70A.040(4), 36.70A.070(5), 36.70A.170, and 36.70A.172 at the time it adopts a resolution for voluntary reversion, under RCW 36.70A.060 (1)(d) must apply to the department for a determination of compliance.

(2) Notice of intent to apply for a determination of compliance.

(a) Not less than one hundred twenty days prior to applying for a determination of compliance, the county must notify the department in writing that it intends to apply for a determination of compliance. Prior notification allows the department to review proposed actions prior to final adoption and advise the county of the actions necessary to achieve compliance.

(b) The notice of intent to apply for a determination of compliance must include:

(i) A statement of all of the issues in which the county is not in compliance with the requirements of the Growth Management Act.

(ii) If applicable, a list of final orders, including number in which the growth management hearings board found the

county not in compliance with the requirements of the Growth Management Act.

(iii) A proposed schedule identifying the actions the county needed to complete to come into compliance. The actions needed to come into compliance must include at a minimum, one hearing and opportunity for public comment on a statement of the issues on which the county is out of compliance, and one hearing and opportunity to comment on the changes proposed to bring the county into compliance.

(iv) Identification of the date which the county intends to apply for a determination of compliance.

(c) The department will consult with state agencies with expertise that would be helpful in making its determination of compliance.

(d) Public notice of intent to apply for determination of compliance.

(i) The department will publish notice in the *Washington State Register* that a county has notified the department of its intent to request certification.

(ii) The department will post a copy of the notice of intent to apply for a determination of compliance on the department web site.

(iii) The department will notify state agencies with expertise that a county has notified the department of its intent to apply for a determination of compliance.

(iv) The department will notify the parties of record in the case or cases before the growth management hearings board that resulted in the finding of noncompliance for which the county is seeking a determination of compliance.

(3) Procedures for an application of determination of compliance.

(a) After taking the legislative action necessary to address the outstanding noncompliance issues, the county may apply to the department for a determination of compliance. A county must submit its application to the department by January 30, 2017.

(b) An application for a determination of compliance must include, at a minimum, the following items:

(i) A cover letter from the board of county commissioners requesting a determination of compliance;

(ii) A copy of the adopted ordinance or resolution taking the legislative action or actions required to comply with RCW 36.70A.040(4), 36.70A.070(5), 36.70A.170, and 36.70A.172;

(iii) A statement of actions the county has taken to address the growth management hearings board's final order or orders; and how the actions taken are sufficient to address the remaining noncompliance orders; and

(iv) A copy of the record developed by the county during the process of coming into compliance. The record of adoption must include copies of any public testimony submitted at the hearings required by (b)(iii) of this subsection.

(4) Compliance determination procedures.

(a) The department must make a compliance determination to either approve or deny the application within one hundred twenty days, or by June 30, 2017, whichever date is earlier.

(b) The department will issue its decision in the form of a written statement, including findings of facts and conclusions, and noting the date of the issuance of its decision.

(c) The department will publish its decision on the application for determination of compliance as follows:

- (i) Notify the county in writing of its determination;
- (ii) Publish a notice of action in the *Washington State Register*;
- (iii) Post a notice of its decision on the agency web site;
- (iv) Notify state agencies with expertise with which department consulted regarding the determination of compliance;
- (v) Notify parties of record in the case or cases before the growth management hearings board that resulted in the finding of noncompliance for which the county is seeking a determination of compliance.

(5) If the department denies an application for a determination of compliance, the county and each city within is obligated to comply with all requirements of this chapter and the resolution for partial planning adopted under RCW 36.70A.-040 (2)(b) is no longer in effect.

NEW SECTION

WAC 365-199-040 Evaluation criteria. Criteria for evaluation of applications.

(1) The determination of compliance requires a finding that the county's comprehensive and development regulations, including critical areas regulations, are in compliance with the requirements of RCW 36.70A.040(4), 36.70A.060, 36.70A.070(5), 36.70A.170, and 36.70A.172.

(2) The scope of the department's review is limited to outstanding findings of noncompliance established in an order from the growth management hearings board. Issues or provisions of the ordinance that were found in compliance by the growth management hearings board, or were not timely challenged at the time of adoption, are not subject to review by the department.

(3) The department must base its decision on the record developed by the county during the process of coming into compliance.

NEW SECTION

WAC 365-199-050 Sharing of appeal costs. (1) If the department approves an application for determination of compliance, the department and the county must equally share the costs incurred by the department for defending an approval of determination of compliance that is before the growth management hearings board.

(2) If the department denies an application for determination of noncompliance, the county is not required to share in the cost of defending the agency action.

Title of Rule and Other Identifying Information: WAC 16-301-235 Phytosanitary field inspection requirements for beans and 16-301-365 through 16-301-440, bean seed quarantine.

Hearing Location(s): Department of Agriculture, Conference Room 238, 21 North First Avenue, Yakima, WA 98902, on July 7, 2015, at 11:00 a.m.

Date of Intended Adoption: July 21, 2015.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2043, by 5:00 p.m., July 7, 2015.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY 1-800-833-6388 or 711 no later than June 23, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2014, halo blight was identified in a seed crop in Washington state. In order to curtail the presence of halo blight in Washington state, the department is proposing to modify the bean seed quarantine under chapter 16-301 WAC either to require two field inspections for fields not under sprinkler irrigation and to add a third inspection for fields under sprinkler irrigation or require a laboratory pathology test of seed for halo blight prior to planting. The proposal also requires a fourth inspection for plantings in a trial ground.

Reasons Supporting Proposal: Current quarantine requirements are not providing enough safeguards to prevent introduction and/or detection of bean diseases. Strengthening the quarantine and updating reporting requirements for quarantine compliance will help curtail disease and result in bean seed lots that are free from detrimental diseases.

Statutory Authority for Adoption: RCW 15.49.005, 17.24.041, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.49 RCW, Seeds.

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

Name of Proponent: Washington bean seed industry, private.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Victor Shaul, Yakima, (509) 249-6950.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared as this proposal will not create significant additional costs to industry.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency in RCW 34.05.328 (5)(a)(i).

May 29, 2015

Brad J. Avy

Assistant Director

WSR 15-12-064

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed May 29, 2015, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-126.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-235 Phytosanitary field inspection requirements for beans. (1) Specific bacterial diseases of beans for which phytosanitary certificates may be issued are:

(a) Halo blight - *Pseudomonas phaseolicola* (Burk.) Dows.

(b) Common bean blight - *Xanthomonas phaseoli* (E.F. Sm.) Dows.

(c) Fuscous blight - *Xanthomonas phaseoli* var. *fuscans* (Burk.)

(d) Bean bacterial wilt - *Corynebacterium flaccumfaciens* (Hedges) Dows.

(e) Or any varieties or new strains of these diseases.

(f) Brown spot disease - *Pseudomonas syringae*.

(g) Bean anthracnose - *Colletotrichum lindemuthianum*.

(h) Seed-borne viral diseases.

(2) For beans to be eligible for a phytosanitary certificate covering the bacterial diseases listed in subsection (1) of this section the following provisions apply:

(a) Common bean must be free of the diseases as determined by the department with a field inspection during the growing season and by a windrow inspection. ~~((A serology test))~~ An appropriate seed health assay and greenhouse test may be accepted in lieu of a windrow inspection at the discretion of the department.

(b) Pintos, red Mexicans, pinks, great northerns, small whites, navy beans, and black turtle beans may be grown for an unlimited number of generations under rill or sprinkler irrigation.

(c) Kidney beans, cranberry types, Taylor horticultural, and Borlotto types may be grown for an unlimited number of generations under rill irrigation or for one generation under rill irrigation and, subsequently, for two generations under sprinkler irrigation. The fourth and unlimited subsequent generations may be grown and inspected with the same alternation of irrigation types.

(d) A field planted must be free of halo blight the previous two years of planting.

(e) Seed fields must be 1,320 feet from an incident of disease. The department recommends that equipment be disinfected between fields.

(3) At least two field inspections of beans are required for bacterial diseases listed in subsection (1) of this section:

(a) Fields not under sprinkler irrigation shall be inspected twice:

(i) The first inspection is to be conducted by the department when ~~((factors effecting diseases are most evident.~~

~~(b)))~~ plants are near the early pod stage.

(ii) The second inspection is to be conducted by the department when the plants are in the windrow.

(b) Fields under sprinkler irrigation shall be inspected three times:

(i) The first inspection is to be conducted by the department when plants are near the full bloom stage. An appropriate seed health assay for halo blight may be accepted in lieu of the first growing season inspection.

(ii) The second inspection is to be conducted by the department when plants are near the full pod stage.

(iii) The third inspection is to be conducted by the department when the plants are in the windrow.

(4) All bean seed entered into the phytosanitary inspection program must comply with the bean seed quarantine rules. See chapter 16-301 WAC.

AMENDATORY SECTION (Amending WSR 04-08-043, filed 3/31/04, effective 5/1/04)

WAC 16-301-395 General requirements for planting bean seed in the regulated area. (1) No beans may be planted, sold, shipped, transported for seed purposes, or knowingly received in the regulated area which are found to be or are known to be contaminated with any disease listed in WAC 16-301-380 and must also comply with the requirements as listed in WAC 16-301-396.

(2) ~~((The department shall be notified in writing, prior to shipping, of any person's intent to ship, move, or transport any bean seed into the regulated area.))~~ For all bean seed to be planted in the regulated area, proof of quarantine compliance must ((have a Notice of Intent/Quarantine Compliance form filed with the WSDA seed program)) accompany any application for phytosanitary or certification field inspection. A copy of the field inspection report or other proof of freedom from specified diseases based on at least one growing season field inspection and one windrow inspection or negative results from an approved pathology laboratory ~~((test must accompany this form. In addition,))~~ indicating freedom from the regulated diseases and a copy of the ((laboratory analysis (ELISA)) appropriate seed health assay showing freedom from regulated viral diseases issued for that bean seed must accompany ~~((this Notice of Intent/Quarantine Compliance form))~~ these applications. Proof of I-gene resistance may be provided in lieu of ~~((laboratory analysis (ELISA)) appropriate seed health assay~~ indicating freedom from regulated viral diseases.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-301-425 Inspection procedures for trial grounds. (1) Applications for planting in a trial ground must be submitted to the department prior to May 15 of the growing year, and must include a detailed varietal planting plan, a description of the exact location of the trial ground and the manner of isolation.

(2) A minimum of ~~((three))~~ four field inspections ~~((is))~~ are made during the growing season and one windrow inspection.

(3) A disinfectant must be applied to machinery used in the production of bean seed and to footwear of personnel performing inspections prior to movement to other bean fields.

(4) If any regulated diseases are detected by field inspections or subsequent laboratory/greenhouse tests, no seed may be released for general planting but must again be planted in an approved trial ground for one additional year and undergo inspection procedures by the department.

AMENDATORY SECTION (Amending WSR 04-08-043, filed 3/31/04, effective 5/1/04)

WAC 16-301-430 Identification and disposition of diseased bean seed and infected bean fields. (1) Any bean field planted with seed in violation of the requirements of this quarantine is subject to destruction, in full or in part, or quarantined, as determined necessary by the director, to prevent the spread of regulated diseases. Any expenses of such

actions will be solely that of the grower or their responsible agents.

(a) Fields that are placed under a quarantine order must be entered into the Washington state bean seed (~~(phyto-sanitary)~~ phytosanitary) inspection program as provided in WAC 16-301-235 with all costs of inspection to be borne by the grower or the grower's agent.

(b) Fields that are placed under a quarantine order may be subject to additional requirements for inspection, control or isolation, as deemed necessary by the director, to prevent the spread of regulated diseases.

(2) Any bean field determined to be infected with a regulated disease must be reported within seventy-two hours after discovery to the department, seed program.

(3) The department encourages the aid of all interested parties, including growers and seed company representatives, in the prompt reporting of suspected infected bean fields in order that timely investigation may be made.

(4) Any bean fields within the boundaries of the regulated area which show contamination by a regulated disease, as provided in subsection (5) of this section, must be destroyed in part or in total as may be required to eliminate the disease, by or at the expense of the grower or their responsible agents. The director may authorize any other method of control at the director's discretion. The director must notify the grower, seed company representatives and/or the grower's landlord of the method and extent of the destruction and safeguards against disease spread in order for the parties to comply.

(5) The identity of a regulated disease on growing plants or plants in windrow is based on the observance of the visual symptoms of the disease. If the department deems it necessary to establish true identity or pathogenically, a laboratory and/or greenhouse test may be conducted by the department in cooperation with the university. Testing is subject to provisions provided in WAC 16-301-396 (3) and (4), the results of which will be used to determine final disposition.

(a) In cases of disagreement concerning the presence of a regulated disease between the department plant pathologist and a qualified plant pathologist representing the commercial company or grower, the definitive verification of identity or pathogenically must be determined by isolation of the suspected pathogen and inoculation of seedlings of a known susceptible host using accepted scientific and professional techniques.

(b) Until verification of the suspected pathogen as specified in this section is completed, the involved planting must be placed under quarantine for a period of thirty days subject to conditions and review or extension as determined by the director. Entry into the quarantined area is to be restricted to the grower or grower's agents, department employees, and/or persons authorized in writing by the director. Persons granted entry into the quarantined area will be required to take all necessary sanitary precautions as prescribed by the director to safeguard against the possible spread of the suspected regulated disease.

(6) The true identity of the regulated disease when found in or on seed is based on testing methods recommended by the university results of which, when positive, is evidence to identify the disease as being subject to the department's

requirements. The owner of the seed, at owner's expense, may request verification of pathogenicity. Such verification must be made using accepted scientific and professional techniques.

(7) When the director determines that it is probable, based on visual symptoms and serological analysis, that a seed field may be infected with bean seed-borne viral diseases and determines that a threat of infection of other fields exists, the director may prescribe aphid control or other requirements, through a notice of destruction as provided in WAC 16-301-435, deemed necessary to prevent infection of adjacent properties.

(8) All bean seed that is determined to be contaminated by bean seed-borne viral diseases and which does not meet the requirements of WAC 16-301-395(2) must be destroyed or diverted to dry edible or other nonseed purposes. For seed that is diverted to dry edible or other nonseed purposes, documentation of disposition of the seed must be provided to the department of agriculture upon request.

(9) Exemptions and special situations:

(a) Any field of beans first found infected during windrow inspection, is exempt from total destruction if the diseased portion and an area (not less than a fifty-foot radius) surrounding the infected site is promptly destroyed or harvested with the beans from the infected area directed, under department supervision, to processing. Seed from the remainder of the field must be tested by ~~((a serology test))~~ the appropriate seed health assays for the regulated disease. Only seed apparently free from regulated diseases may be used for seed purposes in the regulated area.

(b) Any field of beans to be used only for dry edible purposes is exempt from destruction if the diseased portion of the field is destroyed and the entire crop residue is promptly and completely destroyed after harvest.

(c) Beans for processing or fresh consumption are exempt from destruction if the diseased portion of the field is destroyed or harvested within ten days after first detection and/or verification as provided in subsection (4) of this section and the crop residue is promptly and completely destroyed after harvest.

WSR 15-12-065

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed May 29, 2015, 8:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-127.

Title of Rule and Other Identifying Information: WAC 16-301-490 through 16-301-580, crucifer seed quarantine.

Hearing Location(s): Department of Agriculture, Conference Room 238, 21 North First Avenue, Yakima, WA 98902, on July 7, 2015, at 11:00 a.m.

Date of Intended Adoption: July 21, 2015.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2043, by 5:00 p.m., July 7, 2015.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY 1-800-833-6388 or 711 no later than June 23, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state department of agriculture has a crucifer quarantine in place to protect parts of five counties in northwestern Washington, important brassica vegetable seed production areas, from the introduction of black leg and black rot pathogens. This proposal will include the irrigated region of the Columbia Basin as part of the regulated area.

Reasons Supporting Proposal: Black leg was established in Idaho in 2011 and the pathogen was found surviving on rapeseed crop residues near Lewiston, Idaho in 2014. This demonstrates there is a risk of black leg being introduced and becoming established in the irrigated region of the Columbia Basin. The Columbian [Columbia] Basin Vegetable Seed Association petitioned the department to amend chapter 16-301 WAC to expand the regulated area in order to protect these vegetable seed production areas.

Statutory Authority for Adoption: RCW 15.49.005, 17.24.041, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.49 RCW, Seeds.

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

Name of Proponent: Mike Leavitt, Columbia Basin Vegetable Seed Association; Chuck Stoddard, Columbia Basin Vegetable Seed Field Representatives Association, private.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Victor Shaul, Yakima, (509) 249-6950.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared as this proposal will not create significant additional costs to industry.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency in RCW 34.05.328 (5)(a)(i).

May 29, 2015
Brad J. Avy
Assistant Director

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-505 Diseases regulated by this chapter.

(1) "**Regulated diseases**" means those bacterial and fungal diseases of crucifers listed in this section and any new variations or strains of these diseases.

(2) "**Regulated pathogens**" means those bacterial and fungal organisms identified as the ~~((casual))~~ causal agents for the diseases listed in this section.

(3) The following bacterial and fungal diseases of crucifers, and any new strains or variations of these diseases are regulated by this chapter:

Common Name	Scientific Name
Black leg of Crucifers	<i>Phoma lingam</i>
Black rot	<i>Xanthomonas campestris pv. campestris</i>

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-515 Crucifer seed quarantine—Quarantined area. (1) The quarantine area for the crucifer seed quarantine includes all Washington state counties except Adams, Asotin, Benton, Chelan, Clallam, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Island, Kittitas, Klickitat, Lewis, Lincoln, Okanogan, Pend Oreille, Skagit, Snohomish, ~~((and))~~ Spokane, Stevens, Walla Walla, Whatcom, Whitman, and Yakima counties.

(2) Regulated articles imported into Washington state must comply with the regulations of this chapter before transport into ~~((the))~~ a regulated area. No additional requirements apply within the quarantine area but all regulated articles transported into ~~((the))~~ a regulated area must comply with the regulations of this chapter.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-520 Crucifer seed quarantine—Regulated areas. There are two regulated areas for this crucifer quarantine, one in western Washington and one in eastern Washington. Each regulated area has specific requirements related to seed testing and treatment.

(1) The regulated area in western Washington for this crucifer seed quarantine includes Clallam, Island, Lewis, Skagit, Snohomish, and Whatcom counties.

(2) The regulated area in eastern Washington for this crucifer seed quarantine includes Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-525 Crucifer seed quarantine within the regulated areas—Exemptions. This crucifer quarantine does not apply to:

(1) Experiments or trial grounds of the United States Department of Agriculture;

(2) Experiments or trial grounds of a university such as but not limited to the University of Idaho or Washington State University research stations; or

(3) Trial grounds of any person, firm or corporation that are approved by the director and established in accordance with WAC 16-301-550;

(4) Shipments, movements, or transportation of:

(a) Prepackaged crucifer seed in packages of 1/2 ounce or less if the seeds are free of regulated diseases as required in WAC 16-301-530; or

(b) Vegetable seedlings offered for sale for home garden use in the regulated areas if the seedlings are free of regulated diseases as required in WAC 16-301-530.

(5) Research, variety development, variety maintenance or other crucifer production where the entire crop cycle is confined within a building or greenhouse;

(6) Seed lots with a maximum weight of five pounds that were in inventory prior to January 1, 2007.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-530 Planting crucifer seed in the western Washington regulated area—Requirements. (1)(a) It is a violation of this chapter to plant or establish crucifer seed that is infected with any regulated disease in the western Washington regulated area.

(b) Any seed of a *Brassica* ((☞)), *Raphanus*, *Sinapis* species or any other genera in the *Brassicaceae* family planted or established in the western Washington regulated area whose primary use is for any nonvegetable use must be tested for the presence of dormant seed as required by WAC 16-301-510.

(2) Any person who plans to ship, move, or transport any crucifer seed intended for planting purposes into or within the western Washington regulated area must file a Notice of Intent/Quarantine Compliance form with the seed program before planting or offering the seed for sale.

(3) The Notice of Intent/Quarantine Compliance form filed with the seed program must be accompanied by a copy of the:

(a) Laboratory analysis or some other proof (such as a phytosanitary certificate based upon laboratory testing issued from the state or country of production) demonstrating that the lot is free of regulated diseases; and

(b) Seed analysis certificate(s) showing that the lot is free from dormant seed, if required under WAC 16-301-510.

(4) It is a violation of this chapter for any crucifer seed intended for seed production, oil production, commercial vegetable production or cover crop use to be offered for sale within or into the western Washington regulated area unless accompanied by documentation verifying quarantine compliance.

(a) For small packages such as heat sealed envelopes and tins, quarantine compliance may be placed on a sales invoice or other documentation that is provided to the purchaser of seed. Language must be approved by the seed program.

(b) Larger containers must bear a label issued by the seed program indicating that the seed is in compliance with this chapter.

NEW SECTION

WAC 16-301-531 Planting crucifer seed in the eastern Washington regulated area—Requirements. (1)(a) It is a violation of this chapter to plant or establish crucifer seed that is infected with any regulated disease in the eastern Washington regulated area.

(b) Any seed of a *Brassica*, *Raphanus*, *Sinapis* species or any other genera in the *Brassicaceae* family to be planted in the eastern Washington regulated area must be laboratory

tested and found to be free from black leg of crucifers (*Phoma lingam*).

(2) Any seed of a *Brassica*, *Raphanus*, *Sinapis* species or any other genera in the *Brassicaceae* family to be planted in the eastern Washington regulated area must be treated with either a fungicide appropriate to control black leg, hot water or other treatments authorized by the department.

(3) Any seed of a *Brassica*, *Raphanus*, *Sinapis* species or any other genera in the *Brassicaceae* family to be planted in the eastern Washington regulated area must be tagged with a tag issued by the department indicating that the seed has met the requirements of this chapter.

NEW SECTION

WAC 16-301-533 Offering crucifer seed for sale in eastern Washington. Any seed of a *Brassica*, *Raphanus*, *Sinapis* species or any other genera in the *Brassicaceae* family to be planted in the eastern Washington regulated area must be tagged with a tag issued by the department indicating that the seed has met the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-540 Crucifer transplants grown in greenhouses in the regulated areas—Requirements. (1) All crucifer transplants produced in greenhouses in the regulated areas must be subjected to pest control procedures that reduce the presence of diseases or insects that may inhibit identifying regulated diseases.

(2) The interiors of greenhouses in the regulated area used to produce crucifer transplants must be free of crucifer weeds.

(3) One hundred meter buffers, free of crucifer weeds, must surround all greenhouses in the regulated area used to produce crucifer transplants.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-545 Crucifer seed lots that test positive for any regulated disease—Requirements. (1) If a crucifer seed lot tests positive for any regulated disease, the infected seed lot may be treated with an approved seed treatment.

(2) After treatment, the seed lot must be tested for the presence of regulated diseases using appropriate pathological testing methods.

(3) If the pathological testing yields negative test results, the seed lot will be considered in compliance with this chapter.

(4) It is a violation of this chapter to plant seed in the regulated areas that tests positive for any regulated disease subsequent to any approved treatment method.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-550 Planting seed in ((*) the western Washington regulated area—Protocols when certain documentation is unavailable. When no documentation exists

verifying that a crucifer seed lot is free from regulated diseases, the following protocols must be followed before the seed is planted in the western Washington regulated area:

(1) A crucifer seed lot will be classified as a suspect seed lot if the seed lot lacks the documentation verifying that the lot complies with the crucifer seed quarantine requirements of this chapter.

(2) Suspect seed lots must:

(a) Not be offered for sale in the western Washington regulated area.

(b) Be treated by an approved treatment method.

(c) Be sown in a greenhouse and the seedlings must pass inspection by seed program inspectors before transplanting to the field.

(3) Any greenhouse operation used to grow crucifer seedlings for transplant must:

(a) Physically separate suspect seed lots from other crucifer production within that greenhouse.

(b) Monitor and document the location and identity of each suspect seed lot during production.

(4) It is a violation of this chapter for seedlings from a suspect seed lot to be topped, clipped, chopped or undergo any other treatment to toughen them or reduce their size.

(5) All seedlings from a suspect seed lot that exhibit symptoms of regulated diseases must be physically separated from asymptomatic transplants in that lot.

(6) Before shipping seedlings from a suspect seed lot, the seedlings must be inspected by seed program inspectors for the presence of regulated diseases.

(a) If no symptoms of regulated diseases are detected during this inspection, the suspect seed lot is considered in compliance with this chapter and may be sold and planted within the western Washington regulated area.

(b) If seedlings display symptoms of regulated diseases, laboratory testing for the diseases is mandatory.

(c) If seedlings from a suspect seed lot test negative for regulated pathogens after appropriate pathological testing, the suspect seed lot is considered in compliance with this chapter and may be sold and planted within the western Washington regulated area.

(d) If the presence of a regulated disease is confirmed by laboratory testing, all seedlings from a suspect seed lot may be subject to a quarantine order or destruction order under WAC 16-301-570.

(7) Any crucifer seed production fields, plant beds, or greenhouse production that will be planted with or receives production from suspect seed lots that are determined to be free from regulated diseases under subsection (6) of this section must be entered into the Washington state phytosanitary inspection program as required under WAC 16-301-235.

(8)(a) It is a violation of this chapter to plant seedlings from a suspect seed lot that tests positive for any regulated disease in the western Washington regulated area.

(b) Any suspect seed lot testing positive for any regulated disease may be subject to a quarantine order or a destruction order under WAC 16-301-570.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-580 Diseased crucifer seeds and infected fields—Regulations. (1) When the director determines that a field is infected with a regulated pathogen and threatens to infect other fields, the director may issue a notice of destruction prescribing control measures or other requirements needed to prevent the infection of adjacent properties.

(2) Unless the crop is within two weeks of harvest, any crucifer crop within ~~((the))~~ a regulated area that is infected with a regulated pathogen may be subject to immediate destruction, in part or in total. The owner is responsible for the expenses incurred to destroy a diseased crucifer crop.

(3) The following requirements apply to crops that are within two weeks of harvest:

(a) Residues must be destroyed or incorporated into the ground immediately after harvest;

(b) Harvested seed must be isolated from other seed lots until it is treated with hot water and/or chlorine seed treatments;

(c) Harvest equipment must be steam cleaned before entering any other fields; and

(d) WSDA personnel in consultation with WSU extension personnel must monitor these postharvest activities.

WSR 15-12-073

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed May 29, 2015, 12:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-076.

Title of Rule and Other Identifying Information: The department plans to create within chapter 388-825 WAC one new section, WAC 388-825-0168 How do I complain to DDA about my services or treatment?; update twenty-nine existing sections including WAC 388-825-058, 388-825-072, 388-825-074, 388-825-081, 388-825-084, 388-825-0871, 388-825-089, 388-825-091, 388-825-093, 388-825-094, 388-825-097, 388-825-098, 388-825-100, 388-825-101, 388-825-102, 388-825-103, 388-825-104, 388-825-105, 388-825-120, 388-825-125, 388-825-130, 388-825-135, 388-825-150, 388-825-165, 388-825-201, 388-825-206, 388-825-211, 388-825-300 and 388-825-360; and repeal seven existing sections, including WAC 388-825-061, 388-825-062, 388-825-063, 388-825-066, 388-825-069, 388-825-071, and 388-825-088.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on July 21, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 22, 2015.

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

RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., July 21, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by July 7, 2015, TTY (360) 664-6178 or (360) 664-6092 or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These updates will include housekeeping, processes, policies, eligibility information, and changes to the current verbiage to make it easier to comprehend.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.10.015, 71A.18.020, Title 71A RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Shannon Manion, DDA, P.O. Box 45310, Olympia, 98504-5310, (360) 725-3454.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impact small business or nonprofits. They only impact DSHS clients.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(vii) and relate only to client medical or financial eligibility.

May 28, 2015
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-13 issue of the Register.

WSR 15-12-076
PROPOSED RULES
HEALTH CARE AUTHORITY

(Washington Apple Health)
[Filed May 29, 2015, 1:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-092.

Title of Rule and Other Identifying Information: WAC 182-505-0120 Washington apple health breast and cervical cancer treatment program (BCCTP) for women—Client eligibility.

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 July 7, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 8, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, delivery 626 8th

Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on July 7, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 1, 2015, 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: The rule amendment clarifies eligibility for the breast and cervical treatment program.

Reasons Supporting Proposal: The proposed rule complies with federal guidance.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408; Implementation and Enforcement: Mick Pettersen, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-0913.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed filing does not create a disproportionate 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 the joint administrative rules review committee or applied voluntarily.

May 29, 2015
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-21-075, filed 10/10/14, effective 11/10/14)

WAC 182-505-0120 Washington apple health breast and cervical cancer treatment program (~~BCCTP~~) for women—Client eligibility. (1) Effective April 1, 2014, a woman is eligible for categorically needy (CN) coverage under the Washington apple health (WAH) breast and cervical cancer treatment program (BCCTP) only when she:

(a) Has been screened for breast or cervical cancer under the department of health's breast, cervical, and colon health program (BCCHP);

(b) ~~((Is found to))~~ Requires treatment for ~~((either))~~ breast ~~((or))~~ cancer, cervical cancer, or ~~((for))~~ a related precancerous condition;

(c) Is under sixty-five years of age;

(d) Is not ~~((covered by another))~~ eligible for other WAH-CN ~~((program))~~ coverage or alternative benefits plan coverage;

(e) Is uninsured or does not otherwise have creditable coverage;

(f) Meets residency requirements ~~((as described in))~~ under WAC 182-503-0520;

(g) Meets Social Security number requirements ~~((as described in))~~ under WAC 182-503-0515;

(h) ~~((Meets the requirements for citizenship or U.S. national status))~~ Is a U.S. citizen, U.S. national, qualifying

American Indian born abroad, or ((~~"~~))qualified alien(~~"~~ status as described in)) under WAC 182-503-0535; and

(i) Meets the income standard set by the BCCHP (~~((the standard may be found at))~~), available at: <http://www.doh.wa.gov/Portals/1/Documents/Pubs/342-090-BCCHPFundingSources.pdf>((~~)).~~

(2) The certification period for breast and cervical cancer treatment covered under this section is twelve months, as provided in WAC 182-504-0015. (~~(Renewal of eligibility must be completed prior to the end of each certification period))~~ To remain continuously enrolled, the client must renew her eligibility before the certification period ends. Eligibility for BCCTP coverage under subsection (1)(b) of this section continues throughout the course of treatment as certified by the BCCHP. Retroactive coverage (~~((~~is~~))~~) may be available (~~((~~as provided in~~))~~) under WAC 182-504-0005.

WSR 15-12-081

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed June 1, 2015, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-058.

Title of Rule and Other Identifying Information: WAC 458-20-108 (Rule 108) Selling price—Credit card service fees, foreign currency, discounts, patronage dividends and 458-20-278 Returned goods, defective goods—Motor vehicle lemon law.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on July 14, 2015, at 1:30 p.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Call-in option can be provided upon request no later than three days before the hearing date.

Date of Intended Adoption: July 21, 2015.

Submit Written Comments to: Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, by July 14, 2015.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing revisions to WAC 458-20-108 that currently discusses returned goods, allowances and cash discounts. The proposed revision includes the definition of "selling price" or "sales price" which was expanded by legislation. The definition was previously found in WAC 458-20-107. Information on taxability for credit card service fees, purchases with foreign currency, use of coupons and discount vouchers, patronage dividends and payments to dealers for "make-ready" services has been added. The following excise tax advisories (ETA) will be canceled upon adoption of a revised rule: ETA 3008, 3041, 3060, 3081, 3129, and 3147, as pertinent infor-

mation has been incorporated in the draft. Returned goods, defective goods, and motor vehicle lemon law sales are a better fit for a separate rule and have been moved from WAC 458-20-108 to a new proposed rule, WAC 458-20-278.

Reasons Supporting Proposal: To update information and consolidate tax guidance currently in ETAs into Rule 108.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

June 1, 2015

Dylan Waits

Rules Coordinator

AMENDATORY SECTION (Amending WSR 88-01-050, filed 12/15/87)

WAC 458-20-108 ((Returned goods, allowances, cash discounts.)) Selling price—Credit card service fees, foreign currency, discounts, patronage dividends. ((1) When a contract of sale is made subject to cancellation at the option of one of the parties or to revision in the event the goods sold are defective or if the sale is made subject to cash or trade discount, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.

((2) Returned goods. When sales are made either upon approval or upon a sale or return basis, and the purchaser returns the property purchased and the entire selling price is refunded or credited to the purchaser, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability, if the amount of sales tax previously collected from the buyer has been refunded by the seller to the buyer. If the property purchased is not returned within the guaranty period as established by contract or by customs of the trade, or if the full selling price is not refunded or credited to the purchaser, a presumption is raised that the property returned is not returned goods but is an exchange or a repurchase by the vendor.

To illustrate: S sells an article for \$60.00 and credits his sales account therewith. The purchaser returns the article purchased within the guaranty period and the purchase price and the sales tax theretofore paid by the buyer is refunded or cred-

ited to him. S may deduct \$60.00 from the gross amount reported on his tax return.

(3) **Defective goods.** When bona fide refunds, credits or allowances are given within the guarantee period by a seller to a purchaser on account of defects in goods sold, the amount of such refunds, credits or allowances may be deducted by the seller in computing tax liability, if the proportionate amount of the sales tax previously collected from the buyer has been refunded by the seller.

To illustrate: S sells an article to B for \$60.00 and credits his sales account therewith. The article is later found to be defective.

(a) S gives B credit of \$50.00 on account of the defect, and also a credit of sales tax collectible on that amount. S may deduct \$50.00 from the gross amount reported in his tax returns. This is true whether or not B retains the defective article.

(b) B returns the article to S who gives B an allowance of \$50.00 on a second article of the same kind which B purchases for an additional payment of \$10.00, plus sales tax thereon. S may deduct \$50.00 from the gross amount reported in his tax returns. The sale of the second article, however, must be reported for tax purposes as a \$60.00 sale and included in the gross amount in his tax return.

(c) B returns the article to S who replaces it with a new article of the same kind free of charge, and without sales tax. S may deduct \$60.00 from the gross amount reported in his tax returns, but the \$60.00 selling price of the substituted article must be reported in the gross amount.

No deduction is allowed from the gross amount reported for tax if S in (b) and (c) of this subsection, does not credit his sales account with the selling price of the new article furnished to replace the defective one, but instead merely credits the sales account with an amount equal to the additional payment received, if any. In such case, the allowance for the defect is already shown in the sales account by the reduced sales price of the new article.

(4) **Motor vehicle warranties.** In the 1987 session, the Washington legislature enacted a "lemon law" creating enforcement provisions for new motor vehicle warranties. A manufacturer which repurchases a new motor vehicle under warranty because of a defective condition is required to refund to the consumer the "collateral charges" which include retail sales tax. The refund shall be made to the consumer by the manufacturer or by the dealer for the manufacturer. The department will then credit or refund the amount of the tax so refunded.

Evidence. To receive a credit or refund, the manufacturer or dealer must provide evidence that the retail sales tax was collected by the dealer and that it was refunded to the consumer. Acceptable proof will be:

(a) A copy of the dealer invoice showing the sales tax was paid by the consumer; and

(b) A signed statement from the consumer acknowledging receipt of the refunded tax. The statement should include the consumer's name, the date, the amount of the tax refunded, and the name of the dealer or the manufacturer making the refund.

(5) **Discounts.** The selling price of a service or of an article of tangible personal property does not include the amount

of bona fide discounts actually taken by the buyer and the amount of such discount may be deducted from gross proceeds of sales providing such amount has been included in the gross amount reported.

(a) Discounts are not deductible under the retail sales tax when such tax is collected upon the selling price before the discount is taken and no portion of the tax is refunded to the buyer.

(b) Discount deductions will be allowed under the extracting or manufacturing classifications only when the value of the products is determined from the gross proceeds of sales.

(c) Patronage dividends which are granted in the form of discounts in the selling price of specific articles (for example, a rebate of one cent per gallon on purchases of gasoline) are deductible. (Some types of patronage dividends are not deductible. See WAC 458-20-219.) (1) **Introduction.** This rule explains "selling price" and what is included in the selling price when discounts, coupons, rebates, or foreign currency are used. This rule also provides tax guidance for credit card service fees, patronage dividends, and payments for "make ready" services.

(a) **Other rules that may apply.** Readers may also want to refer to other rules for additional information, including those in the following list:

(i) WAC 458-20-107, Requirement to separately state sales tax—Advertised prices including sales tax.

(ii) WAC 458-20-211, Leases or rentals of tangible personal property, bailments.

(iii) WAC 458-20-247, Trade-ins, selling price, sellers' tax measures.

(iv) WAC 458-20-278, Returned goods, defective goods—Motor vehicle lemon law.

(b) **Examples:** Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **What is included in the "selling price"?** RCW 82.08.010 states that "selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following:

(a) The seller's cost of the property sold;

(b) The cost of materials used, labor or service cost, interest, losses, costs of transportation to the seller, taxes imposed on the seller, and any other expense of the seller;

(c) Charges by the seller for any services necessary to complete the sale other than delivery and installation charges;

(d) Delivery charges; and

(e) Installation charges.

(3) **When is third-party consideration included in the "selling price"?** The "selling price" or "sales price" includes consideration received by the seller from a third party if:

(a) The seller actually receives consideration from a party other than the buyer, and the consideration is directly related to a price reduction or discount on the sale;

(b) The seller has an obligation to pass the price reduction or discount through to the buyer;

(c) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of sale of an item to the buyer; and

(d) One of the following criteria is met:

(i) The buyer presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party must reimburse any seller to whom the coupon, certificate, or documentation is presented;

(ii) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the buyer or on a coupon, certificate, or other documentation presented by the buyer; or

(iii) The buyer identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; however, a "preferred customer" card that is available to any patron does not constitute membership in such a group. RCW 82.08.010.

(e) **Example 1.** The Sporting Goods Store offers a 10% discount to all members of the local credit union. Dave, the customer and credit union member, must present an identification card or other evidence of membership in the credit union to claim the 10% discount on his \$100 purchase. As the credit union reimburses The Sporting Goods Store for the discount of \$10, the store must compute sales tax on the full price of \$100. The discount of \$10 is deducted from the total price after sales tax has been added to the purchase price. The store must compute retailing business and occupation (B&O) tax on \$100.

(4) **What is not included in the "selling price"?** The "selling price" or "sales price" does not include:

(a) Discounts, including cash, term, or coupons that are not reimbursed by a third party that a seller allows a buyer to take on a sale;

(b) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a retail sale in RCW 82.04.050, if the amount is separately stated on the invoice, bill of sale, or similar document given to the buyer; and

(c) Any taxes legally imposed directly on the buyer that are separately stated on the invoice, bill of sale, or similar document given to the buyer. RCW 82.08.010.

(d) **Example 2.** The Good Health Club offers a 10% discount to all members of the local credit union. Jill, the club member and credit union member, must present an identification card or other evidence of membership in the credit union to claim the 10% discount on her monthly membership fee of \$50. If the credit union does not reimburse the health club for the \$5 discount, the health club absorbs the \$5 and it is not part of the taxable selling price. Thus, the club must collect sales tax on a selling price of \$45 and compute retailing B&O tax on gross proceeds of sale of \$45.

(5) **Credit card service fees.** When a seller allows a buyer to charge purchases on a credit card, the institution that issued the credit card charges a service fee to the seller. The service fee charge is a part of the seller's cost of doing business. Because the service fee is a cost of doing business, the seller may not deduct the fee when determining its B&O tax and retail sales tax liabilities. RCW 82.04.070 and 82.08.010.

(6) **Foreign currency accepted by seller.** When determining the measure of tax liability, the selling price or gross proceeds of sale must be measured in terms of the currency of the United States. If payment is accepted in foreign currency, the payment must be converted into United States currency. The effect of this conversion, whether resulting in an increase or decrease in the selling price or gross proceeds of sale, must be recognized when tax is computed.

Example 3. ABC Company (ABC) sells a sweater for \$100, plus \$8 in retail sales tax, for a total of \$108. ABC accepts payment in the form of \$108 Canadian. The exchange rate for Canadian dollars at ABC's bank is 0.95 Canadian to 1 U.S. dollars at the time of the sales transaction. In terms of U.S. currency, ABC has actually accepted a payment of \$102.60 (108 Canadian x 0.95). The selling price or gross proceeds of sale for determining the measure of tax liability is \$95 (\$102.60 less \$7.60 retail sales tax).

(7) **Bona fide discounts.** When a sale is made subject to cash or trade discount, the gross proceeds actually derived from the selling price are determined by the transaction as finally completed. A sale is made subject to a discount when the sales price is reduced under terms known to the buyer and seller at the time of the sale, and the price reduction occurs at the time of the sale or within a time agreed and understood by the parties at the time of the sale.

The selling price or sales price of a service or article of tangible personal property does not include bona fide discounts actually taken by the buyer. The amount of bona fide discounts may be deducted only if the amount has been included in the gross amount reported.

Discounts are not deductible when the retail sales tax is based on the selling price or sales price before the discount is taken and no portion of the tax is refunded to the buyer.

(a) **Discount vouchers.** A discount voucher is an instrument redeemed by a customer from a seller at the time of purchase that:

- Is obtained by the customer from a discount voucher provider that has an agreement with the seller, and the seller determined the price of the voucher sold;

- Allows the customer to acquire the voucher for less than its face value;

- Is redeemable either for a specific good or service (product) or for a certain dollar amount towards the sales price of any product sold by the seller; and

- The seller, at the time of redemption, knows the amount paid by the customer for the voucher.

For additional information that may apply see subsection (3) of this rule.

(i) **Taxes apply on the redemption of a discount voucher.**

(A) The purchase of a discount voucher prior to redemption is not taxable.

(B) The seller of a product or products purchased using a discount voucher must include the amount the customer paid for the discount voucher in the gross proceeds of sales or gross income of the business, as the case may be.

(C) If a discount voucher is redeemed by a customer for a product subject to retail sales tax, then the amount paid by the customer is included in the taxable sales price of the product.

(D) The seller may not deduct advertising or similar expenses (fees) paid to the discount voucher provider, even if the discount voucher provider "nets out" those expenses (fees) before remitting the payment to the seller.

(ii) **Determining the amount paid by the customer for the discount voucher.** Sellers must be able to substantiate, through documentation, the amount the customer paid for the redeemed discount voucher and any discount applied to the sale.

(A) If a discount voucher indicates the amount the customer paid, the seller must include that amount in the sales price of the product purchased.

(B) If the seller, through its agreement with the discount voucher provider, knows the amount the customer paid for the discount voucher, that amount is to be included in the sales price of the product purchased.

(C) If the seller does not know at the time of sale the amount the customer paid to obtain a payment instrument and thus does not know whether the instrument is a discount voucher, the seller must treat the consideration paid by the customer as equal to the face value of the instrument.

(b) **Cash discounts.** A cash discount is an incentive for the buyer to pay the seller's invoice price of goods or charges for services on or before a specified date. RCW 82.04.160. Cash discounts may be deducted when determining the measure for the B&O tax.

Example 4. Mann's Lumber Shop (Mann's) sells construction material to Ken, who builds sheds for resale. Mann's bills Ken for \$2,000.00, and offers Ken a 10% discount if he pays the invoiced amount within ten days. Ken pays the invoice upon receipt and takes a 10% discount. Mann's may reduce its gross sales figure by \$200 when determining its wholesaling B&O tax.

(i) **Extracting or manufacturing.** Discount deductions are allowed under the extracting or manufacturing classifications only when the value of the products is determined from the gross proceeds of sales. No discount is available if tax is computed by other means authorized by RCW 82.04.450 (e.g., gross proceeds determined by sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers).

(ii) **Retail sales tax.** Cash discounts are not deductible for retail sales tax purposes when the seller collects the tax on the selling price before the discount is taken and no portion of the tax is refunded to the buyer.

Example 5. Mann's sells Richard all materials needed for a shed that Richard wants to build for extra storage. Mann's bills Richard for \$500 plus retail sales tax at 9.5% (\$500 + \$47.50). Mann's offers a 10% discount if Richard pays the invoiced amount within ten days. Richard neglects to take advantage of the offered discount even though he pays the full invoice within ten days. Mann's gives Richard a credit

for \$50. Mann's may deduct the \$50 discount when reporting retailing B&O tax, but cannot when reporting retail sales tax as no sales tax was refunded.

Example 6. Mann's sells George all the materials needed for a shed that George plans to build for storage. Mann's bills George for \$500 plus retail sales tax at 9.5% (\$500 + \$47.50 = \$547.50). Mann's offers a 10% discount if George pays the invoiced amount within ten days. George takes advantage of the cash discount and pays \$492.75. Mann's must report a sale of \$450 and sales tax of \$42.75 on its excise tax return.

(c) **Retail stores' coupons.** Retail stores' coupons are issued by retail stores and redeemable only at that store or at affiliated stores of the chain. The coupons offer a reduced price for a specific item upon presentation at the store. The price reduction is a discount, and the retail store must report the amount actually paid by the buyer when reporting retail sales and B&O taxes.

(8) **What is not a bona fide discount?** Bona fide discounts do not include discounts on the selling price to the buyer, when the buyer is required to perform a service to receive a discount. Examples of services that may be required include advertising, shelf placement of product, special in-store displays, and hiring product demonstrators to promote sales.

(a) **Slotting fees.** Grocers sometimes receive discounts, allowances, slotting fees, or free product from manufacturers if the grocers provide shelf space for new products or advantageous shelf space for display of the manufacturers' products. Grocers' product placement or slotting activities in exchange for consideration from manufacturers constitute business transactions. RCW 82.04.140. Receipts received by grocers for product placement or slotting activities are taxable income to the grocers under the service and other activities B&O tax classification.

(b) **Manufacturers' or distributors' coupons.** Manufacturers' or distributors' coupons offer a reduction in price of a specified amount on the customer's purchase of specified items. The manufacturer or distributor will redeem these coupons when they are turned in by the seller. Redemption is usually at full face value plus a small handling charge. In this case, the seller actually receives the full retail price for the item sold. Tax is due on the full retail price.

(c) **Manufacturers' rebates.** Manufacturers sometimes make rebates available to buyers. Normally the buyer pays the seller the full purchase price for an item, and then sends requested documentation with a rebate claim form to the manufacturer. The rebate is sent directly to the buyer.

(i) **Seller's measure of tax.** A cash payment by the manufacturer to the buyer has no effect on the selling price of the sales transaction that occurred between the seller and buyer. The measure of the tax remains the total consideration paid or delivered to the seller by the buyer.

(ii) **Automobile manufacturers' sales promotions.** Automobile manufacturers routinely run sales promotions offering a rebate or cash payment directly to the buyer. As an alternative to direct payment, these programs may allow the buyer to assign his or her right to the rebate to the selling dealer. The assignment from the buyer to the seller of the right to a manufacturer's rebate is a part of the consideration paid or delivered by the buyer to the seller. In such cases, the

measure of the B&O tax and retail sales tax must include the value of the manufacturer's rebate.

(d) **Manufacturers' incentives to retailers.** Except as provided in subsection (7)(b) of this rule regarding cash discounts, a payment or credit from a manufacturer or distributor to a retailer that is conditioned on the retailer making sales of services or tangible personal property to consumers, or engaging in any activity other than making the original wholesale purchase from the manufacturer or distributor, is not a bona fide discount.

(9) **Patronage dividends.** A patronage dividend is the distribution of a member's share of the profits of a cooperative association based on the quantity of purchases made by the member. The amount of a patronage dividend (rebate or refund) is determined by:

- The expenses of doing business;
- The volume of sales to other members; and
- The proportion of business the specific member has conducted with the cooperative.

A patronage dividend determined in this manner is simply a redistribution of the cooperative's "profit," even though the cooperative may refer to accounting mechanisms such as "tentative" or "delayed" invoices, or to "deferred discounts."

A member receiving dividends may deduct the amount received from gross income if it reports the income and qualifies for the investment income deduction under RCW 82.04.4281.

(a) **Exception.** Patronage dividends that are granted in the form of discounts in the selling price of specific articles (for example, a rebate of five cents per gallon on purchases of gasoline) are deductible from the gross income received by the taxpayer granting the dividends.

(b) **Example 7.** AB Cooperative, a nonprofit association, sells equipment to members and nonmembers. All equipment is sold at the normal and competitive prices. At year-end the volume of business done with members is determined, and proportionate shares of net profit are refunded. These dividends are not discounts on the selling price of specific articles and are not deductible from the cooperative's gross proceeds of sales when determining taxability.

(c) **Example 8.** MAX, a cooperative selling association comprised of several franchise dealers, sets up refunds as patronage dividends to comply with the Robinson-Patman Act. This act allows MAX to return to its dealers net earnings resulting from trading operations in proportion to purchases from or through the association.

Each purchase is invoiced to the dealer at the suggested wholesale price with net price to MAX also indicated. Every month dealers pay a regular flat fee plus a fixed percentage assessed on volume of purchases for payment of operational expenses. Refunds of the difference between the suggested wholesale price and the net cost are made to dealers quarterly.

The patronage dividends are distributions of the cooperative corporation's profits and are not deductible discounts because the discounts were not provided as a part of the sale of a particular article.

(10) **Payments to dealers for "make-ready" services.** Equipment dealers may be required by the manufacturer to perform or be responsible for "make-ready" services. These

services generally include the inspection, conditioning, and necessary repair of the equipment prior to the sale by the dealer. Payments for "make-ready" services are not bona fide cash discounts taken by the dealer, nor do they represent any adjustment to the dealer's purchase price of the sold equipment.

Payment for these services is a cost of doing business for the manufacturer. As a cost of doing business, the payment may not be deducted from the gross proceeds of sales when the manufacturer determines its B&O tax liability. Payments or credits received by the dealer for services performed are subject to the wholesaling B&O tax classification.

NEW SECTION

WAC 458-20-278 Returned goods, defective goods—Motor vehicle lemon law. (1) Introduction. This rule explains how sellers should report business and occupation (B&O) tax and retail sales tax when goods are returned and refunds or credits are granted.

(a) **Contract of sale.** Generally, when a contract of sale is made subject to cancellation at the option of one of the parties or to revision in the event the goods sold are defective, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.

(b) **Examples.** The examples in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **Returned goods.** When sales are made either upon approval or upon a sale or return basis, and the buyer returns the property purchased and the entire selling price is refunded or credited to the buyer, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability. A deduction is available under the retail sales tax classification only if the amount of sales tax previously collected from the buyer has been refunded by the seller to the buyer. If the property purchased is not returned within the guaranty period as established by contract, or if the full selling price is not refunded or credited to the buyer, a presumption is raised, subject to rebuttal by a preponderance of the evidence, that the property returned is not a returned good but is an exchange or a repurchase by the seller.

(a) **Example 1.** Stan sells an article for \$60.00 and credits his sales account with the sale. The buyer returns the article purchased within the guaranty period and the purchase price and the sales tax previously paid by the buyer is refunded or credited to the buyer. If the sale has not been reported to the department of revenue, Stan may deduct \$60.00 for the returned article from his gross sales amount. If Stan has already reported the sale on his excise tax return, he may take a deduction for \$60.00 for the returned article on his next filed excise tax return.

(b) **Restocking fees charged on returned goods.** A "restocking fee" is a fee intended to cover the cost, by the seller, of restoring returned items to saleable condition and returning them to inventory. The restocking fee is the same

regardless of when a purchased item is returned to the seller by the buyer.

If all the conditions of this subsection are met for returned merchandise with the exception of a restocking fee, the transaction will be viewed as a sale return and not as a repurchase. When a sale return occurs, a deduction may be taken under the appropriate tax classification used in reporting the original sale. However, the restocking fee is considered income and taxable under the service and other business activities B&O tax classification.

(i) **Example 2.** Ace Auto Parts (Ace) sells a catalytic converter to Stan for \$400.00 plus tax. The receipt that Ace gives Stan states that returns must be made within 30 days and a \$35.00 restocking fee will apply to returns. Stan realizes after he gets the part home that it is the wrong one for his car. When Stan returns the part, he finds that Ace does not have the catalytic converter that he needs for his car. Ace computes Stan's refund of \$400.00 plus sales tax minus the \$35.00 restocking fee. Ace may reduce its gross retail sales by \$400.00, but must report the \$35.00 restocking fee under the service and other business activities B&O tax classification.

(ii) **Example 3.** Breen's Department Store (Breen's) accepts returned items, in new condition, but may discount the original purchase price based on the time elapsed since purchase.

Return within	Amount of credit
0 - 30 days from receipt	100% of original purchase price
31 - 60 days from receipt	75% of original purchase price
61 + days from receipt	50% of original purchase price

For example, Jill purchases a dress from Breen's and returns the dress 45 days after purchase. Breen's refunds or provides a credit to her of 75 percent of the cost of the dress. The amount retained by Breen's is not considered a restocking fee. This is considered a repurchase by Breen's, and thus no deductions are allowed under the retailing B&O tax or retail sales tax classifications on Breen's excise tax return.

(3) **Defective goods.** This subsection does not apply to new motor vehicles under an original manufacturer's warranty. See subsection (4) of this rule regarding new motor vehicles under an original manufacturer's warranty.

When bona fide refunds, credits, or allowances are given within the guaranty period by a seller to a buyer on account of defects in goods sold, the seller may deduct the amount of such refunds, credits, or allowances in computing its tax liability, if the seller has refunded the proportionate amount of the sales tax it previously collected from the buyer.

Example 4. On April 5th, Stan sells an item to Bob for \$60.00. Stan records the sale as gross income. The item is later found to be defective by Bob.

(a) Bob returns the item prior to Stan reporting the sale on his excise tax return, and remitting B&O tax and the collected retail sales tax. Stan refunds Bob the purchase price

including the retail sales tax. Stan may subtract \$60.00 from his gross income when completing his excise tax return.

(b) Bob returns the defective article and Stan allows him a full credit of \$60.00 towards another article. The new article's price is \$80.00. Bob pays, in cash, the additional \$20.00 plus retail sales tax on the \$20.00. Stan records the \$20.00 as gross sales. The allowance for the defective article (\$60.00) is already included in Stan's gross sales, thus only the \$20.00 (\$60.00 credit and \$20.00 cash = \$80.00 purchase price) should be added to the gross sales amount.

(c) Bob waits a month to return the defective item for a refund. Stan refunds Bob the full purchase price of \$60.00 plus the retail sales tax. As Stan has already reported the sale on his excise tax return, he may deduct \$60.00 under "Returns" for both the retailing B&O tax and retail sales tax classifications on his next excise tax return.

(d) Bob is willing to keep the defective item but requests a partial refund to offset repair costs. Stan refunds Bob \$25.00 of the purchase price, plus the applicable retail sales tax. As Stan has already reported the sale on his excise tax return, he may take a deduction for \$25.00 under both the retailing B&O tax and retail sales tax classifications on his next excise tax return.

(4) **Motor vehicle warranties - Lemon law.** A manufacturer that replaces or repurchases a new motor vehicle under warranty because of a defective condition is required to refund to the consumer the "collateral charges" (RCW 19.118.021(2)) which include retail sales tax. The refund will be made to the consumer by the manufacturer or by the dealer for the manufacturer. The department of revenue will then verify calculations and credit or refund the correct amount of the tax so refunded. For information on the lemon law, other than retail sales tax, contact the attorney general's office.

(a) **What documentation is needed for credit or refund?** To receive a credit or refund, the manufacturer or dealer must provide the following information to the department of revenue establishing that the dealer collected the retail sales tax and that it was refunded to the consumer:

(i) A complete copy of the new motor vehicle arbitration board decision including the owner signed acceptance/denied page; or

(ii) The Lemon Law Refund Request Verification Form completed in nonarbitrated situations; and

(iii) A statement signed and dated by the consumer accepting the arbitration board decision or the manufacturer's nonarbitrated repurchase offer. The statement must include the consumer's name, repurchase offer date, total repurchase amount, sales tax amount refunded, the name of the manufacturer issuing the refund and any other supporting documents needed to substantiate the claim; and

(iv) A copy of the dealer invoice (purchase order) or lease agreement, signed by the consumer, that shows the amount of retail sales tax paid; and

(v) A copy of the manufacturer's refund check(s) for repurchase drawn payable to the consumer and/or lien holder; and

(vi) For the calculation of reasonable offset for mileage provide all supporting documentation necessary to verify the calculation used and documentation (e.g., all dealer repair

records or service records) to verify the attempted repairs to the vehicle did comply with RCW 19.118.041.

(b) **Where can I obtain the Lemon Law Refund Request Verification Form?** The "Lemon Law Refund Request Verification Form" is available on the department's web site at dor.wa.gov, or by calling the department's telephone information center at 1-800-647-7706, or writing to:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

(c) **Where should documentation be sent?** All documentation from manufacturers for credit or refund on lemon law refunds should be sent to:

Audit Division/Lemon Law Refund Section
Department of Revenue
P.O. Box 47474
Olympia, WA 98504-7474

WSR 15-12-082

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed June 1, 2015, 12:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-07-013.

Title of Rule and Other Identifying Information: WAC 182-502-0060 Reapplying for participation.

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 July 7, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 8, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m., July 7, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 1, 2015, 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: The agency is revising this rule to clarify that individual providers who work in a group practice that has been terminated by the agency may reapply for participation.

Reasons Supporting Proposal: The current version of this rule states that all providers removed from participation are not eligible to reapply for five years. The rule conflicts with WAC 182-502-0030(3), which allows providers who are not full or partial owners to reapply.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408; Implementation and Enforcement: Maureen Guzman, P.O. Box 45502, Olympia, WA 98504-5502, (360) 725-1622.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose a disproportionate cost 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 the joint administrative rules review committee or applied voluntarily.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-17-047, filed 8/13/13, effective 10/1/13)

WAC 182-502-0060 Reapplying for participation. (1)

Providers who are denied enrollment or removed from participation are not eligible to reapply for participation with the medicaid agency for five years from the date of denial or termination.

(2) Providers who are denied enrollment or removed from participation more than once are not eligible to reapply for participation with the agency.

(3) A provider who is terminated solely under WAC 182-502-0030(3) is eligible for immediate reapplication with the agency if the provider is not a full or partial owner of a terminated group practice.

WSR 15-12-087

PROPOSED RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed June 2, 2015, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-089.

Title of Rule and Other Identifying Information: Implementation of the *Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*.

In 2013, The American Psychiatric Association released the *Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*. The department of labor and industries (L&I) is proposing to amend rules in order to aid in the implementation and consistent use of new *DSM* versions within Washington state's workers' compensation program.

Amended rules: WAC 296-14-300, 296-20-330, and 296-21-270.

Hearing Location(s): L&I, Tumwater Headquarters Building, S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on July 13, 2015, at 1:00 p.m.

Date of Intended Adoption: September 1, 2015.

Submit Written Comments to: Jami Lifka, P.O. Box 44321, Olympia, WA 98504-4321 or e-mail Jami.Lifka@Lni.wa.gov or fax (360) 902-6315. Written comments must be received no later than 5 p.m., July 13, 2015.

Assistance for Persons with Disabilities: Contact Jami Lifka by July 1, 2015, TTY at 711 for (360) 902-4941 or directly to (360) 902-4941.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is limited to changes necessary to implement the *DSM-5* and will include the following:

- Amending existing rules that refer to the *DSM-IV* or its required classification method (axis system) or its assessment instruments, and
- Clarifying how the *DSM-5* is implemented within Title 51 RCW.

Reasons Supporting Proposal: Many federal and state health care purchasing agencies will use the *DSM-5* for coding diagnoses for mental disorders as referenced in the federal Health Insurance Portability and Accountability Act (HIPAA) requirements. Washington's workers' compensation program is not mandated to follow HIPAA requirements, but does so to be consistent with other payors and the provider community.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, and 51.08.142.

Statute Being Implemented: RCW 51.04.020, 51.04.030, and 51.08.142.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The *DSM-5* represents industry standards for diagnostic criteria for mental disorders. L&I is governed by Title 51 RCW, Washington's Industrial Insurance Act. The proposed rule changes will clarify how the *DSM-5* is implemented within the limitations of that act. No other state or federal agencies are responsible for interpreting and enforcing the provisions of this act.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jami Lifka, Office of the Medical Director, (360) 902-4941; Implementation: Leah Hole-Marshall, Medical Administrator, Office of the Medical Director, (360) 902-4996; and Enforcement: Vickie Kennedy, Assistant Director, Insurance Services, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed language does not disproportionately impact small businesses. L&I will not be requiring small businesses to do anything that they will not already be doing. L&I's adoption of the *DSM-5* is consistent with industry standards in the health care provider and payer communities for diagnosing mental disorders and the new bill coding standards included in the *DSM-5* (ICD-10) that will be implemented nationwide October 1, 2015.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is a procedural and interpretive rule that will allow for the consistent use of an updated reference manual for the diagnosis of mental disorders (*DSM-5*). As such, no cost-benefit analysis is required. In accordance with RCW 34.05.328 (5)(c)(i) and (ii), this rule making proposes amending language that pertains to ensuring consistent internal operations of an agency and interprets Washington state's Industrial Insurance Act as it relates to the implementation of the *DSM-5*, the violation of which does not subject a person to a penalty or sanction.

June 2, 2015

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 88-14-011, filed 6/24/88)

WAC 296-14-300 Mental condition/mental disabilities. (1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease in RCW 51.08.140.

Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from:

- (a) Change of employment duties;
- (b) Conflicts with a supervisor;
- (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- (d) Relationships with supervisors, coworkers, or the public;
- (e) Specific or general job dissatisfaction;
- (f) Work load pressures;
- (g) Subjective perceptions of employment conditions or environment;
- (h) Loss of job or demotion for whatever reason;
- (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- (j) Objective or subjective stresses of employment;
- (k) Personnel decisions;
- (l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

(2)(a) Stress resulting from extreme exposure to a single traumatic event will be adjudicated (~~(with reference to)~~) as an industrial injury. See RCW 51.08.100.

(b) Examples of extreme single traumatic events include: Actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury.

(c) These exposures must occur in one of the following ways:

- (i) Directly experiencing the traumatic event; or
- (ii) Witnessing, in person, the event as it occurred to others.

(d) Repeated exposure to aversive details of traumatic events, none of which rises to the level of extreme exposure, is not an industrial injury (see RCW 51.08.100) or an occupational disease (see RCW 51.08.140 and 51.08.142).

(3) Claims based on mental conditions or mental disabilities that specify pain primarily as a psychiatric condition (e.g., somatic symptom disorder, with predominant pain), or that are characterized by excessive or abnormal thoughts, feelings, behaviors or neurological symptoms (e.g., conversion disorder, factitious disorder) are not industrial injuries (see RCW 51.08.100) or occupational diseases (see RCW 51.08.140 and 51.08.142).

AMENDATORY SECTION (Amending Order 74-32, filed 6/21/74, effective 10/1/74)

WAC 296-20-330 Impairments of mental health.

~~((H))~~ Rules for evaluation of permanent impairment of mental health:

~~((a))~~ (1) Mental illness means malfunction of the psychic apparatus that significantly interferes with ordinary living.

~~((b))~~ (2) Each person has a pattern of adjustment to life. The pattern of adjustment before the industrial injury or occupational disease serves as a base line for all assessments of whether there has been a permanent impairment due to the industrial injury or occupational disease.

~~((c))~~ (3) To determine the preinjury pattern of adjustment, all evaluations of mental health shall contain a complete preinjury history including, but not necessarily limited to: Family background and the relationships with parents or other nurturing figures; extent of education and reaction to it; military experience, if any; problems with civil authorities; any history of prolonged illness, and difficulty with recovery; any history of drug abuse or alcoholism; employment history, the extent of and reaction to responsibility, and relationships with others at work; capacity to make and retain friends; relationships with spouses and children; nature of daily activities, including recreation and hobbies; and lastly, some summary statement about the sources of the patient's self-esteem and sense of identity. Both strengths and vulnerabilities of the person shall be included.

~~((d))~~ (4) Differences in adjustment patterns before and after the industrial injury or occupational disease shall be described, and the report shall contain the examining physician's opinion as to whether any differences:

~~((1))~~ (a) Are the result of the industrial injury or occupational disease and its sequelae, in the sense they would not have occurred had there not been the industrial injury or occupational disease;

~~((2))~~ (b) Are permanent or temporary;

~~((3))~~ (c) Are more than the normal, self-correcting and expectable response to the stress of the industrial injury or occupational disease;

~~((4))~~ (d) Constitute an impairment psychosocially or physiologically; and

~~((5))~~ (e) Are susceptible to treatment, and, if so, what kind. The presence of any unrelated or coincidental mental impairment shall always be mentioned.

~~((e))~~ (5) All reports of mental health evaluations shall use the diagnostic terminology listed in the edition of the Diagnostic and Statistical Manual of Mental Disorders (of the American Psychiatric Association) (DSM) designated by the department.

~~((f))~~ (6) No classification of impairment shall be made for complaints where the quality of daily life does not differ substantially from the preinjury pattern. A patient not currently employed may not engage in the same activities as when working, but the level and variety of his activities and zest for them shall distinguish the purely situational difference from cases of regression and withdrawal. In cases where some loss of use of body member is claimed, no category or impairment shall be assigned unless there are objective findings of physiologic regression or consistent evidence of altered adaptability.

~~((g))~~ (7) The physician shall identify the ~~((schizoid, antisocial, inadequate, sociopathic, passive, hysterical, paranoid, or dependent personality types))~~ personality disorders as defined in the edition of the DSM designated by the department. Patients with these longstanding character disorders may show problem behavior that seems more related to current stress than it is, sometimes unconsciously insinuating themselves into difficult situations of which they then complain. Emotional reactions to an injury and subsequent events must be carefully evaluated in these patients. It must be medically probable that such reactions are permanent before a category of impairment can be attributed to the injury; temporary reactions or preexisting psychopathology must be differentiated.

AMENDATORY SECTION (Amending WSR 09-14-104, filed 6/30/09, effective 7/31/09)

WAC 296-21-270 ((Psychiatric)) Mental health services. (1) The following rule supplements information contained in the fee schedules regarding coverage and reimbursement for ~~((psychiatric))~~ mental health services.

(2) Treatment of mental conditions to workers is to be goal directed, time limited, intensive, targeted on specific symptoms and functional status and limited to conditions caused or aggravated by the industrial condition. ~~((Psychiatric))~~ Specific functional goals of treatment must be identified and treatment must have an emphasis on functional, measurable improvement towards the specific goals.

(3) Mental health services to workers are limited to those provided by psychiatrists, doctoral level clinical ((PhD)) psychologists (e.g., PhD and PsyD), and psychiatric advanced registered nurse practitioners and according to department policy. Psychiatrists and psychiatric advanced registered nurse practitioners may prescribe medications while providing concurrent care. For purposes of this rule, the term "~~((psychiatric))~~ mental health services" refers to treatment by psychologists, psychiatric advanced registered nurse practitioners, and psychiatrists.

(4) Initial evaluation, and subsequent treatment must be authorized by department staff, as outlined by department policy. The report of initial evaluation, including test results, and treatment plan ~~((are))~~ is to be sent to the worker's attending provider, as well as to the department or self-insurer. A copy of the sixty-day narrative reports are to be sent to the department or self-insurer and to the attending provider.

(5)(a) All providers are bound by the medical aid rules in chapter 296-20 WAC. Reporting requirements are defined in chapter 296-20 WAC. In addition, the following are required:

Testing results with scores, scales, and profiles; report of raw data sufficient to allow reassessment by a panel or independent medical examiner. (~~Use of~~) Explanation of the numerical scales is required.

(b) Providers must use the (~~current~~) edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (~~axis format~~) designated by the department in the initial evaluation, follow-up evaluations and sixty-day narrative reports(~~, and explanation of the numerical scales are required~~).

(c) A report to the department will contain, at least, the following elements:

(i) Subjective complaints;

(ii) Objective observations;

(iii) Identification and measurement of target symptoms and functional status;

(iv) Assessment of the worker's condition and goals accomplished in relation to the target symptoms and functional status; and

(v) Plan of care.

(6) The codes, reimbursement levels, and other policies for (~~psychiatric~~) mental health services are listed in the fee schedules.

(7) When providing mental health services, providers must track and document the worker's functional status using validated instruments such as the World Health Organization Disability Assessment Schedule (WHODAS) or other substantially equivalent validated instruments recommended by the department. A copy of the completed functional assessment instrument must be sent to the attending provider and the department or self-insurer, as required by department policy or treatment guideline.

WSR 15-12-089

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed June 2, 2015, 9:17 a.m.]

WAC 388-310-0500, 388-310-2200, and 388-484-0005, proposed by the department of social and health services in WSR 14-23-086, appearing in issue 14-23 of the Washington State Register, which was distributed on December 3, 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 15-12-090

PROPOSED RULES DEPARTMENT OF HEALTH

[Filed June 2, 2015, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-15-101.

Title of Rule and Other Identifying Information: WAC 246-926-180, amending the parenteral procedure rule for radiologic technologists.

Hearing Location(s): Department of Health, Town Center 2 (TC2), 111 Israel Road S.E., Room 145, Tumwater, WA 98501, on July 24, 2014 [2015], at 9:30 a.m.

Date of Intended Adoption: August 7, 2015.

Submit Written Comments to: Susan Gragg, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, e-mail http://www3.doh.wa.gov/policy_review/, fax (360) 236-2901, by July 24, 2015.

Assistance for Persons with Disabilities: Contact Susan Gragg, program manager, by July 20, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of health (department) received a rule petition asking for clarification as to whether accessing peripherally inserted central catheters (PICC) lines and ports for manual and power injections is within the existing statutory scope of practice for radiologic technologists (RT). In its present form, this rule is not clear on the subject of RTs accessing PICC lines and/or ports. The department has determined that current law regarding the RT scope of practice includes administering diagnostic and/or therapeutic agents, identified in statute as parenteral procedures. The statute does not specify, nor does it limit, the route(s) an RT may use. The administration of substances related to radiologic technology, whether through intravenous injection or by accessing PICC lines and/or power ports, is nationally recognized technique. For that reason, the department is proposing an amendment to the rule.

Reasons Supporting Proposal: Rules that implement chapter 18.84 RCW, RT scope of practice, need to clearly state permissible duties to ensure that imaging technology is safe and effectively administered to the people of this state by skilled and qualified health care providers. The proposed rule meets the statutory goals and objectives because it clearly identifies allowed actions under RT scope of practice. The proposed rule is also consistent with industry standards.

Statutory Authority for Adoption: RCW 18.84.040.

Statute Being Implemented: RCW 18.84.040, 18.84.-020(6).

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: Susan Gragg, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4941.

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 not required under RCW 34.05.328. Under RCW 34.05.328, a cost-benefit analysis is required for "significant legislative rules." By definition, under RCW 34.05.328 (5)(c)(ii), the proposed rule is consid-

ered an "interpretive rule." A preliminary cost-benefit analysis may be obtained by contacting Susan Gragg, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4941, fax (360) 236-2901, e-mail susan.gragg@doh.wa.gov.

June 2, 2015
Dennis E. Worsham
Deputy Secretary
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 12-10-094, filed 5/2/12, effective 5/3/12)

WAC 246-926-180 Parenteral procedures (~~for a diagnostic or therapeutic radiologic technologist, or a cardiovascular invasive specialist~~). (1) For the purposes of this section, these terms shall have the following meaning:

(a) "Diagnostic agent" means a substance used in radiologic technology to reveal, pinpoint, and define the localization of a pathological process, such as contrast preparations, radioactive isotopes, and dyes.

(b) "Parenteral administration" means introducing a substance or medication into the body in a manner other than through the digestive canal or by topical application.

(c) "Therapeutic agent" means a medication or substance intended for medical treatment in the radiologic technology domain.

(d) "Venipuncture" means a procedure to puncture a vein to withdraw blood or to start intravenous infusion related to radiologic technology, but does not include the insertion of peripherally inserted central catheter (PICC) lines.

(2) A certified diagnostic or therapeutic radiologic technologist may administer diagnostic and therapeutic agents via intravenous, intramuscular, or subcutaneous injection, under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW. (~~Diagnostic and therapeutic agents may be administered via intravenous, intramuscular, or subcutaneous injection. In addition to direct supervision,~~) This includes accessing PICC lines and ports for manual or power injections for procedures related to radiologic technology. PICC lines and injection ports must be of a type approved by the federal Food and Drug Administration for administering diagnostic or therapeutic agents in radiologic technology. This does not include intraosseous infusion or intrathecal administration.

(3) Before the radiologic technologist may administer diagnostic and therapeutic agents, the following (~~guidelines~~) must be met:

(a) The radiologic technologist has had the prerequisite training and thorough knowledge of the particular procedure to be performed;

(b) Appropriate facilities are available for coping with any complication of the procedure as well as for emergency treatment of severe reactions to the diagnostic or therapeutic agent itself, including readily available appropriate resuscitative drugs, equipment, and personnel; and

(c) After parenteral administration of a diagnostic or therapeutic agent, competent personnel and emergency facil-

ities must be available to the patient for at least thirty minutes in case of a delayed reaction.

~~((2))~~ (4) A cardiovascular invasive specialist may administer parenteral diagnostic and therapeutic agents during cardiac or vascular catheterization procedures under the personal supervision of a physician licensed under chapter 18.71 or 18.57 RCW. Parenteral administration includes, but is not limited to, catheterization procedures involving arteries and veins.

~~((3))~~ (5) A certified radiologic technologist or cardiovascular invasive specialist may perform venipuncture under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW.

WSR 15-12-095
PROPOSED RULES
EXECUTIVE ETHICS BOARD

[Filed June 2, 2015, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-074.

Title of Rule and Other Identifying Information: WAC 292-110-010 Use of state resources.

Hearing Location(s): 2425 Bristol Court S.W., 4th Floor Conference Room, Olympia, WA, on July 17, 2015, at 9:00 a.m.

Date of Intended Adoption: July 20, 2015.

Submit Written Comments to: Kate Reynolds, P.O. Box 40149, Olympia, WA 98504-0149, e-mail kater[at]atg.wa.gov, fax (360) 586-3955, by July 15, 2015.

Assistance for Persons with Disabilities: Contact Ruthann Bryant by July 15, 2015, (360) 586-3265.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To review the permitted uses of state resources as well as update and clarify the rule.

Reasons Supporting Proposal: The board receives many questions regarding the use of state resources. By amending the rule, agency employees will gain a better understanding of the rules and regulations of the Ethics in Public Service Act.

Statutory Authority for Adoption: RCW 42.52.160, 42.52.360.

Statute Being Implemented: RCW 42.52.160.

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

Name of Proponent: Executive ethics board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kate Reynolds, Olympia, (360) 586-6759.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The state employees and state-wide elected officials that must comply with the proposed rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

June 2, 2015
Ruthann Bryant
Administrative Officer

AMENDATORY SECTION (Amending WSR 09-16-046, filed 7/28/09, effective 8/28/09)

WAC 292-110-010 Use of state resources. (1) **State-ment of principles** (~~—stewardship~~). The proper stewardship of state resources, including funds, facilities, tools, property, and employees and their time, is a responsibility that all state officers and employees share. Accordingly, state employees may not use state resources for personal benefit or gain or for the benefit or gain of other individuals or outside organizations. Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer or state employee, or with the state officer or state employee who authorizes such use. State officers and employees should ensure that any personal use of state resources permitted by this section is the most efficient in terms of overall time and resources.

(2) The following are permitted uses:

(a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute). All state employees and officers are responsible for the proper use of state resources, including funds, facilities, tools, property, and their time. This section does not restrict the use of state resources as described in subsections (2) and (3) of this section.

(2) Permitted uses.

(a) Use of state resources for official state purpose. "Official state purpose" includes use of state resources to conduct official duties, activities reasonably related to the conduct of official state duties, activities related to state employment, and activities otherwise allowed by statute. Examples of official state purposes include:

(i) Training and career development approved by the employing agency under RCW 41.06.410;

(ii) Membership or participation in professional associations that enhance job-related skills of the state officer or employee, so long as the use of state resources for this purpose has been authorized in writing;

(iii) State or agency sponsored health, safety, or diversity fairs;

(iv) Management of or access to state-provided or state-sponsored benefits, including health, deferred compensation, insurance, retirement, and the employee assistance program;

(v) Searching and applying for state jobs, including taking an examination or participating in an interview; and

(vi) Placement of nongovernmental web page links on an agency web site for official state purposes as long as the use does not violate RCW 42.52.180.

(b) **Agency approved use.** An agency head or designee may authorize (a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.

(c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.

~~(d))~~ limited use of agency staff time and resources for the following uses as long as that use is specifically authorized in an agency policy and conforms to that policy:

(i) Supporting, promoting, or soliciting for charitable activities;

(ii) Employee recognition, including birthday, retirement, wedding/baby showers, or other similar celebrations;

(iii) Activities supporting agency organizational effectiveness provided the specific policy is approved by the executive ethics board.

(3) Permitted personal use of state resources. This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee may make (~~(an occasional but limited personal)~~) de minimis use of state resources only if each of the following conditions are met:

(i) There is little or no cost to the state;

(ii) Any use is brief;

(iii) Any use occurs infrequently;

(iv) The use does not interfere with the performance of any state officer's or employee's official duties; (~~(and)~~)

(v) The use does not compromise the security or integrity of state property, information systems, or software(~~(-~~

~~(3) Permitted use of computers, electronic mail, the internet, and other technologies.~~ A state officer or employee may use equipment such as the telephone, the internet, and electronic mail provided such use conforms to ethical standards under subsection (2) of this section, and the use is not otherwise prohibited under subsection (5) of this section);

(vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and

(vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

(b) A state officer or employee may use state resources for wellness or combined fund drive activities as long as use conforms with (a) of this subsection or as authorized in state law and rule.

(4) No expectation of privacy. Technologies such as electronic mail, facsimile transmissions, the internet, and voice mail may create an electronic record. This is what separates these from other forms of communication such as a telephone conversation. The ethics rules do not distinguish between the various forms of communication. Electronic records are reproducible and therefore cannot be considered private. Such records may be subject to disclosure under the Public Records Act, or may be disclosed for audit or legitimate state operational or management purposes.

(5) (~~Prohibited uses.~~

(a) Any use for the purpose of conducting an outside business, private employment, or other activities conducted for private financial gain;

(b) Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to, a private business, or a political party, or supporting, promoting the interests of, or soliciting for a nonprofit organization unless provided for by law or authorized by an agency head or designee;

(c) Any use for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Such a use of state resources is specifically prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2);

(d) Any use for the purpose of participating in or assisting in an effort to lobby the state legislature, or a state agency head. Such a use of state resources is specifically prohibited by RCW 42.17.190, subject to the exceptions in RCW 42.17.190(3);

(e) Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy; and

(f) Any private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the state.

~~(6) Reimbursement for personal use.~~ Establishing a system for reimbursement for private or personal use of state resources undermines the purpose of the Ethics in Public Service Act and imposes significant administrative burdens on state agencies. However, the board recognizes that)) Reimbursement for personal use. In some limited situations, such as officers or employees working at remote locations, ((a system of reimbursement may be appropriate. Any system of reimbursement must be established by the agency in advance, and must result in little or no cost to the state, including administrative costs. To be permitted under this section, the board must approve any reimbursement system implemented by an agency)) an agency may allow reimbursement for limited personal use of state resources by the state employee or officer.

~~((7)) (6) Agency policies ((encouraged.~~ State agencies are encouraged to adopt policies applying these principles to their unique circumstances)). Agency policies that are approved by the board qualify for "safe harbor" under WAC 292-120-035. Nothing in this section is intended to limit the ability of an agency to adopt policies that are more restrictive. However, violation of a more restrictive agency policy by itself will not constitute a violation of RCW 42.52.160, even if it would constitute a violation of agency policy.

~~((8)) (7) Advisory opinions and frequently asked questions ((and examples)).~~ The executive ethics board ((maintains a list of frequently asked questions and examples that provide additional guidance regarding this section. State officers and employees are encouraged to review this document at the board's web site www.ethics.wa.gov or to request a copy of the document through the board's office.

Washington State Executive Ethics Board
P.O. Box 40149
Olympia, WA 98504-0149

Or by electronic mail at: ethics@atg.wa.gov) publishes advisory opinions interpreting the Ethics in Public Service Act and/or its rules and provides answers to frequently asked questions regarding the use of state resources that can be found at www.ethics.wa.gov.

WSR 15-12-096
PROPOSED RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed June 2, 2015, 11:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-07-003.

Title of Rule and Other Identifying Information: The department is amending chapter 388-97 WAC, Nursing homes, as follows: Amending WAC 388-97-2000 Preadmission screening and resident review (PASRR) determination and appeal rights; repealing WAC 388-97-1920 Preadmission screening—Level I, 388-97-1940 Advanced categorical determinations, not subject to preadmission screening—Level II, 388-97-1960 Preadmission screening—Level II and 388-97-1980 Resident review; and new sections WAC 388-97-1910 Definitions related with PASRR, 388-97-1915 PASRR requirements prior to admission of new residents, and 388-97-1975 PASRR requirements after admission of a resident.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on July 7, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 8, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., July 7, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by June 23, 2015, phone (360) 664-6092 or TTY (360) 664-6178, e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing these new, amended, and repealed rules to assure compliance with federal standards regarding the PASRR process in accordance with 42 C.F.R. § 483.100-138.

Reasons Supporting Proposal: This amendment will provide greater clarity regarding the PASRR process for nursing facilities.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

Statute Being Implemented: Chapters 18.51 and 74.42 RCW.

Rule is necessary because of federal law, 42 C.F.R. § 483.100-138.

Name of Proponent: Department of social and health services, aging and long-term support administration, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Abbott, P.O. Box 45600, Olympia, WA 98513, (360) 725-2581; Implementation: Carl Walters, P.O. Box 45600, Olympia, WA 98513, (360) 725-2400; and Enforcement: Tim Hoekstra, P.O. Box 45600, Olympia, WA 98513, (360) 725-3238.

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

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

May 26, 2015
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-97-1910 Definitions related with PASRR
"AAA" means area agency on aging.

"**Advance categorical determination**" means a determination by a mental health or DDA PASRR evaluator that an individual may be admitted to a nursing facility on a temporary basis. The PASRR evaluator will do an abbreviated evaluation that is sufficient to determine that the individual has an intellectual disability or related condition and that the individual meets nursing facility level of care, but does not need specialized services at that time. The potential reasons are:

- (1) Protective services stay of not more than seven days;
- (2) Respite in a nursing facility for not more than thirty days; and
- (3) Delirium (full level II evaluation required when condition improves).

"**DDA**" means the developmental disabilities administration within the department.

"**Exempted hospital discharge**" means the process by which an individual who meets the criteria in WAC 388-97-1920 (2)(a) through (c) may be admitted to a nursing facility without a PASRR level II evaluation, even though he or she may have a serious mental illness or an intellectual disability or related condition.

"**HCS**" means home and community services within the department.

"**Intellectual disability or related condition**" means a condition as defined in 42 CFR §483.102 (b)(3) and 42 CFR §435.1010 or successor laws.

"**Preadmission screening and resident review process**" or "**PASRR process**" means the process required by federal law to determine if placement in a nursing facility is appropriate for an individual who has a serious mental illness, an intellectual disability or related condition, or both, and if so, to determine whether specialized services are necessary. The PASRR process includes the following steps:

(1) A "PASRR level I" screening is conducted by a referring provider, such as a hospital or physician, or by designated HCS, AAA or DDA staff, to identify whether an individual may have a mental illness, an intellectual disability or related condition, or both. Under the limited circumstances described in this chapter, a nursing facility may conduct the screening. The standardized form and guidelines developed

by the department's PASRR program must be used to conduct the Level I screening.

(2) A "PASRR level II" evaluation is conducted by the DDA or mental health PASRR evaluator, or both, as appropriate. This evaluation is performed with individuals who, based upon the PASRR level I screening, are suspected of having a mental illness, an intellectual disability or related condition, or both. The level II evaluator determines:

- (a) Whether the individual has a serious mental illness and/or an intellectual disability or related condition;
- (b) If so, whether nursing facility placement is appropriate; and
- (c) If so, whether the individual requires specialized services while residing at the nursing facility.

"**Resident review**" means a PASRR level II evaluation of a resident with serious mental illness and/or intellectual disability or related condition after that resident has experienced a significant change in physical or mental condition, as defined in this section.

"**Serious mental illness**" means a condition as defined in 42 CFR §483.102 (b)(1) or successor laws.

"**Significant change in physical or mental condition**" for PASRR purpose means a deterioration or improvement in the physical or mental condition of a resident with serious mental illness or intellectual disability or related condition such that:

- (1) The resident may reasonably require new, different, or fewer specialized services than the resident had been receiving; or
- (2) Community placement is a reasonable consideration for the resident.

"**Specialized services**" are services provided or arranged for by the department as described in 42 CFR §483.120 or successor laws, which are additional to services the nursing facility is required to provide. The PASRR level II evaluation identifies the specialized services needed by the resident.

NEW SECTION

WAC 388-97-1915 PASRR requirements prior to admission of new residents Prior to every admission of a new resident, the nursing facility must:

(1) Verify that a PASRR level I screening has been completed, and deny admission until that screening has been completed.

(2) Verify that a PASRR level II evaluation has been completed when the individual's PASRR level I screening indicates that the individual may have serious mental illness and/or intellectual disability or related condition, and deny admission until that evaluation has been completed, unless all three of the following criteria apply and are documented in the PASRR level I screening:

- (a) The individual is admitted directly from a hospital after receiving acute inpatient care;
- (b) The individual requires nursing facility services for the condition for which he or she received care in the hospital; and

(c) The individual's attending physician has certified that the individual is likely to require fewer than thirty days of nursing facility services.

(3) Decline to admit any individual whose PASRR level II evaluation determines that he or she does not require nursing facility services or that a nursing facility placement is otherwise inappropriate.

(4) Coordinate with PASRR evaluators to the maximum extent practicable in order to avoid duplicative assessments and effort, and to ensure continuity of care for nursing facility residents with a serious mental illness and/or an intellectual disability or related condition.

NEW SECTION

WAC 388-97-1975 PASRR requirements after admission of a resident Following a resident's admission, the nursing facility must:

(1) Review the all level I screening forms for accuracy. If at any time the facility finds that the previous level I screening was incomplete, erroneous or is no longer accurate, the facility must immediately complete a new screening using the department's standardized level I form, following the directions provided by the department's PASRR program. If the corrected level I screening identifies a possible serious mental illness or intellectual disability or related condition, the facility must notify DDA and/or the mental health PASRR evaluator so a level II evaluation can be conducted.

(2) Record the evidence of the level I screening and level II determinations (and any subsequent changes) in the resident assessment in accordance with the schedule required under WAC 388-97-1000.

(3) Maintain the level I form and the level II evaluation report in the resident's active clinical record.

(4) Immediately complete a level I screening using the department's standardized form if the facility discovers that a resident does not have a level I screening in his or her clinical record, following directions provided by the department's PASRR program. If the level I screening identifies a possible serious mental illness or intellectual disability or related condition, notify the DDA and/or mental health PASRR evaluator so a level II evaluation can be conducted.

(5) Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted on an exempted hospital discharge appears likely to need nursing facility services for more than thirty days, so a level II evaluation can be performed. This notification must occur as soon as the nursing facility anticipates that the resident may require more than 30 days of nursing facility services, and no later than the twenty-fifth day after admission unless good cause is documented for later notification.

(6) Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted with an advance categorical determination appears likely to need nursing facility services for longer than the period specified by DDA and/or the mental health PASRR evaluator, so that a full assessment of the individual's need for specialized services can be performed. This notification must occur as soon as the nursing facility anticipates that the resident will require more than the number of days of nursing facility services authorized for the

specific advance categorical determination and no later than five days before expiration of the period (three days for protective services) unless good cause is documented for later notification.

(7) Immediately notify the DDA and/or mental health PASRR evaluator for a possible resident review when there has been a significant change in the physical or mental condition, as defined in WAC 388-97-1910, of any resident who has been determined to have a serious mental illness or intellectual disability or related condition. Complete a new level I screening for the significant change.

(8) Provide or arrange for the provision of any services recommended by a PASRR level II evaluator that are within the scope of nursing facility services. If the facility believes that the recommended service either cannot or should not be provided, the facility must document the reason(s) for not providing the service and communicate the reason(s) to the level II evaluator.

(9) Immediately complete a new level I screening using the department's standardized form if the facility finds that a resident, not previously determined to have a serious mental illness, develops symptoms of a serious mental illness, and refer the resident to the mental health PASRR evaluator for further evaluation.

(10) Provide services and interventions that complement, reinforce and are consistent with any specialized services recommended by the level II evaluator. The resident's plan of care must specify how the facility will integrate relevant activities to achieve this consistency and the enhancement of the PASRR goals.

(11) Discharge, in accordance with WAC 388-97-0120, any resident with a serious mental illness or intellectual disability or related condition who does not meet nursing facility level of care, unless the resident has continuously resided in the facility for at least thirty months and requires specialized services. The nursing facility must cooperate with DDA and/or mental health PASRR evaluator as it prepares the resident for a safe and orderly discharge.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2000 Preadmission screening and resident review (PASRR) determination and appeal rights.

(1) The resident has the right to choose to remain in the nursing facility and receive specialized services if:

(a) He or she has continuously resided in a nursing facility since October 1, 1987; and

(b) The department determined, in 1990, that the resident required specialized services for a serious mental illness or developmental disability but did not require nursing facility services.

(2) ~~(In the event that residents chose to remain in the nursing facility as outlined in subsection (1) above, the department, or designee, will clarify the effect on eligibility for medicaid services under the state plan if the resident chooses to leave the facility, including its effect on readmission to the facility.~~

~~(3) An individual applying for admission to a nursing facility or a)~~ A nursing facility resident who has been

adversely impacted by a PASRR determination may appeal the department's determination that the individual is:

(a) Not in need of nursing facility care as defined under WAC 388-106-0350 through 388-106-0360;

(b) Not in need of specialized services as defined under WAC ((388-97-1960)) 388-97-1910; or

(c) Need for specialized services as defined under WAC ((388-97-1960)) 388-97-1910.

((4)) (3) The nursing facility must assist ((the individual applying for admission or)) a resident, as needed, in requesting a hearing to appeal the department's PASRR determination.

((5) If the department's PASRR determination requires that a resident be transferred or discharged, the department will:

(a) Provide the required notice of transfer or discharge to the resident, the resident's surrogate decision maker, and if appropriate, a family member or the resident's representative thirty days or more before the date of transfer or discharge;

(b) Attach a hearing request form to the transfer or discharge notice;

(c) Inform the resident, in writing in a language and manner the resident can understand, that:

(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge;

(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date of transfer or discharge set forth in the written transfer or discharge notice; and

(iii) The resident will be ineligible for medicaid nursing facility payment:

(A) Thirty days after the receipt of written notice of transfer or discharge; or

(B) If the resident appeals under subsection (1)(a) of this section, thirty days after the final order is entered upholding the department's decision to transfer or discharge a resident.

(6) The department's home and community services may pay for the resident's nursing facility services after the time specified in subsection (5)(c)(iii) of this section, if the department determines that a location appropriate to the resident's medical and other needs is not available.

(7) The department will:

(a) Send a copy of the transfer/discharge notice to the resident's attending physician, the nursing facility and, where appropriate, a family member or the resident's representative;

(b) Suspend transfer or discharge:

(i) If the office of administrative hearings receives an appeal on or before the date set for transfer or discharge or before the resident is actually transferred or discharged; and

(ii) Until the office of appeals makes a determination; and

(c) Provide assistance to the resident for relocation necessitated by the department's PASRR determination.

(8) Resident appeals of PASRR determinations will be in accordance with 42 C.F.R. § 431 Subpart E, chapter 388-02 WAC, and the procedures defined in this section. In the event of a conflict between a provision in this chapter and a provision in chapter 388-02 WAC, the provision in this chapter will prevail.)

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-97-1920 Preadmission screening—Level I.

WAC 388-97-1940 Advanced categorical determinations, not subject to preadmission screening—Level II.

WAC 388-97-1960 Preadmission screening—Level II.

WAC 388-97-1980 Resident review.

WSR 15-12-108

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed June 2, 2015, 6:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-013.

Title of Rule and Other Identifying Information: Amendments to chapter 180-90 WAC, Private schools. Proposed amended rules include WAC 180-90-112 Definitions, 180-90-130 Approval—Annual certification—Adverse findings, 180-90-139 Approval action by SBE, 180-90-141 Loss of private school approval, 180-90-145 Approval—Annual certification and initial application—Exception and 180-90-160 Minimum standards and certificate form; and a new section is proposed on complaints against private schools.

Hearing Location(s): Museum of Flight, Skyline Room, 9404 East Marginal Way South, Seattle, 98108, on July 8, 2015, at 3:00.

Date of Intended Adoption: July 9, 2015.

Submit Written Comments to: Linda Drake, State Board of Education, P.O. Box 47206, [Olympia], WA 98504-7206, e-mail linda.drake@k12.wa.us, fax (360) 586-2357, by June 30, 2015.

Assistance for Persons with Disabilities: Contact Denise Ross by June 30, 2015, TTY (360) 644-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed amendments are to make technical corrections, update the process of private school approval for consistency with board policy, to clarify definitions, and describe the process for handling complaints against private schools. Anticipated effects included (1) streamlining the approval process, (2) providing greater flexibility to private schools in meeting the requirement for Washington state certified educators, and (3) clarifying the process for handling complaints against private schools.

Reasons Supporting Proposal: Proposed amendments include updating the rules for better alignment with statute and to reflect current practices. WAC 180-08-015 requires the state board of education to review all board rules not less than every three years. Compliance with WAC 180-08-015 resulted in this update of chapter 180-90 WAC.

Statutory Authority for Adoption: RCW 28A.195.040.

Statute Being Implemented: RCW 28A.195.040.

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

Name of Proponent: State board of education, governmental.

Name of Agency Personnel Responsible for Drafting: Linda Drake, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, (360) 725-6028; Implementation and Enforcement: Ben Rarick, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, (360) 725-6025.

A school district fiscal impact statement has been prepared under section 1, chapter 210, Laws of 2012.

SCHOOL DISTRICT FISCAL IMPACT STATEMENT

WSR: **Title of Rule:** WAC 180-90-105 Private schools.
Agency: SDF - School District Fiscal Impact - SPI.

Part I: Estimates: No Fiscal Impact, this section of rule does apply [apply] to private schools, and therefore has no fiscal impact on school districts in the state.

Estimated Cash Receipts to: No Estimated Cash Receipts.

Estimated Expenditures From: No Estimated Expenditures.

Estimated Capital Impact: No Estimated Capital Impact.

Part II: Narrative Explanation:

II. A - Brief Description Of What the Measure Does That Has Fiscal Impact: Briefly describe by section, the significant provisions of the rule, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

None.

II. B - Cash Receipts Impact: Briefly describe and quantify the cash receipts impact of the rule on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

None.

II. C - Expenditures: Briefly describe the agency expenditures necessary to implement this rule (or savings resulting from this rule), identifying by section number the provisions of the rule that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

None.

Part III: Expenditure Detail:

III. A - Expenditures by Object or Purpose: None.

Part IV: Capital Budget Impact: None.

A copy of the statement may be obtained by contacting Thomas J. Kelly, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, phone (360) 725-6031, e-mail Thomas.kelly@k12.wa.us.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Linda Drake, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, phone (360) 725-6028, fax (360) 586-2357, e-mail linda.drake@k12.wa.us.

June 2, 2015

Ben Rarick

Executive Director

AMENDATORY SECTION (Amending WSR 10-23-104, filed 11/16/10, effective 12/17/10)

WAC 180-90-112 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Approved private school" means a nonpublic school or nonpublic school district conducting a program consisting of kindergarten and at least grade one, or a program consisting of any or all of grades one through twelve which has been approved by the state board of education in accordance with the minimum standards for approval as prescribed in this chapter.

(2)(a) "Reasonable health requirements" means those standards contained in chapter 246-366 WAC as adopted by the state board of health.

(b) "Reasonable fire safety requirements" means those standards adopted by the state fire marshal pursuant to chapter 43.44 RCW.

(3)(a) "Minor deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel, and which does not ~~((raise a question as to))~~ impact the ability of the school to provide an educational program which is in substantial compliance with the minimum standards set forth in WAC 180-90-160, and which, therefore, does not preclude the granting of full approval.

(b) "Major deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel but ~~((raises a question as to))~~ may impact the ability of the school to provide an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160, but is not so serious as to constitute an unacceptable deviation.

(c) "Unacceptable deviation" means a variance from the standards established by these regulations which either:

(i) Constitutes a ~~((serious, imminent))~~ threat to the health or safety of students or school personnel; or

(ii) Demonstrates that the school is not capable of providing an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160.

(4) "Total instructional hour offering" means those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school staff, as directed by the administration and board of directors, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences which are planned and scheduled by the approved private school for the purpose of discussing students' educational needs for progress, and exclusive of time actually spent for meals.

(5)(a) "Non-Washington state certificated teacher" means a person who has:

(i) A K-12 teaching certificate from a nationally accredited preparation program, other than Washington state, recognized by the U.S. Department of Education; or

(ii) ~~(A minimum of forty-five quarter credits beyond the baccalaureate degree with a minimum of forty-five quarter credits in courses in the subject matter to be taught or in courses closely related to the subject matter to be taught; or~~

~~(iii) A minimum of three calendar years of experience in a specialized field. For purposes of this subsection the term "specialized field" means a specialized area of the curriculum where skill or talent is applied and where entry into an occupation in such field generally does not require a baccalaureate degree, including, but not limited to, the fields of art, drama, dance, music, physical education, and career and technical or occupational education.)~~ High qualifications and experience in the subject matter to be taught and has unusual distinction or exceptional talent demonstrated through public records of accomplishments or awards and has general supervision by a Washington state certified teacher.

(b) "Exceptional case" means that a circumstance exists within a private school in which:

(i) The educational program offered by the private school will be significantly improved with the employment of a non-Washington state certificated teacher. Each teacher not holding a valid Washington state certificate shall have experience or academic preparation appropriate to K-12 instruction and consistent with the school's mission. Such experience or academic preparation shall be consistent with the provisions of (c) of this subsection; and

(ii) The school ~~((which))~~ employs ~~((a non-Washington state certificated teacher or teachers pursuant to this subsection employs))~~ at least one ~~((person certified pursuant to rules of the state board of education and (c) of this subsection to every twenty-five FTE students enrolled in grades kindergarten through twelve. The school will report the academic preparations and experience of each teacher providing K-12 instruction))~~ Washington state certified teacher, administrator, or superintendent who provides general supervision to any non-Washington state certificated teacher and annual written statements must be submitted to the office of the superintendent of public instruction reporting and explaining such circumstances; and

(iii) The non-Washington state certificated teacher of the private school, employed pursuant to this section ~~((and as)),~~ has been verified by the private school, ~~((meets))~~ as meeting the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), and has not had his or her teacher's certificate revoked by any state or foreign country ~~((-t))~~ consistent with WAC 181-79A-155 (5)(a).~~((t))~~

(c) "Unusual competence": As applied to an exceptional case wherein the educational program as specified in RCW 28A.195.010 and WAC 180-90-160(7) will be significantly improved with the employment of a non-Washington state certificated teacher as defined in (a) of this subsection.

(d) "General supervision" means that a Washington state certificated teacher or administrator shall be generally available at the school site to observe and advise the teacher

employed under provision of (c) of this subsection and shall evaluate pursuant to policies of the private school.

AMENDATORY SECTION (Amending WSR 03-04-053, filed 1/29/03, effective 3/1/03)

WAC 180-90-130 Approval—Annual certification—Adverse findings. (1) At least ninety days prior to the commencement of the annual school term or period, the chief administrator of each private school shall file with the superintendent of public instruction, in accordance with procedures established by the superintendent of public instruction, a certificate of compliance in the form and substance set forth in WAC 180-90-160.

(2) The superintendent of public instruction shall review each certificate. The review shall be completed within thirty days after receipt of a completed application.

(3) If the superintendent of public instruction finds no minor, major, or unacceptable deviations, the superintendent of public instruction shall ~~((so notify the private school and shall))~~ recommend full approval of the private school to the state board of education.

(4) If the superintendent of public instruction finds deviation, the private school shall be notified ~~((in writing))~~ through written or electronic communication of any minor, major, or unacceptable deviations which must be corrected.

(5) If the superintendent of public instruction finds ~~((minor))~~ major~~((s))~~ or unacceptable deviations, the superintendent of public instruction shall not transmit the recommendation regarding approval status to the state board of education until the private school submits a narrative report indicating agreement or not with the findings of the superintendent of public instruction and any proposed remedial action to address the reported deviations. Upon receipt of the narrative report, the superintendent of public instruction shall transmit the recommendation and the narrative report to the state board of education. Minor deviations will be resolved with the office of the superintendent of public instruction staff prior to submission for approval. In the case of major deviations, the private school may request that the state board of education grant provisional status for up to one year so the private school may take action to meet the requirements.

AMENDATORY SECTION (Amending WSR 85-24-056, filed 12/2/85)

WAC 180-90-139 Approval action by SBE. The state board of education shall take one of the following actions:

(1) If no deviations are found, the state board of education shall grant full approval.

(2) If minor deviations are found and the private school ~~((acknowledges the existence of such deviations and indicates an intent to correct such deviations in its narrative response))~~ has resolved the deviations, the state board of education shall grant full approval.

(3) If major deviations are found and the private school in its narrative report ~~((assures))~~ provides satisfactory assurance of compliance by the commencement of the annual school term, the state board of education shall grant full approval.

(4) If major deviations are found and the private school in its narrative report, supplemented by direct testimony to the state board of education, demonstrates it is not practical to correct such major deviations prior to the commencement of the annual school term but establishes to the satisfaction of the state board of education its ~~((commitment))~~ ability to correct such deviation as soon as is practical, the state board of education shall grant such private school provisional approval for the period of time the state board of education determines is necessary to correct the major deviation but no longer than one year.

(5) If unacceptable deviations are found or if the private school fails to comply with timely corrective conditions within subsection (2), (3), or (4) of this section for minor or major deviations, state board of education approval shall be denied or rescinded.

AMENDATORY SECTION (Amending WSR 03-04-053, filed 1/29/03, effective 3/1/03)

WAC 180-90-141 Loss of private school approval. (1) The superintendent of public instruction is authorized to rescind approval of a private school for one or more of the following reasons:

(a) Failure to have students enrolled for any six consecutive calendar months in the school's physical facilities or failure to provide evidence of student enrollment upon request of the superintendent of public instruction for the said period of time.

(b) Failure to provide verification that the approved private school teaching staff have a valid Washington state teaching certificate or meet the provisions of WAC 180-90-112 (5) ~~((b)(ii))~~.

(c) Failure to provide verification that the physical facilities of the school meet the health and fire safety standards.

(2) The superintendent of public instruction shall notify the state board of education of decisions to rescind approval.

AMENDATORY SECTION (Amending WSR 85-24-056, filed 12/2/85)

WAC 180-90-145 Approval—~~((Annual certification and))~~ Initial application—Exception. Any potential private school which is unable to file its application for approval at least ~~((90))~~ ninety days prior to the commencement of the annual school term or period may ~~((in any event))~~ request ~~((that))~~ the superintendent of public instruction ~~((to))~~ review the application and ~~((that))~~ the superintendent's findings and recommendations be submitted to the state board of education. This request shall be granted if the superintendent of public instruction finds ~~((that))~~ the private school was not sufficiently developed prior to the 90 day time period to enable it to comply with that requirement. The superintendent of public instruction shall have the discretion to grant the request in other exceptional circumstances. If ~~((said))~~ the superintendent of public instruction grants the request ~~((is granted))~~, the review shall be completed within thirty days and the findings and recommendations presented to the state board of education.

AMENDATORY SECTION (Amending WSR 14-19-032, filed 9/8/14, effective 10/9/14)

WAC 180-90-160 Minimum standards and certificate form. (1) The annual certificate required by WAC 180-90-130 shall be in substantial compliance with the form and substance of the following:

CERTIFICATE OF COMPLIANCE
WITH STATE STANDARDS

ESD/County/Public
School District
Private School/
District Address

I,, do hereby certify that I am the principal or chief administrator of the above named school; that said school is located at the address listed above, and conducts grades through with a projected enrollment of; and that said school is scheduled to meet throughout the school year, the following standards with the exception only of such deviations, if any, as are set forth in an attachment to this certificate of compliance

or

I,, do hereby certify that I am the superintendent of the above named private school district; and that the private schools under my jurisdiction are scheduled to meet throughout the school year, the following standards with the exception only of such deviations as are set forth in an attachment to this certificate of compliance; and that a list of such schools, including the grades conducted and the projected enrollment for each school, accompanies this certificate:

~~((Following initial approval as a private school by the state board of education, evidence of current accreditation by a state board of education approved accrediting body may be submitted annually in lieu of approval documents described in 1-12.~~

~~((1))~~ (a) The minimum school year for instructional purposes consists of no less than ~~((180))~~ one hundred eighty school days or the equivalent in annual minimum instructional hour offerings as prescribed in RCW 28A.150.220.

~~((2))~~ (b) On each school day, pupils enrolled in the school are provided the opportunity to be engaged in educational activity planned by and under the direction of the staff, as directed by the administration and/or governing board; and that pupils are provided a total instructional hour offering as prescribed in RCW 28A.150.220 except that the percentages for basic skills, work skills, and optional subjects and activities prescribed in RCW 28A.150.220 do not apply to private schools and that the total instructional hour offering, except as otherwise specifically provided in RCW 28A.150.220, made available is at least:

~~((a))~~ (i) 450 hours for students in kindergarten.

~~((b))~~ (ii) 1000 hours for students in grades one through twelve.

~~((3))~~ (c) All classroom teachers hold appropriate Washington State certification except for:

((a)) (i) Teachers for religious courses or courses for which no counterpart exists in the public schools: Provided, That a religious course is a course of study separate from the courses of study defined in RCW 28A.195.010 including occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of the appreciation of art and music all in sufficient units for meeting state board of education graduation requirements; and/or

((b)) (ii) A person of unusual competence who is not certified but who will teach students in an exceptional case under the general supervision of a Washington state certificated teacher ((c)), administrator, or superintendent pursuant to WAC 180-90-112. The non-Washington state certificated teacher, the Washington state certificated person who will supervise, and the exceptional circumstances are listed on the addendum to this certificate: Provided, That if a non-Washington state certificated teacher is employed subsequent to the filing of this certificate, this same information shall be forwarded to the superintendent of public instruction within thirty days from the date of employment.

((4)) (d) If the school operates an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody, the extension program meets the following requirements:

((a)) (i) The parent, guardian, or custodian is supervised by a person certified under chapter 28A.410 RCW and who is employed by the school;

((b)) (ii) The planning by the certified person and the parent, guardian, or person having legal custody includes objectives consistent with (a), (b), (e) through (g) of this subsection ((and subsections (1), (2), (5), (6), and (7) of this section));

((c)) (iii) The certified person spends a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the extension program;

((d)) (iv) Each student's progress is evaluated by the certified person; and

((e)) (v) The certified person does not supervise more than thirty students enrolled in the approved private school's extension program.

((5)) (e) Measures have been taken to safeguard all permanent records against loss or damage through either the storage of such records in fire-resistant containers or facilities, or the retention of duplicates in a separate and distinct area;

((6)) (f) The physical facilities of the school are adequate to meet the program offered, and all school facilities and practices are in substantial compliance with reasonable health and fire safety standards, as substantiated by current inspection reports of appropriate health and fire safety officials which are on file in the chief administrator's office;

((7)) (g) The school's curriculum includes instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music in sufficient units for meeting state board of education graduation requirements, as set forth in chapter 180-51 WAC. A school may substitute courses specific to the mis-

sion or focus of the school to satisfy the requirement of WAC 180-51-068(7);

((8)) (h) The school or its organized district maintains up-to-date policy statements related to the administration and operation of the school or district;

((9)) (i) The school does not engage in a policy of racial segregation or discrimination;

((10)) (j) The governing authority of this private school or private school district has been apprised of the requirements of chapter 180-90 WAC relating to the minimum requirements for approval of private schools and such governing authority has further been apprised of all deviations from the rules and regulations of the state board of education and the standards contained in chapter 180-90 WAC. I have reported all such deviations herewith.

Dated this day of, 20

(signed)

(title)

(phone number)

((11)) (2) Approval by the state board of education is contingent upon on-going compliance with the standards certified herein. The superintendent of public instruction shall be notified of any deviation from these standards which occurs after the action taken by the state board of education. Such notification shall be filed within thirty days of occurrence of the deviation.

((12)) (3) Failure to comply with the requirements of this chapter may result in the revocation of the approval of the private school and shall be considered in subsequent application for approval as a private school.

~~((Dated this day of, 20~~

~~_____
(signed)~~

~~_____
(title)~~

~~_____
(phone number))~~

(4) Following initial approval as a private school by the state board of education, evidence of current accreditation by a state board of education approved accrediting body may be submitted annually in lieu of approval documents described in subsection (1)(a) through (j) of this section.

NEW SECTION

WAC 180-90-170 Complaints against private schools. (1) Complaints about an approved private school may be made in writing to the office of public instruction.

(2) If a complaint against a private school is received, the office of the superintendent of public instruction will:

(a) Notify the complainant that the communication was received;

(b) Notify the school of the complaint, provide a copy of the complaint if requested, and provide an opportunity for the school to respond. All correspondence will conform to state and federal student privacy laws; and

(c) Review the complaint and the school's response and may take appropriate action it deems necessary. Any action taken by the office of the superintendent of public instruction will be limited to authority pursuant to chapter 28A.195 RCW and the rules promulgated thereunder.

(3) The record of the complaint, the response and any action taken will be retained according to the record retention schedule established by the office of the secretary of state for the office of the superintendent of public instruction.

WSR 15-12-115
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 3, 2015, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-01-157 on December 23, 2014.

Title of Rule and Other Identifying Information: WAC 220-40-021 Willapa Bay salmon summer fishery and 220-40-027 Salmon—Willapa Bay fall fishery.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on July 7, 2015, at 1:00-3:00 p.m.

Date of Intended Adoption: On or after July 7, 2015.

Submit Written Comments to: Joanna Eide, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by July 3, 2015.

Assistance for Persons with Disabilities: Contact Tami Lininger by July 1, 2015, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Willapa Bay, while protecting species of fish listed as endangered.

Reasons Supporting Proposal: This rule will protect salmon species supporting commercial salmon fishing in Willapa Bay.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1213; Implementation: James Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; 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 rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Willapa Bay.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: These rule changes clarify dates for anticipated open periods and areas for full-fleet and limited participation salmon fisheries, and legal gear requirements for those fisheries.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The changes proposed by these rules that carry potential compliance costs include gear restrictions during certain days in Area 2U. WAC 220-40-027 specifies gill net mesh requirements of 4.25" maximum for salmon fisheries in Catch Areas [Area] 2U on September 20, 21, 22, 27, 28, and 29. This gear restriction is similar to gear restrictions the department has proposed in the past for Willapa Bay and Grays Harbor salmon fisheries; and currently used in the Columbia River. Because some license holders fish the Columbia River and/or Grays Harbor, they have already acquired this gear. Other license holders will be required to obtain the gear if they choose to fish in [Area] 2U on the aforementioned dates. In addition, this cost can be amortized over years as the net should last for several years. Cost of compliance is estimated at \$4,000 to \$5,000.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rules do not affect the harvestable numbers of salmon available to nontreaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

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.

The only metric available to the department for identifying the largest ten percent of businesses, or for use in a cost comparison for small and large businesses, is the exvessel value of salmon sold by each Puget Sound salmon commercial license in recent years. This exvessel value is used as a

June 3, 2015

Joanna M. Eide

Rules Coordinator

surrogate for sales in this analysis, but it is an underestimate of total sales, since the majority of the businesses affected have additional revenue from other fisheries and related ventures. In addition, this analysis assumes that all license holders will be required to purchase equipment described above. However, some license holders already own gear that meets the requirements, and will not be required to purchase new gear. These two factors combined mean that the cost of compliance per one hundred dollars of sales will be overestimated for small and large businesses. Also note that each individual license was treated as a business for this analysis, although some businesses own more than one license.

There were approximately sixty-one Willapa Bay salmon licenses that participated in the Willapa Bay fishery in 2014. The cost of compliance will vary between license types, but the average cost per license is approximately \$4,500, assuming that all license holders will be required to spend the amounts described above. For the ten percent of licenses with the highest exvessel sales values for 2014 combined, the average exvessel value per year was \$46,762. This means that the cost of compliance per \$100 of exvessel value would be \$9.62. Most businesses affected by these rules qualify as small businesses, so an average cost of compliance for all businesses was calculated for comparison. The average exvessel value per year for all licenses for 2014 was \$18,840, meaning the average cost of compliance would be \$23.89 per \$100 of exvessel value. Again, both of these estimates of cost of compliance are believed to be overestimates, for the reasons described above.

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 businesses. As indicated above, the gear restrictions proposed by the rules apply to Columbia River salmon fisheries, and are identical to gear restrictions the department has required in past Willapa Bay and Grays Harbor salmon fishery seasons.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacted with and received input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allowed constituents to participate in formulating these rules.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Willapa Bay will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: As explained above, these rules impose similar requirements used in other salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, phone (360) 249-4628 ext. 1213, fax (360) 249-1229, e-mail Barbara.McClellan@dfw.wa.gov.

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

AMENDATORY SECTION (Amending WSR 14-15-052, filed 7/11/14, effective 8/11/14)

WAC 220-40-021 Willapa Bay salmon—Summer fishery. From July 5 through August 15, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes(~~(, except:~~

Fishing periods:

(1) ~~Gillnet gear may be used to fish for coho salmon, chum salmon, and Chinook salmon:~~

Time:	Areas:
6:00 a.m. August 12 through 6:00 p.m. August 15.	Area 2N, Area 2T (except those waters north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green), then northeasterly to the power transmission pole located at 46°43.1907'N, 123°50.83134'W), and Area 2U

Gear:

(2) ~~Gillnet gear restrictions—All areas:~~

(a) ~~Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.~~

~~It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transit through Willapa Bay, provided the net is properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.~~

(b) ~~Mesh size must not exceed nine inches.~~

Other:

(3) ~~Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.~~

(4) ~~Retention of any species other than coho salmon, chum salmon, and Chinook salmon, is prohibited.~~

(5) ~~Report ALL encounters of green sturgeon and steelhead (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfistickets~~

@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(6) Do NOT remove tags from white sturgeon. Please obtain available information from tags without removing the tags. Submit tag information to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563.

(7) It is unlawful to fish with gillnet gear in Areas 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department issued certification card.

(8) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on July 28).

AMENDATORY SECTION (Amending WSR 14-15-052, filed 7/11/14, effective 8/11/14)

WAC 220-40-027 Salmon—Willapa Bay fall fishery.

From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for coho salmon, chum salmon, and Chinook salmon:

((Time:	Area:
7:00 p.m. August 25 through	2N and 2U
7:00 a.m. August 26;	
7:00 p.m. September 1	
through 7:00 a.m. September 2;	
7:00 p.m. September 7	
through 7:00 a.m. September 8;	
7:00 p.m. September 8	
through 7:00 a.m. September 9;	
7:00 p.m. September 9	
through 7:00 a.m. September 10;	
7:00 p.m. September 10	
through 7:00 a.m. September 11;	
AND	
7:00 p.m. September 14	
through 7:00 a.m. September 15;	

((Time: 6:00 p.m. September 15 through 6:00 p.m. September 19;

Area: **2M, 2N, 2R, and 2T** (except those waters of 2T north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green), then northeasterly to the power transmission pole located at 46°43.1907'N; 123°50.83134'W)

6:00 p.m. September 22 through 6:00 p.m. September 26;

AND

6:00 p.m. September 28 through 6:00 p.m. September 30;

6:00 p.m. September 15 through 6:00 p.m. September 18;

2U

6:00 p.m. September 22 through 6:00 p.m. September 25;

AND

6:00 p.m. September 28 through 6:00 p.m. October 2;

6:00 p.m. September 30 through 6:00 p.m. October 3;

2M, 2N, 2R, and 2T

6:00 p.m. October 4 through 6:00 p.m. October 7;

2M, 2N, 2R, 2T, and 2U

12:00 a.m. November 2 through 11:59 p.m. November 7;

12:00 a.m. November 10 through 11:59 p.m. November 14;

AND

12:00 a.m. November 17 through 11:59 p.m. November 19.))

<u>Area</u>	<u>Time</u>	<u>Date(s)</u>	<u>Maximum Mesh Size</u>
<u>2T</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>9/14, 9/15, 9/16, 9/17, 9/18, 9/19</u>	<u>6.5"</u>
<u>2M, 2N, 2R</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>9/13, 9/14, 9/15, 9/16, 9/17, 9/18, 9/19</u>	<u>6.5"</u>
<u>2T</u>	<u>6:30 a.m. through 6:30 p.m.</u>	<u>9/21, 9/22, 9/23, 9/24, 9/25, 9/26,</u>	<u>6.5"</u>
<u>2U</u>	<u>6:30 a.m. through 6:30 p.m.</u>	<u>9/20, 9/21, 9/22</u>	<u>4.25"</u>
<u>2U</u>	<u>6:30 a.m. through 6:30 p.m.</u>	<u>9/24, 9/25, 9/26,</u>	<u>6.5"</u>
<u>2M, 2N, 2R</u>	<u>6:30 a.m. through 6:30 p.m.</u>	<u>9/20, 9/21, 9/22, 9/23, 9/24, 9/25, 9/26,</u>	<u>6.5"</u>
<u>2T</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/28, 9/29, 9/30, 10/1, 10/2, 10/3,</u>	<u>6.5"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/27, 9/28, 9/29,</u>	<u>4.25"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/1, 10/2, 10/3,</u>	<u>6.5"</u>
<u>2M, 2N, 2R</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/28, 9/29, 9/30, 10/1, 10/2, 10/3,</u>	<u>6.5"</u>
<u>2U</u>	<u>7:30 a.m. through 7:30 p.m.</u>	<u>10/5</u>	<u>6.5"</u>
<u>2M, 2N</u>	<u>7:30 a.m. through 7:30 p.m.</u>	<u>10/5, 10/6, 10/7, 10/8, 10/9</u>	<u>6.5"</u>
<u>2R</u>	<u>7:30 a.m. through 7:30 p.m.</u>	<u>10/5, 10/6</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m through 11:59 p.m.</u>	<u>11/2, 11/3, 11/4, 11/5, 11/6</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m through 11:59 p.m.</u>	<u>11/9, 11/10, 11/11, 11/12, 11/13</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m through 11:59 p.m.</u>	<u>11/16, 11/17, 11/18, 11/19, 11/20</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m through 11:59 p.m.</u>	<u>11/23, 11/24, 11/25, 11/26, 11/27</u>	<u>6.5"</u>

Note: Those waters of 2T north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green), then northeasterly to the power transmission pole located at 46°43.1907'N; 123°50.83134'W are closed through September 30.

Gear:

(2) Gillnet gear restrictions - All areas:

(a)(i) Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

(ii) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Willapa Bay, provided the net is properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

~~(b) ((From August 16 through 12:00 p.m., September 8: Mesh size must not exceed nine inches stretched.~~

~~(c)) From 12:01 ((p.m.)) a.m. September ((8)) 13 through November 30: Mesh size must not exceed six and one-half inches stretched, except mesh size must not exceed four and one-quarter inches stretched in Area 2U on September 20, 21, 22, 27, 28, and 29.~~

Other:

(3) Recovery boxes and soak time limits described in this section are required from 12:01 ((p.m.)) a.m. September ((8)) 13 through ((12:00 p.m. (noon) September 22)) 11:59 p.m. October 10:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(b) All steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the

river/bay as set forth in (c) of this subsection. From September 13 through October 3, all chum must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (c) of this subsection.

(c) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river/bay prior to landing or docking.

(d) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.

(5) Retention prohibitions:

(a) ~~((From August 16 through November 30,))~~ All green and white sturgeon and all steelhead, except as provided in subsection (3) of this section, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay.

(b) ~~((From August 16 through 12:00 p.m. September 8,))~~ Retention of any species other than coho salmon, chum salmon, or Chinook is prohibited.

(c) ~~From 12:01 ((p.m.)) a.m. September ((8)) 13 through ((12:00 p.m. (noon) September 22)) 11:59 p.m. October 3,~~ retention of any species other than coho salmon ~~((chum salmon,))~~ or hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(d) ~~From ((6:00 p.m. September 22 through November 30)) 12:01 a.m. October 4 through 11:59 p.m. October 10,~~ retention of any species other than coho salmon, chum salmon, ~~((and Chinook is prohibited))~~ or hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(6) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) Do NOT remove tags from white sturgeon. Please obtain available information from tags without removing tags. Submit tag information to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563.

(8) It is unlawful to fish with gillnet gear in Areas 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.

(9) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on ~~((August 12))~~ September 1.

(10) Fishers must provide notice of intent to participate in 2U on September 20, 21, 22, 27, 28, and 29 by contacting quick reporting by phone, fax, or e-mail. Notice of intent must be given prior to 12:00 p.m. on September 1. Fishers must take department observers when participating in these openings.

WSR 15-12-116
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 3, 2015, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-01-157 on December 23, 2014.

Title of Rule and Other Identifying Information: WAC 220-36-023 Salmon—Grays Harbor fall fishery.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on July 7, 2015, at 3:00-5:00 p.m.

Date of Intended Adoption: On or after July 7, 2015.

Submit Written Comments to: Joanna Eide, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by July 3, 2015.

Assistance for Persons with Disabilities: Contact Tami Lininger by July 1, 2015, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Grays Harbor, while protecting species of fish listed as endangered.

Reasons Supporting Proposal: This rule will protect salmon species supporting commercial salmon fishing in Willapa Bay.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1213; Implementation: James Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; 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:

This proposed rule change incorporates the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon in Grays Harbor while taking reasonable and prudent measures to protect local salmon and steelhead stocks of concern and nonlocal species of fish listed under the federal Endangered Species Act as threatened or endangered. The rule includes legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Grays Harbor.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply With Such Requirements: None - these rule changes clarify dates for anticipated open periods, show areas in Grays Harbor that are closed to commercial harvest methods, and explain legal gear requirements. There are no anticipated professional services required to comply.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The proposed rule changes are similar to the requirements of the rule in previous years and primarily only adjust opening and closing dates. The proposed rule changes do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there are no additional costs to comply with the proposed rules.

4. Will Compliance With the Rule Cause Businesses to Lose Sales or Revenue? The proposed rule changes do not affect the harvestable numbers of salmon available to commercial fisher[s] licensed to fish in Grays Harbor. Therefore, the proposed rule changes should not cause any businesses to lose sales or revenue.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

The proposed rule changes do not require any additional equipment, supplies, labor, or administrative costs. Therefore, no costs for compliance are anticipated.

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 rule changes are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions WDFW has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small

businesses to participate in formulating the agreements underlying these rules. Additionally, WDFW will allow for written public comment and hold a public hearing on these rule changes as required under the Administrative Procedure Act, chapter 34.05 RCW.

8. A List of Industries That Will be Required to Comply with the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Grays Harbor will be required to comply with the rule.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: As explained above, these rule changes impose similar requirements to those for previous years' commercial salmon fisheries. Compliance with the proposed rule changes will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, phone (360) 249-4628 ext. 1213, fax (360) 249-1229, e-mail Barbara.McClellan@dfw.wa.gov.

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

June 3, 2015

Joanna M. Eide

Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-20-023, filed 9/19/14, effective 10/20/14)

WAC 220-36-023 Salmon—Grays Harbor fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for Chinook, coho, and chum salmon, and shad as provided in this section and in the times and area identified in the chart below.

Time:	Areas:
((12:00 p.m. October 22 through 8:00 p.m. October 22;	Area 2A and Area 2D
6:00 a.m. October 23 through 6:00 p.m. October 23;	
12:00 p.m. October 28 through 8:00 p.m. October 28;	
7:00 a.m. October 29 through 7:00 p.m. October 29;	
12:00 p.m. November 3 through 8:00 p.m. November 3;	
7:00 a.m. November 4 through 7:00 p.m. November 4;	
7:00 a.m. November 5 through 7:00 p.m. November 5;	
AND	

Time: Areas:
~~12:00 p.m. November 11 through 8:00 p.m. November 11;~~
~~12:00 p.m. October 28 through 11:59 p.m. October 29;~~ Area 2C
~~12:00 p.m. November 4 through 11:59 p.m. November 5;~~
 AND

~~12:00 p.m. November 12 through 11:59 p.m. November 12;))~~
7:00 a.m. through 11:59 a.m. October 11 or 4:30 p.m. through 9:30 p.m. October 14; Area 2A and Area 2D
12:30 p.m. through 4:30 p.m. October 14;
8:30 a.m. through 5:30 p.m. October 18;
8:30 a.m. through 5:30 p.m. October 19;
8:00 a.m. through 5:00 p.m. October 20;
8:00 a.m. through 5:00 p.m. October 21;
8:00 a.m. through 5:00 p.m. November 1;
8:00 a.m. through 5:00 p.m. November 2;
8:00 a.m. through 5:00 p.m. November 3;
 AND
8:00 a.m. through 5:00 p.m. November 4.

6:30 a.m. through 3:30 p.m. October 26; Area 2C
 AND
6:30 a.m. through 3:30 p.m. October 27.

Gear:

(2) Gear restrictions:

(a) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches in diameter or greater.

(b) Areas 2A and 2D from October ((21)) 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

(c) Area 2C from October ((21)) 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed nine inches.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

Other:

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked and any time a fish is being held in accordance with (b) and (c) of this subsection. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request,

that the pumping system is delivering the proper volume of fresh river or fresh bay water into each chamber.

(b) When fishing in Grays Harbor Areas 2A and 2D, all steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(c) When fishing in Grays Harbor Area 2C, all steelhead and wild (unmarked) coho must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(d) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river or bay prior to landing or docking.

(e) For Areas 2A, 2C, and 2D, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Retention of any species other than coho, chum, hatchery Chinook marked by a healed scar at the site of the adipose fin, or shad is prohibited in Areas 2A and 2D from October ((2+)) 1 through November 30.

(5) Retention of any species other than Chinook, chum, or hatchery coho marked by a healed scar at the site of the adipose fin, or shad, is prohibited in Area 2C from October ((2+)) 1 through November 30.

(6) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.

(7) Report all encounters of green sturgeon to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

(8) Do NOT remove tags from white or green sturgeon. Please obtain available information from tags without removing tags. Submit tag information to:

Washington Department of Fish and Wildlife
48 Devonshire Rd.
Montesano, WA 98563.

(9)(a) Fishers must take department observers, if requested, by department staff when participating in these openings.

(b) Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on October ((2+)) 1, for openings in Areas 2A, 2C, or 2D.

(10) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A, 2C, and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

WSR 15-12-117
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 3, 2015, 10:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-01-158 on December 23, 2014.

Title of Rule and Other Identifying Information: Rules for coastal salmon recreational fishing, WAC 220-310-180 Freshwater exceptions to statewide rules—Coast.

Hearing Location(s): Washington Department of Fish and Wildlife (WDFW), Region 6 Office Conference Room, 48 Devonshire Road, Montesano, WA 98563, on July 7, 2015, at 11:00 a.m.

Date of Intended Adoption: On or after July 7, 2015.

Submit Written Comments to: Charmane Ashbrook, P.O. Box 43138, Olympia, WA 98504, e-mail Charmane.Ashbrook@dfw.wa.gov, fax (360) 586-0739, by July 3, 2015.

Assistance for Persons with Disabilities: Contact Tami Lininger by July 1, 2015, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making incorporates coastal freshwater recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council (PFMC) for recreational anglers to take harvestable salmon while protecting species of fish listed as endangered.

Reasons Supporting Proposal: To protect fish species listed as endangered while supporting recreational fishing opportunity and to incorporate changes to the rule needed as a result of the recommendations of the North of Falcon subgroup of the PFMC.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Charmane Ashbrook, 1111 Washington Street, Olympia, WA 98501, (360) 586-0734; Implementation: Jim Scott, 1111 Washington Street, Olympia, WA 98501, (360) 902-2736; and Enforcement: Steve Crown, Chief, 1111 Washington Street, Olympia, WA 98501, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule amendments do not affect small business; i.e., there is no direct regulation of small business. The rules apply to recreational fishers.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

June 3, 2015
Joanna M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-16-027, filed 7/25/14, effective 8/25/14)

WAC 220-310-180 Freshwater exceptions to state-wide rules—Coast. (1) Aberdeen Lake (Grays Harbor County):

(a) Open the fourth Saturday in April through October 31.

(b) Trout: No more than 2 trout over 15 inches in length may be retained.

(2) Alder Creek (Pacific County) (Naselle River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~(3) ((Aldwell Lake (Clallam County): Closed.~~

~~(4)) Anderson Lake (Jefferson County):~~

(a) Open the fourth Saturday in April through October 31; fishing from a floating device equipped with an internal combustion motor prohibited.

(b) Open September 1 through October 31:

(i) Selective gear rules apply.

(ii) Trout: Catch and release only.

~~((5)) (4) Bear Creek (Clallam County) (Bogachiel River tributary):~~

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((6)) (5) Bear Creek (Clallam County) (Sol Duc River tributary):~~

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((7)) (6) Bear River (Pacific County):~~

(a) Open the first Saturday in June through March 31.

(b) August 16 through November 30: Night closure in effect.

(i) From the mouth (Highway 101 Bridge) to Lime Quarry Road (approximately two river miles):

(A) August 16 through November 30:

(I) Barbless hooks required.

(II) Anti-snagging rule applies.

(B) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(C) Salmon:

(I) Open September 1 through ~~((November 30))~~ January 31.

(II) Limit 6 fish; ~~((no more than 2))~~ only 4 may be adults~~((, and no more than one wild adult coho may be retained))~~.

(III) Release ~~((chum and))~~ wild Chinook.

(ii) From the Lime Quarry Road upstream to the Longview Fiber Bridge:

(A) Selective gear rules apply.

(B) Release all fish, except anglers may retain up to 2 hatchery steelhead.

~~((8)) (7) Beaver Creek (Clallam County) (Sol Duc River tributary):~~

(a) From the mouth upstream to Beaver Falls:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) From Beaver Falls upstream to Beaver Lake: Open the first Saturday in June through October 31.

~~((9)) (8) Beaver Lake (Clallam County):~~

(a) Selective gear rules apply.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Trout: Maximum length 12 inches.

~~((10)) (9) Big Creek (Grays Harbor County):~~

(a) Open the first Saturday in June through ~~((the last day in))~~ October 31.

(b) Selective gear rules apply.

~~((11)) (10) Big Quilcene River (Jefferson County):~~

(a) From the mouth to Rodgers Street:

(i) Open the first Saturday in June through August 15.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Catch and release only.

(b) From Rodgers Street to the Highway 101 Bridge:

(i) Open the first Saturday in June through October 31.

(ii) Catch and release only.

(iii) From the first Saturday in June through August 15:

(A) Selective gear rules apply.

(B) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) August 16 through October 31:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(v) Salmon:

(A) Open August 16 through October 31.

(B) Limit 4 coho only; only coho hooked inside the mouth may be retained.

(c) From the electric weir at Quilcene National Fish Hatchery to the upper boundary of Falls View campground:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Catch and release only.

(d) From the upper boundary of Falls View campground upstream: Open the Saturday before Memorial Day through October 31.

~~((12)) (11) Big River (Clallam County), outside of Olympic National Park:~~

(a) Open the first Saturday in June through October 15, and January 1 through the last day of February.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((13))~~ **(12) Black Creek (Grays Harbor County)****(Wynoochee River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((14))~~ **(13) Black Lake (Pacific County):** Open the fourth Saturday in April through October 31.~~((15))~~ **(14) Black River (Grays Harbor/Thurston counties):**

(a) From the mouth to State Highway 12:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) From Highway 12 to bridge on 128th Ave. S.W.:

(i) Anti-snagging rule applies.

(ii) Night closure in effect.

(iii) Barbless hooks are required.

(iv) Open for game fish the first Saturday in June through October 31; trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(v) Salmon open October 1 through January 31:

(A) From October 1 through November 30:

(I) Limit 6; only 2 adults may be retained.

(II) Release Chinook and chum.

(B) From December 1 through January 31:

(I) Limit 6; only 2 adults may be retained and only one may be a wild adult (~~may be wild~~) coho.

(II) Release Chinook and chum.

(c) From bridge on 128th Avenue S.W. (west of Litterock) to Black Lake:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

~~((16))~~ **(15) Bogachiel River (Clallam County):**

(a) From the mouth to Highway 101 Bridge:

(i) Open the first Saturday in June through April 30.

(ii) Trout:

(A) From the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From April 1 through April 30: Trout minimum length 14 inches.

(C) November 1 through last day in February: The limit may include one additional hatchery steelhead.

(D) February 16 through April 30: It is permissible to retain wild steelhead.

(iii) Salmon open July 1 through November 30:

(A) From July 1 through August 31:

(I) Limit 6; no more than 2 adults may be retained.

(II) Release wild adult Chinook and wild adult coho.

(B) From September 1 through November 30: Limit 6; ~~((two salmon may be adults, plus 2 additional adult hatchery coho))~~ only one adult may be retained.

(b) From Highway 101 Bridge to Olympic National Park boundary:

(i) Open the first Saturday in June through April 30.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Selective gear rules apply.

(iv) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

~~((17))~~ **(16) Bone River (Pacific County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((18))~~ **(17) Bunker Creek (Lewis County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((19))~~ **(18) Butte Creek (Pacific County) (Smith River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((20))~~ **(19) Calawah River (Clallam County):**

(a) From the mouth to the Highway 101 Bridge:

(i) Open the first Saturday in June through April 30.

(ii) Trout:

(A) From the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From April 1 through April 30: Trout minimum length 14 inches.

(C) From November 1 through the last day in February: The limit may include one additional hatchery steelhead.

(D) From February 16 through April 30: It is permissible to retain wild steelhead.

(iii) Salmon open July 1 through November 30:

(A) From July 1 through August 31:

(I) Limit 6; ~~((no more than))~~ only 2 adults may be retained.

(II) Release wild adult Chinook and wild adult coho.

(B) From September 1 through November 30: Limit 6; ~~((up to two salmon may be adults, plus up to 2 additional adult hatchery coho))~~ only one adult may be retained.

(b) From the Highway 101 Bridge to the forks:

(i) Open the first Saturday in June through April 30.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Selective gear rules apply.

(iv) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

~~((21))~~ **(20) Calawah River, North Fork (Clallam County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((22))~~ **(21) Calawah River, South Fork (Clallam County):**

(a) Open the first Saturday in June through the last day in February from the mouth to the Olympic National Park boundary.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((23))~~ **(22) Cases Pond (Pacific County):**

(a) Open the fourth Saturday in April through November 30 to juvenile anglers only.

(b) Landlocked salmon rules apply.

~~((24))~~ **(23) Cedar Creek (Clallam County), outside of Olympic National Park:**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((25))~~ **(24) Cedar Creek (Grays Harbor/Thurston counties) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((26))~~ **(25) Cedar Creek (Jefferson County), outside Olympic National Park:**

(a) Open the first Saturday in June through the last day in February.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((27))~~ **(26) Cedar River (Pacific County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((28))~~ **(27) Chehalis River (Grays Harbor County), including all channels, sloughs, and interconnected waterways:**

(a) From the mouth (Highway 101 Bridge in Aberdeen) to ~~(the high bridge on Weyerhaeuser 1000 line (approximately 400 yards downstream from Roger Creek, south of Pe Ell))~~ South Elma Bridge (Wakefield Road) including all channels, sloughs, and interconnected waterways:

(i) ~~((Open August 16))~~ All species July 1 through November 30:

(A) Single-point barbless hooks are required.

(B) Anglers may fish with two poles from the mouth to the South Elma Bridge (Wakefield Road), provided they possess a valid two-pole endorsement.

(ii) Gamefish:

(A) Open the first Saturday in June through April 15:

(B) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon:

(A) Open May 1 through June 30: ~~((H))~~ Open from the mouth Highway 6 Bridge in the town of Adna only.

~~(H))~~ Limit one salmon.

(B) ~~((August 16))~~ Open July 1 through November 30:

(I) ~~((Open from the mouth to the confluence with the Black River only.~~

~~(H))~~ Limit 6; ~~((no more than))~~ only 3 adults may be retained.

~~((HH))~~ (II) Release adult Chinook.

(C) ~~((September 16 through November 30:~~

~~(I) Open from the confluence with the Black River to the Highway 6 Bridge in the town of Adna:~~

~~(H) Limit 6; no more than 3 adults may be retained.~~

~~(HH) Release chum and adult Chinook.~~

~~(D) October 1 through November 30:~~

~~(I) Open from the Highway 6 Bridge in the town of Adna to the high bridge on Weyerhaeuser 1000 line approximately 400 yards downstream of Roger Creek (south of Pe Ell) only:~~

~~(H) Limit 6; no more than 3 adults may be retained.~~

~~(HH) Release Chinook and chum.~~

~~(E))~~ December 1 through January 31:

(I) ~~((Open from the mouth to the confluence with the Black River:~~

~~(H))~~ Limit 6; ~~((no more than 2 may be adults;))~~ only 2 adults may be retained and only one ~~((adult))~~ may be a wild adult coho ~~((may be retained)).~~

~~((HH))~~ (II) Release Chinook.

~~((F) December 1 through January 31:~~

~~(I) Open from the confluence with the Black River to the high bridge on Weyerhaeuser 1000 line approximately 400 yards downstream of Roger Creek (south of Pe Ell):~~

~~(H) Limit 6; no more than 2 adult salmon, and only one adult wild coho may be retained.~~

~~(HH) Release chum and Chinook.~~

~~(iv) Sturgeon: It is permissible to fish for sturgeon 24 hours per day; catch and release only.)~~

(b) From South Elma Bridge (Wakefield Road) to the Black River:

(i) All species: Single-point barbless hooks are required August 16 through November 30.

(ii) Gamefish:

(A) Open the first Saturday in June through April 15.

(B) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon:

(A) Open May 1 through June 30: Limit one salmon.

(B) Open September 16 through November 30:

(I) Limit 6; only 3 adults may be retained.

(II) Release adult Chinook.

(C) Open December 1 through January 31:

(I) Limit 6; only 2 adults may be retained, and only one may be a wild adult coho.

(II) Release Chinook.

(c) From Black River to the Highway 6 Bridge in the town of Adna:

(i) All species August 16 through November 30: Single-point barbless hooks are required.

(ii) Gamefish:

(A) Open the first Saturday in June through April 15:

(B) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon:

(A) Open May 1 through June 30: Limit one salmon.

(B) Open September 16 through November 30:

(I) Limit 6; only 3 adults may be retained.

(II) Release adult Chinook and chum.

(C) Open December 1 through January 31:

(I) Limit 6; only 2 adults may be retained and only one may be a wild adult coho.

(II) Release Chinook and chum.

(d) From the Highway 6 Bridge in the town of Adna to the high bridge on Weyerhaeuser 1000 line approximately 400 yards downstream of Roger Creek (south of Pe Ell):

(i) All species August 16 through November 30: Single-point barbless hooks are required.

(ii) Gamefish:

(A) Open the first Saturday in June through April 15.

(B) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon:

(A) Open October 1 through November 30:

(I) Limit 6; only 3 adults may be retained.

(II) Release Chinook and chum.

(B) Open December 1 through January 31:

(I) Limit 6; only 2 adults may be retained and only one may be a wild adult coho.

(II) Release Chinook and chum.

(e) From high bridge on Weyerhaeuser 1000 line (approximately 400 yards downstream from Roger Creek, south of Pe Ell, including all forks) upstream:

(i) Open the first Saturday in June through April 15.

(ii) Selective gear rules apply.

(iii) Release all fish, except anglers may retain up to 2 hatchery steelhead.

((29)) (28) Chehalis River, South Fork (Lewis County):

(a) From the mouth to County Highway Bridge near Boistfort School:

(i) Open the first Saturday in June through April 15.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) From the County Highway Bridge near Boistfort School, upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

((30)) (29) Chehalis River Potholes (adjacent to the Chehalis River south of Highway 12 in Grays Harbor County, not including sloughs or beaver ponds): Open the fourth Saturday in April through October 31.

((31)) (30) Chenois Creek (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

((32)) (31) Chester Creek (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

((33)) (32) Chimacum Creek (Jefferson County):

(a) From the mouth to Ness's Corner Road:

(i) Open the first Saturday in June through August 31.

(ii) Selective gear rules apply.

(iii) Catch and release only.

(b) From Ness's Corner Road to headwaters:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Catch and release only.

((34)) (33) Clallam River (Clallam County):

(a) Open the first Saturday in June through January 31.

(b) Selective gear rules apply from the first Saturday in June through October 31.

(c) From the first Saturday in June through October 31: Catch and release only.

(d) Trout: Minimum length 14 inches.

((35)) (34) Clearwater River (Jefferson County):

(a) From the mouth to Snahapish River:

(i) Open the first Saturday in June through April 15:

(A) From February 16 through April 15: It is permissible to retain wild steelhead.

(B) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Salmon:

(A) Open September 1 through November 30.

(B) Limit 6; ~~((no more than 2 may be adults))~~ only one may be an adult.

(C) Release wild adult coho.

(b) From Snahapish River upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iv) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

((36)) (35) Cloquallum Creek (Grays Harbor County):

(a) From the mouth to the outlet at Stump Lake:

(i) Open the first Saturday in June through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

(b) From the outlet at Stump Lake upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

((37)) (36) Coal Creek (Clallam County) tributary to Ozette River, outside the Olympic National Park boundary:

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

(ii) Release kokanee.

((38)) (37) Connor Creek (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

((39)) (38) Cook Creek (Grays Harbor County), from the Quinault Indian Reservation boundary upstream:

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((40))~~ **(39) Copalis River (Grays Harbor County):**

(a) General river rules:

(i) From the first Saturday in June through last day in February: Open for game fish.

(ii) It is permissible to retain hatchery steelhead with a dorsal fin height of less than 2 1/8 inches or with an adipose or ventral fin clip.

(b) Rules by river section:

(i) From the mouth to Carlisle Bridge:

(A) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) Salmon:

(I) Open September 1 through January 31.

(II) Limit 6; ~~((no more than))~~ only 2 adult salmon may be retained.

(III) Release adult Chinook and chum.

(ii) From Carlisle Bridge upstream: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((41))~~ **(40) Crim Creek (Lewis County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((42))~~ **(41) Crocker Lake (Jefferson County):**
Closed.

~~((43))~~ **(42) Crooked Creek (Clallam County) and tributaries that are outside of Olympic National Park:**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((44))~~ **(43) Damon Lake (Grays Harbor County):**
Open the first Saturday in June through October 31.

~~((45))~~ **(44) Deep Creek (Clallam County) (Humptulips River tributary):**

(a) Open December 1 through January 31.

(b) Selective gear rules apply.

(c) Release all fish except anglers may retain up to two hatchery steelhead.

~~((46))~~ **(45) Deep Creek (Grays Harbor County):**

(a) Open the first Saturday in June through ~~((last day in))~~ October 31.

(b) Selective gear rules apply.

~~((47))~~ **(46) Delezene Creek (Grays Harbor County) (Chehalis River tributary):**

(a) Open the first Saturday in June through ~~((last day in))~~ October 31.

(b) Selective gear rules apply.

~~((48))~~ **(47) Dickey River (Clallam County):**

(a) From Olympic National Park boundary upstream to the confluence of the East and West forks:

(i) Open the first Saturday in June through April 30.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) February 16 through April 30: It is permissible to retain wild steelhead.

(iv) Salmon open July 1 through November 30:

(A) From July 1 through August 31:

(I) Limit 6; ~~((no more than))~~ only 2 adult salmon may be retained.

(II) Release wild adult Chinook and wild adult coho.

(B) From September 1 through November 30: Limit 6; ~~((two salmon may be adults, plus 2 additional adult hatchery coho))~~ only one adult may be retained.

(b) From the confluence of the East and West forks upstream (for both forks):

(i) Open the first Saturday in June through April 30.

(ii) Selective gear rules apply.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((49))~~ **(48) Donkey Creek (Grays Harbor County):**

(a) Open the first Saturday in June through ~~((last day in))~~ October 31.

(b) Selective gear rules apply.

~~((50))~~ **(49) Duck Lake (Grays Harbor County):**
Crappie limit 10; minimum length 9 inches.

~~((51))~~ **(50) Dungeness River (Clallam County):**

(a) From the mouth to the forks at Dungeness Forks Campground:

(i) Open October ~~((8))~~ 6 through January 31.

(ii) Trout: Minimum length 14 inches.

(iii) Salmon:

(A) Open only from the mouth to the hatchery intake pipe at river mile 11.3 from October ~~((8))~~ 16 through December 31.

(B) Limit 4 coho only.

(b) From Gold Creek upstream: Open the Saturday before Memorial Day through October 31.

~~((52))~~ **(51) East Twin River (Clallam County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((53))~~ **(52) Eight Creek (Lewis County) (tributary to Elk Creek, which is a Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((54))~~ **(53) Elk Creek (Clallam County), outside of Olympic National Park:**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((55))~~ **(54) Elk Creek (Lewis County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((56))~~ (55) **Elk Lake (Clallam County):**

- (a) Open the first Saturday in June through October 15.
- (b) Selective gear rules apply.
- (c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

- (ii) Release all kokanee.

~~((57))~~ (56) **Elk River (Grays Harbor County):**

(a) From the mouth (Highway 105 Bridge) to the confluence of east and middle branches:

(i) Open the first Saturday in June through the last day in February.

(ii) From August 16 through November 30: Single-point barbless hooks are required.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

- (iv) Salmon open October 1 through November 30:

(A) Limit 6; ~~((no more than))~~ only one adult may be retained.

- (B) Release Chinook.

(b) From confluence of east and middle branches upstream:

(i) Open the first Saturday in June through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((58))~~ (57) **Elkhorn Creek (Pacific County) (Smith Creek tributary):**

- (a) Open the first Saturday in June through October 31.

- (b) Selective gear rules apply.

~~((59))~~ (58) **Ellis Creek (Pacific County) (Willapa River tributary):**

- (a) Open the first Saturday in June through October 15.

- (b) Selective gear rules apply.

~~((60))~~ (59) **Ellsworth Creek (Pacific County) (Naselle River tributary):**

(a) Open the first Saturday in June through September 30.

- (b) Selective gear rules apply.

~~((61))~~ (60) **Elwha River (Clallam County):** Closed.~~((62))~~ (61) **Failor Lake (Grays Harbor County):**

(a) Open the fourth Saturday in April through ~~((the last day in))~~ October 31.

(b) Trout: It is unlawful to retain more than two trout over 15 inches in length per day.

~~((63))~~ (62) **Fairchild Creek (Pacific County) (Wilson Creek tributary, which is a Willapa River tributary):**

- (a) Open the first Saturday in June through October 31.

- (b) Selective gear rules apply.

~~((64))~~ (63) **Fall River and all forks (Pacific County) (North River tributary):**

- (a) Open the first Saturday in June through October 31.

- (b) Selective gear rules apply.

~~((65))~~ (64) **Falls Creek (Pacific County) (Willapa River tributary):**

- (a) Open the first Saturday in June through October 15.

- (b) Selective gear rules apply.

~~((66))~~ (65) **Fern Creek (Pacific County) (Willapa River tributary):**

- (a) Open the first Saturday in June through October 15.

- (b) Selective gear rules apply.

~~((67))~~ (66) **Finn Creek (Pacific County) (North Nemah River tributary):** Open the first Saturday in June through October 31.

~~((68))~~ (67) **Fork Creek (Pacific County) (Willapa River tributary):**

(a) From Forks Creek Hatchery rack upstream 500 feet at fishing boundary sign:

(i) Open only for anglers with disabilities who permanently use a wheelchair and possess a designated harvester companion card.

- (ii) Night closure in effect.

- (iii) From October 1 through November 30:

(A) Single-point barbless hooks are required.

(B) Stationary gear restriction applies.

(iv) Open the first Saturday in June through July 15 and October 1 through March 31: Release all fish, except anglers may retain up to 2 hatchery steelhead.

- (v) Salmon(~~(s)~~) open October 1 through January 31.

- (A) From October 1 through November 30:

(I) Limit 6; ~~((no more than 3 may be))~~ only 3 adults may be retained, and only 2 ~~((adult))~~ may be wild adult coho ~~((may be retained))~~.

- (II) Release wild Chinook ~~((and chum))~~.

- (B) From December 1 through January 31:

(I) Limit 6; ~~((no more than 2 may be))~~ only 2 adults may be retained, and only one ~~((adult))~~ may be a wild adult coho ~~((may be retained))~~.

- (II) Release wild Chinook ~~((and chum))~~.

(b) From the fishing boundary sign 500 feet above Forks Creek Hatchery rack upstream to the source:

- (i) Open the first Saturday in June through October 31.

- (ii) Selective gear rules apply.

~~((69))~~ (68) **Garrard Creek (Grays Harbor County) (Chehalis River tributary):**

- (a) Open the first Saturday in June through October 31.

- (b) Selective gear rules apply.

~~((70))~~ (69) **Gibbs Lake (Jefferson County):**

- (a) Selective gear rules apply.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

- (c) Trout: Catch and release only.

~~((71))~~ (70) **Goodman Creek (Jefferson County), outside Olympic National Park:**

(a) Open the first Saturday in June through the last day in February.

- (b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((72))~~ (71) **Grass Creek (Grays Harbor County):**

- (a) Open the first Saturday in June through October 31.

- (b) Selective gear rules apply.

~~((73))~~ (72) **Gray Wolf River (Clallam County):** From the bridge at river mile 1.0, upstream:

- (a) Open the first Saturday in June through October 31.

- (b) Selective gear rules apply.

(c) Catch and release only.

~~((74))~~ (73) **Halfmoon Creek (Pacific County) (Willapa River tributary):**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

~~((75))~~ (74) **Halfway Creek (Lewis County) (tributary of Stillman Creek, which is a Chehalis River tributary):**

(a) Open the first Saturday in June through October 31 from the mouth to the second bridge crossing on Pe Ell McDonald Road.

(b) Selective gear rules apply.

~~((76))~~ (75) **Hanaford Creek (Lewis County) (Skokumchuck River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((77))~~ (76) **Harris Creek (Grays Harbor County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Trout: Selective gear rules apply.

~~((78))~~ (77) **Hoh River (Jefferson County):**

(a) From the Olympic National Park boundary upstream to the DNR Oxbow Campground Boat Launch:

(i) Open ~~((the first Saturday in June))~~ August 1 through April 15.

~~((ii))~~ (A) From February 16 through April 15: It is permissible to retain wild steelhead.

~~((iii))~~ ~~From the first Saturday in June through April 15:~~

~~(A) The first Saturday in June)~~ (B) From August 1 through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((B))~~ (C) April 1 through April 15: Trout minimum length 14 inches.

~~((C))~~ (D) From November 1 through February 15: The trout limit may include one additional hatchery steelhead.

~~((iv))~~ (ii) Salmon open September 1 through November 30: Limit 6; ~~((no more than 2 adults))~~ only one adult may be retained.

(b) From the DNR Oxbow Campground Boat Launch to ~~((Mortans))~~ Morgans Crossing Boat Launch site:

(i) Open ~~((the first Saturday in June))~~ August 1 through April 15.

(A) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(B) Selective gear rules apply ~~((the first Saturday in June))~~ August 1 through October 15 and December 1 through April 15.

(ii) From ~~((the first Saturday in June))~~ August 1 through April 15: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open October 16 through November 30: Limit 6; ~~((no more than 2 adults))~~ only one adult may be retained.

(c) From Morgan's Crossing Boat Launch upstream to the Olympic National Park boundary below mouth of South Fork Hoh River:

(i) Selective gear rules apply.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(ii) Open ~~((the first Saturday in June))~~ August 1 through April 15: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((79))~~ (78) **Hoh River, South Fork (Jefferson County), outside the Olympic National Park boundary:**

(a) Open ~~((the first Saturday))~~ August 1 in June through April 15.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((80))~~ (79) **Hoko River (Clallam County):**

(a) From the mouth to the upper Hoko Bridge:

(i) ~~((It is permissible to fish up to the hatchery ladder, except))~~ Closed to fishing ~~((from shore on the hatchery side of the river))~~ from the hatchery ladder downstream 100 feet.

(ii) Open the first Saturday in June through March 15. Open to fly fishing only September 1 through October 31.

(iii) Trout: Minimum length fourteen inches.

(b) From the upper Hoko Bridge to Ellis Creek Bridge (river mile 18.5):

(i) Open the first Saturday in June through March 31 to fly fishing only.

(ii) Release all fish except anglers may retain up to two hatchery steelhead.

~~((81))~~ (80) **Hoquiam River, including West Fork (Grays Harbor County):**

(a) From the mouth (Highway 101 Bridge on Simpson) to Dekay Road Bridge (West Fork):

(i) August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day of February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon~~((:~~

~~(A))~~ open October 1 through ~~((November 30:~~

~~(B))~~ December 31:

(A) From October 1 through November 30:

(I) Limit 6; ((no more than)) only 2 adults may be retained.

~~((C))~~ (II) Release Chinook.

(B) From December 1 through December 31:

(I) Limit 6; only 2 adults may be retained.

(II) Release Chinook.

(b) From Dekay Road Bridge upstream:

(i) Open the first Saturday in June through the last day of February.

(ii) Selective gear rules apply.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((82))~~ (81) **Hoquiam River, East Fork (Grays Harbor County):**

(a) From the mouth to the confluence of Berryman Creek:

(i) August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day of February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon(~~(=~~
(A)) open October 1 through (~~(November 30-~~
(B)) December 31.

(A) From October 1 through November 30:

(I) Limit 6; (~~(no more than))~~ only 2 adults may be retained.

(~~(C))~~ (II) Release Chinook.

(B) From December 1 through December 31:

(I) Limit 6; only 2 adults may be retained.

(II) Release Chinook.

(b) From the confluence of Berryman Creek upstream to Youman's Road Bridge:

(i) Open the first Saturday in June through the last day of February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(~~(83))~~ **(82) Hoquiam River, Middle Fork (Grays Harbor County):** From the mouth upstream:

(a) Open the first Saturday in June through last day of October.

(b) Selective gear rules apply.

(~~(84))~~ **(83) Horseshoe Lake (Jefferson County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one.

(~~(85))~~ **(84) Howe Creek (Jefferson County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(~~(86))~~ **(85) Humptulips River (Grays Harbor County):**

(a) From the mouth (Jessie Slough) to the Highway 101 Bridge, including all channels, sloughs, and interconnected waterways:

(i) From August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open September 1 through January 31:

(A) From September 1 through (~~(October 31))~~ September 30:

(I) Limit 6; (~~(no more than 3))~~ only 2 adults may be retained, and only one may be a wild adult Chinook (~~(may be retained)).~~

(II) Release wild coho.

(B) From (~~(November))~~ October 1 through November (~~(30))~~ 15:

(I) Limit 6; (~~(no more than 3))~~ only 2 adults may be retained, and only one may be an adult Chinook.

(II) Release (~~(Chinook and))~~ wild coho.

(C) From (~~(December 1))~~ November 16 through January 31:

(I) Limit 6; (~~(No more than))~~ Only 2 adults may be retained.

(II) Release Chinook and wild coho.

(b) From the Highway 101 Bridge to the confluence of the East and West forks:

(i) From December 1 through March 31: It is unlawful to fish from a floating device equipped with an internal combustion motor.

(ii) From August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(iii) Open the first Saturday in June through March 31:

(A) From the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From March 1 through March 31:

(I) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(II) Selective gear rules apply.

(iv) Salmon open September 1 through January 31:

(A) From September 1 through (~~(October 31))~~ September 30:

(I) Limit 6; (~~(no more than 3))~~ only 2 adults may be retained, and only one may be a wild adult Chinook (~~(may be retained)).~~

(II) Release wild coho.

(B) From (~~(November))~~ October 1 through November (~~(30))~~ 15:

(I) Limit 6; (~~(no more than 3))~~ only 2 adults may be retained, and only one may be an adult Chinook.

(II) Release (~~(Chinook and))~~ wild coho.

(C) From (~~(December 1))~~ November 16 through January 31:

(I) Limit 6; (~~(no more than))~~ only 2 adults may be retained.

(II) Release Chinook and wild coho.

(~~(87))~~ **(86) Humptulips River, East Fork (Grays Harbor County):**

(a) From the mouth to the concrete bridge on Forest Service Road 220:

(i) August 16 through October 31: Anti-snagging rule applies and night closure in effect.

(ii) Open the first Saturday in June through October 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) From the concrete bridge on Forest Service Road 220 upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(~~(88))~~ **(87) Humptulips River, West Fork (Grays Harbor County):**

(a) From the mouth to Donkey Creek:

(i) August 16 through November 30: Anti-snagging rule applies and night closure in effect.

(ii) Open the first Saturday in June through March 31:

(A) From the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From March 1 through March 31:

(I) Selective gear rules apply.

(II) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(III) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(b) From Donkey Creek upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

~~((89))~~ (88) **Independence Creek (Grays Harbor County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((90))~~ (89) **Jimmy-Come-Lately Creek (Clallam County):**

(a) From the mouth to confluence with East Fork:

(i) Open the first Saturday in June through August 31.

(ii) Selective gear rules apply.

(iii) Catch and release only.

(b) From confluence with East Fork upstream, including East Fork: Open the first Saturday in June through October 31.

~~((91))~~ (90) **Joe Creek (Grays Harbor County):**

(a) From the mouth to Ocean Beach Road Bridge:

(i) August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through November 30: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open September 1 through November 30:

(A) Limit 6; ~~((no more than))~~ only 2 adults may be retained.

(B) Release adult Chinook and chum.

(b) From Ocean Beach Road Bridge upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((92))~~ (91) **Johns River (Grays Harbor County):**

(a) From the mouth (Highway 105 Bridge) to Ballon Creek:

(i) August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open October 1 through November 30:

(A) Limit 6; ~~((no more than))~~ only one adult may be retained.

(B) Release Chinook.

(b) From Ballon Creek upstream, including North and South Forks:

(i) Open the first Saturday in June through September 30 and December 1 through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((93))~~ (92) **Jones Creek (Lewis County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((94))~~ (93) **Kalaloch Creek (Jefferson County), outside Olympic National Park:**

(a) Closed within the section posted as the Olympic National Park water supply.

(b) Open the first Saturday in June through the last day in February:

(i) Selective gear rules apply.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((95))~~ (94) **Leland Creek (Jefferson County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((96))~~ (95) **Leland Lake (Jefferson County):** No more than two trout over 14 inches in length may be retained.

~~((97))~~ (96) **Lena Lake, Lower (Jefferson County):** The inlet stream is closed from the mouth upstream to the footbridge (about 100 feet).

~~((98))~~ (97) **Lincoln Creek, including South Fork (Lewis County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((99))~~ (98) **Lincoln Pond (Clallam County):** Open to juvenile anglers only.

~~((100))~~ (99) **Little Hoko River (Clallam County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((101))~~ (100) **Little Hoquiam River (Grays Harbor County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((102))~~ (101) **Little North River and all forks (Grays Harbor County) (North River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((103))~~ (102) **Little Quilcene River (Jefferson County):**

(a) From the mouth to the Little Quilcene River Bridge on Penny Creek Road:

(i) Open the first Saturday in June through October 31.

(ii) From the mouth to Highway 101 Bridge: Closed September 1 through October 31.

(iii) Selective gear rules apply.

(iv) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(v) Catch and release only.

(b) From Little Quilcene River Bridge on Penny Creek Road upstream: Open the first Saturday in June through October 31.

~~((104))~~ **(103) Long Beach Peninsula waterways and lakes (Pacific County):** Open the fourth Saturday in April through October 31.

~~((105))~~ **(104) Loomis Lake (Pacific County):** Open the fourth Saturday in April through October 31.

~~((106))~~ **(105) Loomis Pond (Grays Harbor County):** Closed.

~~((107))~~ **(106) Lower Salmon Creek and all forks (Grays Harbor/Pacific counties) (North River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((108))~~ **(107) Lucas Creek (Lewis County) (tributary to the Newaukum River North Fork):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Catch and release only.

~~((109))~~ **(108) Ludlow Creek (Jefferson County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((110))~~ **(109) Ludlow Lake (Jefferson County):**

(a) Open the fourth Saturday in April through October 31.

(b) Trout: It is unlawful to retain more than two trout over 14 inches in length.

~~((111))~~ **(110) Lyre River (Clallam County):**

(a) From the mouth to falls near river mile 3:

(i) Open the first Saturday in June through January 31.

(ii) Trout: Minimum length 14 inches.

(b) From the falls to the Olympic National Park boundary:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Catch and release only.

~~((112))~~ **(111) Matheny Creek (Jefferson County) (Queets River tributary), outside Olympic National Park:**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((113))~~ **(112) McDonald Creek (Clallam County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((114))~~ **(113) Middle Nemah River (Pacific County):**

(a) From the mouth upstream to the department of natural resources bridge on the Middle Nemah A-Line Road:

(i) Open the first Saturday in June through March 31: Release all fish except anglers may retain up to 2 hatchery steelhead.

(ii) August 1 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(iii) Salmon:

(A) Open September 1 through January 31.

(B) Limit 6; ~~((anglers may not retain))~~ no more than ((2)) 4 adults may be retained.

(C) Release wild Chinook ~~((wild coho, and chum)).~~

(b) From the department of natural resources bridge on the Middle Nemah A-Line Road upstream:

(i) Open the first Saturday in June through March 31:

(A) Selective gear rules apply.

(B) Release all fish except anglers may retain up to 2 hatchery steelhead.

(ii) August 16 through November 30: Anti-snagging rule applies and night closure in effect.

~~((115))~~ **(114) Mill Creek (Pacific County) (Willapa River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((116))~~ **(115) Mill Creek Pond (Grays Harbor County):** Open to juvenile anglers only.

~~((117))~~ **(116) Mitchell Creek (Lewis County) (tributary to the Newaukum River North Fork):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Catch and release only.

~~((118))~~ **(117) Moclips River (Grays Harbor County):**

(a) Open from the mouth to the Quinault Indian Reservation boundary from the first Saturday in June through the last day in February.

(b) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) It is permissible to retain steelhead with a dorsal fin height of less than 2 1/8 inches or with an adipose or ventral fin clip.

(c) Salmon is open September 1 through January 31:

(i) Limit 6; ~~((no more than))~~ only 2 adults may be retained.

(ii) Release chum and adult Chinook.

~~((119))~~ **(118) Morse Creek (Clallam County):**

(a) From the mouth to Port Angeles Dam:

(i) Open from December 1 through January 31.

(ii) Trout: Minimum length 14 inches.

(b) From Port Angeles Dam upstream: Open the first Saturday in June through October 31.

~~((120))~~ **(119) Mosquito Creek (Jefferson County):**

(a) Open outside Olympic National Park upstream to the Goodman 3000 Mainline Bridge from the first Saturday in June through the last day in February.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

~~((121))~~ **(120) Mox Chehalis Creek (Grays Harbor County) (Chehalis River tributary):** Open the first Saturday in June through October 31: Selective gear rules apply.

~~((122))~~ **(121) Naselle River (Pacific/Wahkiakum counties):**

(a) From the Highway 101 Bridge to the Highway 4 Bridge:

(i) From August 1 through November 15:

- (A) Night closure in effect.
- (B) Anti-snagging rule applies.
- (C) Barbless hooks are required.
- (D) From the South Fork upstream to the Highway 4 Bridge: Stationary gear restriction applies.
- (ii) From Highway 101 Bridge upstream to Highway 401: Anglers may fish with ~~((a two-pole endorsement))~~ two poles August 1 through January 31, provided they possess a valid two-pole endorsement.
- (iii) Open the first Saturday in June through April 15: Release all fish except anglers may retain up to 2 hatchery steelhead.
 - (iv) Salmon open August 1 through January 31:
 - (A) From August 1 through October 31:
 - (I) Limit 6; ~~((no more than 3))~~ only 4 adults may be retained.
 - ~~((B))~~ (II) Release wild Chinook ~~((and chum))~~.
 - (B) From November 1 through January 31:
 - (I) Limit 6; only 4 adults may be retained and only two adults may be wild coho.
 - (II) Release wild Chinook.
 - (b) From the Highway 4 Bridge to the upstream entrance of the Naselle Hatchery Attraction Channel:
 - (i) Closed waters from the upstream entrance of the hatchery attraction channel downstream 400 feet.
 - (ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.
 - (iii) From ~~((October))~~ September 16 through November 15:
 - (A) Night closure in effect.
 - (B) Anti-snagging rule applies.
 - (C) Barbless hooks are required.
 - (D) Stationary gear rules in effect.
 - (iv) Open the first Saturday in June through July 31 and ~~((October 6))~~ September 16 through April 15: Release all fish except anglers may retain up to 2 hatchery steelhead.
 - (v) Salmon open ~~((October))~~ September 16 through January 31:
 - (A) From September 16 through October 31:
 - (I) Limit 6; ~~((no more than 3))~~ only 4 adults may be retained.
 - ~~((B))~~ (II) Release wild Chinook ~~((and chum))~~.
 - (B) From November 1 through January 31:
 - (I) Limit 6; only 4 adults may be retained and only two may be wild adult coho.
 - (II) Release wild Chinook.
 - (c) From the upstream entrance of the Naselle Hatchery Attraction Channel to the Crown Mainline (Salme) Bridge:
 - (i) The following areas are closed:
 - (A) From the falls in Sec. 6, T10N, R8W (Wahkiakum Co.) downstream 400 feet.
 - (B) Downstream of the full spanning concrete diversion structure at the Naselle Hatchery: Closed August 1 through October 15.
 - (ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.
 - (iii) From August 1 through November 15:
 - (A) Night closure in effect.
 - (B) Anti-snagging rule applies.
 - (C) Barbless hooks are required.

- (D) Stationary gear rules in effect.
- (iv) Open the first Saturday in June through April 15: Release all fish, except anglers may retain up to 2 hatchery steelhead.
 - (v) Salmon open October 16 through January 31:
 - (A) From October 16 through October 31:
 - (I) Limit 6; ~~((no more than 3))~~ only 4 adults may be retained.
 - ~~((B))~~ (II) Release wild Chinook ~~((and chum))~~.
 - (B) From November 1 through January 31:
 - (I) Limit 6; only 4 adults may be retained and only two may be wild adult coho.
 - (II) Release wild Chinook.
 - (d) From the Crown Mainline (Salme) Bridge to the mouth of the North Fork:
 - (i) Open the first Saturday in June through April 15: Release all fish except anglers may retain up to 2 hatchery steelhead.
 - (ii) From August 16 through November 30:
 - (A) Night closure ~~((and anti-snagging))~~ in effect.
 - (B) Anti-snagging rule ~~((in effect))~~ applies.
 - (e) Upstream from the mouth of the North Fork:
 - (i) Open the first Saturday in June through October 31.
 - (ii) Selective gear rules apply.
 - (iii) Release all fish except anglers may retain up to 2 hatchery steelhead.
 - ~~((+23))~~ (122) **North Naselle River (Pacific County):**
 - (a) Open the first Saturday in June through October 31.
 - (b) Selective gear rules apply.
 - ~~((+24))~~ (123) **South Naselle River (Pacific County):**
 - (a) From the mouth to Bean Creek: Open the first Saturday in June through the last day in February.
 - (b) From the first Saturday in June through August 15: Selective gear rules apply.
 - (c) August 16 through November 30: Anti-snagging rule applies and night closure in effect.
 - (d) Release all fish except anglers may retain up to 2 hatchery steelhead.
 - ~~((+25))~~ (124) **Neil Creek (Grays Harbor County) (Wynoochee River tributary):**
 - (a) Open from the mouth to USFS 22 Road from the first Saturday in June through October 31.
 - (b) Selective gear rules apply.
 - ~~((+26))~~ (125) **Newaukum River, including South Fork (Lewis County):**
 - (a) From the mouth to Leonard Road near Onalaska:
 - (i) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
 - (ii) August 16 through November 30:
 - (A) Night closure in effect.
 - (B) Single-point barbless hooks are required.
 - (iii) Salmon open October 1 through the last day in February:
 - (A) From October 1 through November 30:
 - (I) Limit 6; ~~((no more than))~~ only 3 adults may be retained.
 - (II) Release Chinook and chum.
 - (B) From December 1 through the last day in February:

(I) Limit 6; ~~((no more than))~~ only 2 adults may be retained, and only one ~~((adult))~~ may be a wild adult coho.

(II) Release Chinook and chum.

(b) From Leonard Road near Onalaska to Highway 508 Bridge near Kearny Creek:

(i) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(c) From Highway 508 Bridge upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Trout: Catch and release only.

(iv) August 16 through October 31: Night closure in effect.

~~((127))~~ **(126) Newaukum River, Middle Fork (Lewis County), from the mouth to Tauscher Road Bridge:**

(a) Open the first Saturday in June to March 31.

(b) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length.

~~((128))~~ **(127) Newaukum River, North Fork (Lewis County), from the mouth to 400 feet below the Chehalis city water intake:**

(a) Open the first Saturday in June through March 31.

(b) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length.

~~((129))~~ **(128) Newman Creek (Grays Harbor County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((130))~~ **(129) Newkah Creek (Grays Harbor County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((131))~~ **(130) Niawiakum River (Pacific County):**
From Highway 101 Bridge to the South Bend/Palix Road Bridge:

(a) August 16 through November 30:

(i) Night closure in effect.

(ii) Single-point barbless hooks are required.

(b) Open the first Saturday in June through November 30.

(c) Salmon(=) open September 1 through November 30.

(i) ~~((Open September 1 through November 30.~~

~~((ii))~~ Limit 6; ~~((of which no more than 2 may be adult salmon.~~

~~((iii))~~ only 2 adults may be retained.

~~((ii))~~ Release ~~((chum, wild coho, and))~~ wild Chinook and wild coho.

~~((132))~~ **(131) North Nemah River (Pacific County):**

(a) From Highway 101 Bridge upstream to the bridge on Nemah Valley Road:

(i) Open the first Saturday in June through March 31.

(ii) Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) From August 1 through November 30:

(A) Night closure in effect.

(B) Stationary gear restriction applies.

(C) Single-point barbless hooks are required.

(iv) Salmon(=

~~((A)))~~ open August 1 through ((November 30)) January 31.

~~((H))~~ (A) Limit 6; ~~((no more than 3))~~ only 4 adults may be retained ~~((and only 2 adults may be wild coho)).~~

~~((H))~~ (B) Release ~~((chum and))~~ wild Chinook.

~~((B))~~ Open December 1 through January 31.

~~((I))~~ Limit 6; ~~no more than 2 adults may be retained and only one adult may be a wild coho.~~

~~((H))~~ Release ~~chum and wild Chinook.~~)

(b) From the bridge on Nemah Valley Road upstream to ~~((Cruiser Creek))~~ Nemah Hatchery barrier dam:

(i) The ~~((bridge on))~~ Nemah ~~((Valley Road))~~ Hatchery Bridge upstream to Nemah Hatchery barrier dam: Closed ~~((August 1 through November 15)).~~

(ii) Open the first Saturday in June through July 31 and November 16 through March 31.

(iii) Release all ~~((game))~~ fish except anglers may retain up to 2 hatchery steelhead.

(iv) From August 16 through November 30:

(A) Anti-snagging rule applies ~~((and night)).~~

(B) Night closure in effect.

(v) ~~((December 1 through March 31:))~~ Selective gear rules apply December 1 through March 31.

(c) From the Nemah Hatchery barrier dam upstream to N-700 Road:

(i) Open the first Saturday in June through March 31.

(ii) Release all game fish except anglers may retain up to 2 hatchery steelhead.

(iii) From August 16 through November 30:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(iv) Selective gear rules apply from December 1 through March 31:

(v) Salmon open October 1 through January 31:

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(d) From the N-700 Road upstream to Cruiser Creek:

(i) Open the first Saturday in June through March 31.

(ii) Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) From August 16 through November 30:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(iv) Selective gear rules apply from December 1 through March 31.

~~((133))~~ **(132) North River (Grays Harbor/Pacific counties):**

(a) From the Highway 105 Bridge to Salmon Creek (located approximately 2 miles upstream from Highway 101):

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day in February: Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon open October 1 through ~~((December))~~ January 31:

~~(A) ((From October 1 through November 30:~~

~~(H)) Limit 6; ((no more than 3)) only 4 adults may be retained((, and only 2 adults may be wild coho)).~~

~~((H)) (B) Release wild Chinook ((and chum:~~

~~(B) From December 1 through December 31:~~

~~(I) Limit 6; no more than 2 adults may be retained, and only one adult may be a wild coho.~~

~~(H) Release wild Chinook and chum)).~~

(b) From Salmon Creek (located approximately 2 miles upstream from Highway 101) to Fall River:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(C) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day in February: Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon open October 1 through ~~((December))~~ January 31:

~~(A) ((From October 1 through November 30:~~

~~(H)) Limit 6; ((no more than 3)) only 4 adults may be retained((, and only 2 adults may be wild coho)).~~

~~((H)) (B) Release wild Chinook ((and chum:~~

~~(B) From December 1 through December 31:~~

~~(I) Limit 6; no more than 2 adults may be retained, and only one adult may be a wild coho.~~

~~(H) Release wild Chinook and chum)).~~

(c) From Fall River to Raimie Creek:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((134)) (133) **Owens Pond (Pacific County):** The first Saturday in June through October 31 season.~~

~~((135)) (134) **Palix River, including all forks (Pacific County):**~~

(a) From the Highway 101 Bridge to the mouth of the Middle Fork:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon:

(A) Open September 1 through ~~((November 30))~~ January 31.

(B) Limit 6; ~~((no more than 2))~~ only 4 adults may be retained ~~((and only one adult may be a wild coho)).~~

(C) Release ~~((chum and))~~ wild Chinook.

(b) From the confluence with the Middle Fork upstream and all forks, including South Fork Palix and Canon rivers:

(i) August 16 through October 15:

(A) Anti-snagging rule applies.

(B) Night closure in effect.

(ii) From the first Saturday in June through August 15, and from December 16 through March 31: Selective gear rules apply.

(iii) Open the first Saturday in June through October 15, and from December 16 through March 31.

(iv) Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((136)) (135) **Palmquist Creek (Clallam County), outside of Olympic National Park:**~~

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((137)) (136) **Peabody Creek (Clallam County):** Open the first Saturday in June through October 31 to juvenile anglers only.~~

~~((138)) (137) **Penny Creek (Jefferson County):** Open the first Saturday in June through October 31.~~

~~((139)) (138) **Petroleum Creek (Clallam County):** From the Olympic National Park boundary upstream:~~

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((140)) (139) **Pheasant Lake (Jefferson County):** Open the fourth Saturday in April through October 31.~~

~~((141)) (140) **Pilchuck Creek (Clallam County) (Sooes River tributary):**~~

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((142)) (141) **Pioneer Creek (Grays Harbor County) (North River tributary):**~~

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((143)) (142) **Pleasant Lake (Clallam County):** Trout: Kokanee minimum length 6 inches, maximum length 18 inches.~~

~~((144)) (143) **Porter Creek (Grays Harbor County) (Chehalis River tributary):**~~

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((145)) (144) **Promised Land Pond (Grays Harbor County):** Open the first Saturday in June through October 31.~~

~~((146)) (145) **Pysht River (Clallam County):**~~

(a) Open the first Saturday in June through January 31.

(b) Selective gear rules apply.

(c) From the first Saturday in June through October 31: Catch and release only.

(d) From November 1 through January 31: Trout minimum length 14 inches.

~~((147))~~ (146) Rock Creek (Lewis County) (Chehalis River tributary):

- (a) Open the first Saturday in June through October 31.
(b) Selective gear rules apply.

~~((148))~~ (147) Stearns Creek (Lewis County) (Chehalis River tributary):

- (a) Open the first Saturday in June through October 31.
(b) Selective gear rules apply.

~~((149))~~ (148) Stillman Creek (Lewis County) (Chehalis River tributary):

- (a) Open the first Saturday in June through October 31 from the mouth to water supply pipeline at Mill Creek.
(b) Selective gear rules apply.

~~((150))~~ (149) Stowe Creek (Lewis County) (Chehalis River tributary):

- (a) Open the first Saturday in June through October 31.
(b) Selective gear rules apply.

~~((151))~~ (150) Quigg Lake (Grays Harbor County):

- (a) Open the first Saturday in June through April 15.
(b) Trout: Minimum length 14 inches.
(c) Salmon:

(i) Open October 1 through January 31.

(ii) Limit 6 hatchery coho salmon ~~(, of which no more than)~~ only 4 may be adult hatchery coho.

~~((152))~~ (151) Quillayute River (Clallam County), outside of Olympic National Park: Open year-round.

(a) ~~(Open)~~ From May 1 through the Friday before the first Saturday in June: Release all fish except anglers may retain up to 2 hatchery steelhead.

(b) ~~(Open the first Saturday in June through April 30:)~~ From the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((i))~~ (c) From April 1 through April 30: Trout minimum length 14 inches.

~~((ii))~~ (d) From November 1 through the last day in February: Anglers may retain one additional hatchery steelhead as part of the limit.

~~((i+))~~ (e) From February 16 through April 30: It is permissible to retain wild steelhead.

~~((e))~~ (f) Salmon: ((i)) Open February 1 through ~~(August 31)~~ November 30:

(i) From February 1 through August 31:

(A) Limit 6; ~~((no more than))~~ only 2 adults may be retained.

(B) Release wild adult Chinook and wild adult coho.

(ii) ~~(Open)~~ From September 1 through November 30: Limit 6; ~~((two))~~ only 3 adults may be ~~((adults, plus anglers may retain 2 additional adult hatchery coho))~~ retained and only one may be a wild adult.

~~((153))~~ (152) Quinault River (Grays Harbor County): From the mouth at the upper end of Quinault Lake upstream to the Olympic National Park boundary:

(a) Open the first Saturday in June through April 15:

(i) February 16 through April 15: It is permissible to retain one wild steelhead per day.

(ii) Trout: minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) Salmon open July 1 through November 30:

(i) From July 1 through September 30:

(A) Limit 6 jack salmon only.

(B) Single-point barbless hooks are required.

(ii) From October 1 through November 30:

(A) Limit 6; ~~((no more than))~~ only 2 adults may be retained.

(B) Release sockeye and chum.

~~((154))~~ (153) Quinn Creek (Clallam County), outside of Olympic National Park:

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((155))~~ (154) Radar Ponds (Pacific County): Salmon: Landlocked salmon rules apply.

~~((156))~~ (155) Raimie Creek and all forks (Pacific County) (North River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((157))~~ (156) Ripley Creek (Jefferson County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((158))~~ (157) Rock Creek (Grays Harbor County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((159))~~ (158) Rocky Brook (Jefferson County) (Dosewallips River tributary): From the falls 1000 feet upstream of the mouth: Open the first Saturday in June through October 31.

~~((160))~~ (159) Rue Creek, including West Fork (Pacific County) (South Fork Willapa tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((161))~~ (160) Salmon Creek and all forks (Grays Harbor County) (North River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((162))~~ (161) Salmon Creek (Pacific County) (tributary of Naselle River):

(a) Open the first Saturday in June through the last day in February.

(b) Selective gear rules apply.

(c) Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((163))~~ (162) Salmon River (Jefferson County), outside Olympic National Park and the Quinault Indian Reservation:

(a) Open the first Saturday in June through the last day in February:

(i) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) It is permissible to retain steelhead with a dorsal fin height of less than 2 1/8 inches or with an adipose or ventral fin clip.

(b) Salmon open September 1 through November 30:

(i) Limit 6; ~~((no more than))~~ only 3 adults may be retained, ~~((and))~~ no more than 2 adults may be Chinook, and only one Chinook may be wild.

(ii) Release wild adult coho salmon.

~~((164))~~ (163) Salt Creek (Clallam County): From the mouth to the bridge on Highway 112:

(a) Open the first Saturday in June through January 31.

(b) Selective gear rules apply.

(c) First Saturday in June through October 31: Catch and release only.

(d) November 1 through January 31: Anglers may retain up to 2 hatchery steelhead.

~~((165))~~ (164) Sand Creek (Grays Harbor County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((166))~~ (165) Sandyshore Lake (Jefferson County):

(a) Open the fourth Saturday in April through October 31.

(b) Trout: No more than two over 14 inches in length may be retained.

~~((167))~~ (166) Satsop Lakes (Grays Harbor County): Open the fourth Saturday in April through October 31.

~~((168))~~ (167) Satsop River and East Fork (Grays Harbor County):

(a) From the mouth to the bridge at Schafer State Park:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open September 16 through January 31:

(A) From September 16 through November 30:

(I) Limit 6; ~~((no more than))~~ only 3 adults may be retained.

(II) Release wild adult Chinook.

(B) From December 1 through January 31:

(I) Limit 6; ~~((no more than))~~ only 2 adults may be retained, and only one may be an wild adult (~~((wild))~~ coho.

(II) Release Chinook.

(b) From the bridge at Schafer State Park upstream to 400 feet below Bingham Creek Hatchery barrier dam:

(i) Open the first Saturday in June through October 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Open August 16 through October 31:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(c) From 400 feet downstream of the Bingham Creek Hatchery barrier dam upstream to the dam:

(i) Closed, except open within posted markers to anglers with disabilities who permanently use a wheelchair and possess a designated harvester companion card.

(ii) Night closure in effect.

(iii) From August 16 through October 31: Single-point barbless hooks are required.

(iv) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(v) Salmon open September 16 through January 31:

(A) From September 16 through November 30:

(I) Limit 6; ~~((no more than))~~ only 3 adults may be retained.

(II) Release wild adult Chinook.

(B) From December 1 through January 31:

(I) Limit 6; ~~((no more than))~~ only 2 adults may be retained, and only one may be ~~((a))~~ a wild adult (~~((wild))~~ coho.

(II) Release Chinook.

(d) From the Bingham Creek Hatchery dam upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) August 16 through October 31: Night closure in effect.

~~((169))~~ (168) Satsop River, Middle Fork (Turnow Branch):

(a) From the mouth to Cougar Smith Road:

(i) From August 16 through November 30:

(A) Anti-snagging rule applies.

(B) Night closure in effect.

(ii) Open the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) From Cougar Smith Road upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) August 16 through October 31:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

~~((170))~~ (169) Satsop River, West Fork:

(a) From the mouth to Cougar Smith Road:

(i) August 16 through November 30:

(A) Anti-snagging rule applies.

(B) Night closure in effect.

(ii) Open the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) From Cougar Smith Road to USFS 2260 Road Bridge at Spoon Creek:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) August 16 through October 31: Night closure in effect.

(c) From USFS 2260 Road Bridge at Spoon Creek upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Eastern brook trout: Limit 5; no minimum size.

~~((171))~~ (170) **Schafer Creek (Grays Harbor County)****(Wynoochee River tributary):**

- (a) From the mouth to USFS 22 Road:
- (b) Open the first Saturday in June through October 31.
- (c) Selective gear rules apply.

~~((172))~~ (171) **Sekiu River (Clallam County):**

- (a) From the mouth to the forks:
- (i) Open the first Saturday in June through January 31.
- (ii) From the first Saturday in June through October 31:

Selective gear rules apply.

- (iii) November 1 through January 31: Catch and release only.

- (iv) Trout: Minimum length 14 inches.

- (b) From the forks upstream:

- (i) Open the first Saturday in June through October 31.
- (ii) Selective gear rules apply.
- (iii) Catch and release only.

~~((173))~~ (172) **Shine Creek (Jefferson County):**

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.
- (c) Catch and release only.

~~((174))~~ (173) **Shye Lake (Grays Harbor County):**

Open the first Saturday in June through October 31.

~~((175))~~ (174) **Siebert Creek (Clallam County):**

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.
- (c) Catch and release only.

~~((176))~~ (175) **Silent Lake (Jefferson County):**

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Trout: It is unlawful to retain more than two over 14 inches in length.

~~((177))~~ (176) **Sitkum River (Clallam County) (Calawah River tributary):**

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.
- (c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((178))~~ (177) **Siwash Creek (Clallam County), outside of Olympic National Park:**

- (a) Open the first Saturday in June through October 15.
- (b) Selective gear rules apply.
- (c) Trout:

- (i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

- (ii) Release all kokanee.

~~((179))~~ (178) **Skookumchuck River (Thurston County):**

(a) From the mouth to 100 feet below the outlet of the PP&L/WDFW steelhead rearing pond located at the base of the Skookumchuck Dam:

- (i) August 16 through November 30:
 - (A) Night closure in effect.
 - (B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through April 30:

(A) From the first Saturday in June through March 31, trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From April 1 through April 30: Trout minimum length 14 inches.

(iii) Salmon open October 1 through the last day in February:

(A) From October 1 through November 30:

(I) Limit 6; ~~((no more than))~~ only 3 adults may be retained.

(II) Release Chinook and chum.

(B) From December 1 through the last day in February:

(I) Limit 6; ~~((no more than))~~ only 2 adults may be retained and only one may be a wild adult coho.

(II) Release Chinook and chum.

(b) From Skookumchuck Reservoir upstream, selective gear rules apply.

~~((180))~~ (179) **Smith Creek (near North River) (Pacific County):**

(a) From the mouth to the Highway 101 Bridge:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day in February: Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon open October 1 through December 31:

(A) From October 1 through November 30:

(I) Limit 6; ~~((no more than))~~ only 3 adults may be retained, and only 2 ~~((adults))~~ may be wild adult coho.

(II) Release wild Chinook ~~((and chum))~~.

(B) From December 1 through December 31:

(I) Limit 6; ~~((no more than))~~ only 2 adults may be retained, and only one ~~((adult))~~ may be a wild adult coho.

(II) Release wild Chinook ~~((and chum))~~.

(b) From the Highway 101 Bridge upstream:

(i) Selective gear rules apply.

(ii) Open the first Saturday in June through the last day in February: Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((181))~~ (180) **Smith Creek (Pacific County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((182))~~ (181) **Snahapish River (Jefferson County)****(Clearwater River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((183))~~ (182) **Sol Duc River (Clallam County):**

(a) Open year-round from the mouth to the concrete pump station at the Sol Duc Hatchery:

(i) May 1 through the Friday before the first Saturday in June: Release all fish except anglers may retain up to 2 hatchery steelhead.

(ii) From the first Saturday in June through April 30:

(A) The first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) April 1 through April 30: Trout minimum length 14 inches.

(C) November 1 through the last day in February: Anglers may retain one additional hatchery steelhead as part of the trout limit.

(D) February 16 through April 30: It is permissible to retain wild steelhead.

(iii) Salmon open February 1 through November 30:

(A) From February 1 through August 31:

(I) Limit 6; ~~((no more than))~~ only 2 adults may be retained.

(II) Release wild adult Chinook and wild adult coho.

(III) May 1 through August 31: Closed from the Sol Duc Hatchery outlet creek upstream to the old trestle pilings.

(B) From September 1 through November 30: Limit 6; ~~((two))~~ only 3 adult salmon ~~((, plus 2 additional adult hatchery coho may be retained as part of the limit))~~ may be retained, only one may be a wild adult.

(b) From the concrete pump station at Sol Duc Hatchery to the Highway 101 Bridge upstream of Klahowya Campground:

(i) Open the first Saturday in June through April 30.

(ii) Selective gear rules apply.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(c) From the Highway 101 Bridge upstream of Klahowya Campground to the Olympic National Park boundary:

(i) Open the first Saturday in June through October 31.

(ii) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(iii) Selective gear rules apply.

(iv) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((184))~~ (183) **Solberg Creek (Clallam County) (Big River tributary):**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((185))~~ (184) **Solleks River (Jefferson County) (Clearwater River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((186))~~ (185) **Sooes River (Tsoo-Yess River) (Clallam County), outside of Makah Indian Reservation:**

(a) Open the first Saturday in June through the last day in February.

(b) From the first Saturday in June through October 31:

(i) Selective gear rules apply.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(c) Open November 1 through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((187))~~ (186) **South Bend Mill Pond (Pacific County):** Open to juvenile anglers only.

~~((188))~~ (187) **South Creek (Clallam County), outside of Olympic National Park:**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release all kokanee.

~~((189))~~ (188) **South Nemah River (Pacific County):**

(a) From the mouth (Lynn Point, 117 degrees true to opposite shore) to the confluence with Middle Nemah River:

(i) September 1 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon:

(A) Open September 1 through January 31.

(B) Limit 6; only ~~((2))~~ 4 adults may be retained.

(C) Release wild Chinook ~~((, wild coho, and chum)).~~

(b) From the confluence with the Middle Nemah River upstream to the second Highway 101 Bridge crossing:

(i) Open the first Saturday in June through March 31.

(ii) Selective gear rules apply.

(iii) Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((190))~~ (189) **Stevens Creek (Grays Harbor County):**

(a) From the mouth to the Highway 101 Bridge:

(i) Closed from the WDFW hatchery outlet downstream 400 feet.

(ii) Open the first Saturday in June through September 30 and December 1 through the last day in February.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) From the Highway 101 Bridge upstream to the Newbury Creek Road Bridge:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

~~((191))~~ (190) **Sutherland Lake (Clallam County):**

(a) Open the fourth Saturday in April through October 31.

(b) Trout: Minimum length 6 inches and maximum length 18 inches.

~~((192))~~ (191) **Sylvia Creek (Grays Harbor County)**
(Wynoochee River tributary):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

~~((193))~~ (192) **Sylvia Lake (Grays Harbor County):** It is unlawful to retain more than 2 trout over 15 inches in length.

~~((194))~~ (193) **Tarboo Creek (Jefferson County):**

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.
- (c) Catch and release only.

~~((195))~~ (194) **Tarboo Lake (Jefferson County):**

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Trout: It is unlawful to retain more than two over 14 inches in length.

~~((196))~~ (195) **Teal Lake (Jefferson County):**

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Selective gear rules apply.

(c) Trout: Limit one.

~~((197))~~ (196) **Thorndyke Creek (Jefferson County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((198))~~ (197) **Thunder Creek (Clallam County)**

(Tributary to East Fork Dickey River):

(a) Open the first Saturday in June through April 30.

(b) From D2400 Road upstream: Closed from November 1 through April 30.

(c) Selective gear rules apply.

(d) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((199))~~ (198) **Trap Creek (Pacific County) (Willapa River tributary):**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

~~((200))~~ (199) **Trout Creek (Clallam County) (Big River tributary):**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release all kokanee.

~~((201))~~ (200) **Twin Lake (Jefferson County):** Open the fourth Saturday in April through October 31.

~~((202))~~ (201) **Umbrella Creek (Clallam County), outside Olympic National Park, including tributaries:**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release all kokanee.

~~((203))~~ (202) **Valley Creek (Clallam County):** Open the first Saturday in June through October 31 to juvenile anglers only.

~~((204))~~ (203) **Vance Creek (Grays Harbor County) (Chehalis River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((205))~~ (204) **Vance Creek/Elma Ponds (Grays Harbor County), Pond One (Bowers Lake) and Pond Two (Lake Ines):**

(a) Pond One/Bowers Lake is open only to juvenile anglers, seniors, and anglers with a disability who possess a designated harvester companion card.

(b) Open the fourth Saturday in April through November 30:

(i) Anglers may not retain more than 2 trout over 15 inches in length.

(ii) Landlocked salmon rules apply.

~~((206))~~ (205) **Van Winkle Creek (Grays Harbor County):**

(a) August 16 through November 30:

(i) Night closure in effect.

(ii) Anti-snagging rule applies.

(b) From the mouth to 400 feet below the outlet of Lake Aberdeen Hatchery:

(i) Open the first Saturday in June through January 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Salmon open September 1 through January 31:

(A) Limit 6; ~~((no more than))~~ only 3 adults may be retained.

(B) Release Chinook.

(c) From Lake Aberdeen upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

~~((207))~~ (206) **Vesta Creek and all forks (Grays Harbor County) (North River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((208))~~ (207) **Ward Creek (Pacific County) (Willapa River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((209))~~ (208) **Wentworth Lake (Clallam County):** It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((210))~~ (209) **West Twin River (Clallam County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((211))~~ (210) **Wildcat Creek (Grays Harbor County) (Cloquallum Creek tributary):**

(a) Open from the mouth to the confluence of the Middle and East Forks from the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((212))~~ (211) Wildcat Creek, East Fork (Grays Harbor County) (Cloquallum Creek tributary):

(a) Open from the mouth to the Highway 108 Bridge (Simpson Avenue, in the town of McCleary) from the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((213))~~ (212) Willapa River (Pacific County):

(a) From the mouth (city of South Bend boat launch) to the Highway 6 Bridge approximately 2 miles below the mouth of Trap Creek:

(i) From August 1 through November 30:

(A) It is unlawful to fish from a floating device from the second bridge on Camp One Road upstream to the mouth of Mill Creek (approximately 0.5 miles).

(B) Night closure in effect.

(C) Single-point barbless hooks are required.

(D) Stationary gear restriction applies, except from the mouth of the Willapa River to the WDFW access site at the mouth of Ward/Wilson creeks.

(ii) From the City of South Bend boat launch upstream to the second bridge on Camp One Road: Anglers may fish with two poles August 1 through January 31, provided they possess a valid two-pole endorsement.

(iii) Open the first Saturday in June through March 31; release all fish except anglers may retain up to 2 hatchery steelhead.

~~((iii))~~ (iv) Salmon open August 1 through January 31:

~~(A) ((From August 1 through November 30-~~

~~(H)) Limit 6; ((no more than 3)) only 4 adults may be retained ((and only 2 adults may be wild coho)).~~

~~((H)) (B) Release wild Chinook ((and chum-~~

~~(B) From December 1 through January 31-~~

~~(I) Limit 6; no more than 2 adults may be retained and only one adult may be a wild coho.~~

~~(H) Release wild Chinook and chum)).~~

(b) From Highway 6 Bridge to Fork Creek:

(i) From ~~((October 1))~~ September 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(C) Stationary gear restriction applies.

(ii) Open the first Saturday in June through July 15 and from ~~((October 1))~~ September 16 through March 31: Release all fish, except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon open ~~((October 1))~~ September 16 through January 31:

~~(A) ((From October 1 through November 30-~~

~~(H)) Limit 6; ((no more than 3)) only 4 adults may be retained ((and only 2 adults may be a wild coho)).~~

~~((H)) (B) Release wild Chinook ((and chum-~~

~~(B) From December 1 through January 31-~~

~~(I) Limit 6; no more than 2 adults may be retained, and only one adult may be a wild coho.~~

~~(H) Release wild Chinook and chum)).~~

(c) From Fork Creek upstream to the Highway 6 Bridge near the town of Lebam:

(i) From August 16 through October 31:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through October 31: Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon:

(A) Open October 1 through January 31:

(I) Limit 6; only 4 adults may be retained and only two may be wild adult coho.

(II) Release wild Chinook.

(d) From the Highway 6 Bridge near the town of Lebam upstream:

(i) From August 16 through October 31:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through October 31: Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((214))~~ (213) Willapa River, South Fork (Pacific County): From the mouth to the bridge on Pehl Road:

(a) From the falls/fish ladder downstream 400 feet in Section 6, Township 13 North, and Range 8 West: Closed.

(b) Selective gear rules apply from the first Saturday in June through July 31.

(c) From August 1 through November 30:

(i) Night closure in effect.

(ii) Anti-snagging rule applies.

(iii) Barbless hooks are required.

(d) Open the first Saturday in June through the last day in February: Release all fish except anglers may retain up to 2 hatchery steelhead.

(e) Salmon~~(-~~

~~(+))~~ open August 1 through January 31~~(-~~

~~(+))~~:

(i) Limit 6; ((no more than)) only 3 adults may be retained, and only one may be wild adult coho.

~~((iii))~~ (ii) Release wild Chinook~~(, wild coho, and chum)).~~

(f) From Pehl Road upstream:

(i) Open the first Saturday in June through the last day in February.

(ii) Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((215))~~ (214) Williams Creek (Pacific County) (North Nemah River tributary):

(a) Open the first Saturday in June through October 15.

(b) Release all fish except anglers may retain up to two hatchery steelhead.

~~((216))~~ (215) Wilson Creek (Pacific County) (Willapa River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((217))~~ (216) Wilson Creek, North Fork (Pacific County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((218))~~ (217) Wishkah River (Grays Harbor County):

(a) From August 16 through November 30: Single-point barbless hooks are required.

(b) From the mouth to West Fork:

(i) Open the first Saturday in June through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open September 16 through January 31:

(A) From September 16 through November 30:

(I) Limit 6; ~~((no more than 2))~~ only 3 adults may be retained, and only 2 may be wild adult coho.

(II) Release Chinook.

(B) From December 1 through January 31:

(I) Limit 6; ~~((no more than))~~ only 2 adults may be retained, and only one may be a wild adult coho.

(II) Release Chinook ~~((and wild coho)).~~

(c) From the mouth of West Fork to 200 feet below the weir at the Wishkah Rearing Ponds:

(i) From 150 feet upstream to 150 feet downstream of the Wishkah adult attraction channel/outfall structure (within the posted fishing boundary): Open only to anglers with disabilities who permanently use a wheelchair and have a designated harvester companion card.

(ii) Open the first Saturday in June through the last day in February.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iv) Salmon open September 16 through January 31:

(A) From September 16 through November 30:

(I) Limit 6; ~~((no more than 2))~~ only 3 adults may be retained, and only 2 may be wild adult coho.

(II) Release Chinook.

(B) From ~~((September 16))~~ December 1 through ~~((November 30))~~ January 31: ~~((Release Chinook.~~

~~((C) From December 1 through January 31: Release Chinook and wild coho.))~~

(I) Limit 6; only 2 adults may be retained and only one may be a wild adult coho.

(II) Release Chinook.

(d) From the weir upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

~~((219))~~ (218) Wishkah River, East and West forks

(Grays Harbor County):

(a) Open the first Saturday in June through ~~((the last day in))~~ October 31.

(b) Selective gear rules apply.

~~((220))~~ (219) Wynoochee River (Grays Harbor County):

(a) From the mouth to the WDFW White Bridge Access Site:

(i) From August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon~~((=~~

~~((A))~~ open September 16 through ~~((November 30))~~ January 31.

~~((B))~~ (A) Limit 6; ~~((no more than))~~ only 2 adults may be retained.

~~((C))~~ (B) Release Chinook.

(b) From the WDFW White Bridge Access Site to the 7400 line bridge:

(i) From August 16 through November 30: Single-point barbless hooks are required.

(ii) From September 16 through November 30: It is unlawful to use bait.

(iii) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(c) From the 7400 line bridge to 400 feet below Wynoochee Dam, including the confluence of the reservoir upstream to Wynoochee Falls:

(i) Closed from 400 feet downstream of Wynoochee Dam and from the barrier dam near Grisdale.

(ii) Open the first Saturday in June through October 31 and from December 1 through March 31:

(A) From the first Saturday in June through October 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From December 1 through March 31:

(I) Selective gear rules apply.

(II) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(d) From Wynoochee Falls upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Eastern brook trout limit 5. Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing.

~~((221))~~ (220) Wynoochee Reservoir (Grays Harbor County):

(a) Open the first Saturday in June through ~~((the last day in))~~ October 31.

(b) Trout: Minimum length 12 inches.

(c) Landlocked salmon rules apply.

WSR 15-12-118

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 3, 2015, 10:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-07-078.

Title of Rule and Other Identifying Information: WAC 392-101-010 Conduct of administrative hearings.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Policy Conference Room, 600 Washington Street, Olympia, WA 98504-7200, on July 7, 2015, at 1:00 p.m.

Date of Intended Adoption: July 8, 2015.

Submit Written Comments to: Dierk Meierbachtol, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Dierk.Meierbachtol@k12.wa.us, fax (360) 753-6712, by June 30, 2015.

Assistance for Persons with Disabilities: Contact Kristin Murphy by June 30, 2015, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to assign to the office of administrative hearings (OAH) the authority to hear cases and issue final decisions on behalf of OSPI related to the withholding or recovering of federal funds as a result of school consolidated program reviews (CPR) of school district programs conducted in accordance with 34 C.F.R. § 80.40. The anticipated effect of the proposal is the amendment of WAC 392-101-010, authorizing OAH to hear and issue final decisions pertaining to federal fund withholding and recovery resulting from OSPI CPRs.

Reasons Supporting Proposal: A federal regulation, 34 C.F.R. § 80.43(b), requires state education agencies that award federal funds to subgrantees to provide subgrantees an opportunity for a hearing, appeal, or other administrative proceeding to which the subgrantee is entitled under the law. Assigning these appeals to OAH will protect school districts' right to challenge OSPI's determinations, and will help ensure school district and OSPI compliance with federal law.

Statutory Authority for Adoption: RCW 34.05.220.

Rule is necessary because of federal law, 34 C.F.R. § 80.43(b).

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Dierk Meierbachtol, OSPI, Olympia, Washington, (360) 725-6004; **Implementation and Enforcement:** Jennifer Carrouger, OSPI, Olympia, Washington, (360) 725-6280.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

June 3, 2015
Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 13-18-077, filed 9/3/13, effective 10/4/13)

WAC 392-101-010 Conduct of administrative hearings. The superintendent of public instruction hereby assigns the following administrative hearings to the office of administrative hearings and hereby delegates to the administrative law judge conducting any such hearing the authority to render the final decision by the superintendent of public instruction:

(1) Nonresident transfer appeals pursuant to WAC 392-137-055(2).

(2) Special education hearings pursuant to chapter 392-172A WAC or as amended.

(3) Equal educational opportunity complaints pursuant to WAC 392-190-075.

(4) Professional certification appeals pursuant to WAC 181-86-150.

(5) National school lunch program, special milk program for children, school breakfast program, summer food service program, and child and adult care food program appeals pursuant to 7 C.F.R. Parts 210, 215, 220, 225 and 226.

(6) Traffic safety education appeals pursuant to WAC 392-153-001 through 392-153-070.

(7) Bus driver authorization appeals pursuant to chapter 392-144 WAC.

(8) Audit resolution appeals of agency management decisions regarding resolution of state and federal audit findings pursuant to chapter 392-115 WAC.

(9) Appeals of enforcement actions withholding or recovering funds, in whole or in part, taken as a result of consolidated program reviews of federal programs conducted in accordance with 34 C.F.R. Sections 80.40 and 80.43.

WSR 15-12-119

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed June 3, 2015, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-112.

Title of Rule and Other Identifying Information: Determination of practicable goals for use of biofuels, electricity, natural gas and propane by local government subdivisions of the state that own and operate vessels, vehicles and construction equipment.

Hearing Location(s): Washington State Department of Commerce, Building 5, First Floor Room 110, 1011 Plum Street S.E., Olympia, WA 98501, on July 7, 2015, at 10 a.m. to noon.

Date of Intended Adoption: July 13, 2015.

Submit Written Comments to: Peter Moulton, Washington State Department of Commerce, P.O. Box 42525, Olympia, WA 98504, e-mail peter.moulton@commerce.wa.gov, fax (360) 586-0049, by 5 p.m., July 10, 2015.

Assistance for Persons with Disabilities: Contact Carolee Sharp by July 6, 2015, TTY (360) 586-0772 or (360) 725-3118.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To establish standards for practicability (e.g. regional availability of fuels, vehicle costs, cost of program implementation; cost differentials in different parts of the state, differences between types of vehicles, vessels or equipment) for local government planning and compliance with RCW 43.19.648. Anticipated effects are clarification and guidance regarding procurement decisions for alternative fuels and vehicles, and annual reporting on compliance efforts to legislature and governor's office.

Reasons Supporting Proposal: Required under RCW 43.325.080.

Statutory Authority for Adoption: RCW 43.325.080.

Statute Being Implemented: RCW 43.325.080 and 43.19.648.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The Washington state department of commerce has held several meetings with affected local governments to develop this rule as required by statute. This rule will assist local governments and their fleet managers, and guide reporting regarding compliance.

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

Name of Agency Personnel Responsible for Drafting: Peter Moulton, Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98501, (360) 725-3116; Implementation and Enforcement: Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98501, (360) 725-4000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule only addresses local governments and will have no effect on small businesses. This rule was not prepared by the office of the superintendent of public instruction and is therefore not affected by the fiscal impact statement requirement under section 1, chapter 210, Laws of 2012. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not require commerce to provide a cost-benefit analysis. Not applicable.

June 3, 2015
Nick Demerice
Assistant Director

Chapter 194-29 WAC

PRACTICABLE USE OF ELECTRICITY AND BIOFUELS TO FUEL LOCAL GOVERNMENT VEHICLES, VESSELS, AND CONSTRUCTION EQUIPMENT

NEW SECTION

WAC 194-29-010 Authority and purpose. This chapter is pursuant to the authority granted in RCW 43.325.080, which requires the department to adopt rules to define practicability and clarify how local governments will be evaluated in determining whether they have met the goals set forth in RCW 43.19.648. The goals call for all local governments, to the extent practicable, to satisfy one hundred percent of their fuel usage for operating publicly owned vehicles, vessels, and construction equipment from electricity or biofuel, effective June 1, 2018.

Reviser's note: The unnecessary underscoring 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 194-29-020 Definitions and abbreviations. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Biofuel" - Means a liquid or gaseous fuel derived from organic matter intended for use as a transportation fuel,

including, but not limited to, biodiesel, ethanol, and renewable natural gas.

(2) "Department" - Means the department of commerce.

(3) "Electric vehicle" - Means vehicles, vessels, and construction equipment with motive energy supplied solely by an electric motor.

(4) "Hybrid electric vehicle" - Means vehicles, vessels, and construction equipment with motive energy supplied by both an internal combustion engine and an electric motor powered primarily by externally supplied sources of energy. Vehicles that utilize externally supplied energy for electric power take-off functionality are also considered hybrid electric vehicles.

(5) "Hybrid vehicle" - Means vehicles, vessels, and construction equipment with motive energy supplied by both an internal combustion engine and an electric or hydraulic motor powered solely by regenerative braking or the internal combustion engine. Vehicles that utilize regenerative braking for electric power take-off functionality are also considered hybrid vehicles.

(6) "Lifecycle cost" - Means the total cost of ownership over the life of an asset, including, but not limited to, purchase or lease cost, financing costs, taxes, incentives, operation, maintenance, depreciation, resale or surplus value, incremental cost of associated refueling infrastructure, engine conversion, and the social cost of carbon emissions.

(7) "Local government" - Means any unit of local government including, but not limited to, counties, cities, towns, municipal corporations, quasi-municipal corporations, special purpose districts, and school districts.

(8) "Practicable" or "practicability" - Means the extent to which alternative fuels and vehicle technologies can be used to displace gasoline and diesel fuel in vehicles, vessels, and construction equipment as determined by multiple dynamic factors including cost and availability of fuels and vehicles, changes in fueling infrastructure, operations, maintenance, technical feasibility, implementation costs, and other factors.

(9) "Procure" - Means to purchase or lease.

(10) "Renewable natural gas" - Means biogas derived from landfills, wastewater treatment facilities, anaerobic digesters, and other sources of organic decomposition that has been purified to meet requirements for use as a transportation fuel.

(11) "Revenue fleet" - Means all vehicles used in to provide transportation services where a transit agency is directly or indirectly compensated for the services provided to passengers.

(12) "Social cost of carbon" - Means a calculation of the economic impacts of greenhouse gas emissions as determined by the department in cooperation with the Washington State Department of Ecology.

(13) "Vehicles" - Means motorized vehicles, watercraft, and construction equipment. It does not mean aircraft, railed vehicles, or stationary electrical generating equipment.

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 194-29-030 Applicability. All local governments are required to transition all vehicles to electricity or biofuels to the extent practicable. The provisions of this chapter apply statewide. Pursuant to RCW 43.19.648:

(1) Transit agency revenue fleets with a majority of vehicles using compressed natural gas on June 1, 2018 are exempt from these rules. Non-revenue fleet vehicles remain subject to these rules.

(2) These rules do not require engine retrofits that would void warranties, or replacement of equipment before the end of its useful life.

(3) If a local government believes it is not practicable to use electricity or biofuels to fuel police, fire, and other emergency response vehicles, including utility vehicles frequently used for emergency response, they are encouraged to consider alternate fuels and vehicle technologies to displace gasoline and diesel fuel use. Local governments that opt to exempt emergency response vehicles from these rules must notify the department as part of their annual reporting under WAC 194-29-080.

Reviser's note: The unnecessary underscoring 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 194-29-040 Assessment data and reporting. For purposes of assessing and reporting compliance with these rules, the department will use data collected, compiled, and reported by each local government using 200,000 or more total gallons of gasoline and diesel fuel on an annual basis. The department will use the most recent data from the National Transit Database, as published by the Washington State Department of Transportation, to determine which transit agencies meet the reporting threshold. Any local government with fuel use that initially meets the reporting threshold, but whose subsequent fuel use drops below the threshold, is encouraged to continue filing annual reports.

Given the findings of the underlying legislation and associated policies guiding public sector use of alternative fuels and vehicles, the department intends to continue to monitor local government compliance beyond June 1, 2018.

NEW SECTION

WAC 194-29-050 Compliance threshold. Pursuant to RCW 43.325.005, all local governments are expected to comply with these rules.

Reviser's note: The unnecessary underscoring 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 194-29-060 Technical coordination. The department, in cooperation with the Washington State University energy program and external stakeholders with appropriate knowledge and expertise, will convene meetings at least quarterly of the agencies listed in WAC 194-28-050 and

the local governments required to report under this rule to discuss trends in alternative fuel and vehicle development, including current and near-term market availability, procurement costs and pricing differentials, performance metrics, innovative procurement opportunities, and fleet management tools. The meetings will take place in person, by phone, via the Internet, or any combination thereof through the year 2020, and thereafter as may be warranted.

Reviser's note: The unnecessary underscoring 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 194-29-070 Compliance evaluation. RCW 43.325.080 requires the department to specify how local government efforts to meet the goals set forth in RCW 43.19.648 will be evaluated. While local governments are responsible for determining the most effective means of displacing their gasoline and diesel consumption through vehicle electrification and biofuel use, procurement decisions should be guided primarily through a comparison of alternatives on a comprehensive, lifecycle cost basis. The department will provide an analytical tool to assist local governments in their assessment of lifecycle costs. Local governments may use alternate means of determining lifecycle costs so long as all the variables included in the department's analytical tool are taken into consideration.

Local governments must consider the following criteria in determining whether they have, to the extent practicable, satisfied one hundred percent of fuel usage for operating vehicles, vessels, and construction equipment from electricity or biofuel, effective June 1, 2018:

(1) Vehicles.

(a) It is considered practicable to procure an electric or hybrid electric vehicle when the following criteria are met; a vehicle is available that meets operational needs, charging requirements can be met during routine use or through fleet management strategies, and the lifecycle cost is equal to or less than the lowest lifecycle cost of any equivalent hybrid vehicle. If equivalent hybrid vehicles are not available, then when compared to the lifecycle cost of the vehicle the local government would otherwise procure.

(b) If the criteria in (a) cannot be met, it is considered practicable to procure a hybrid vehicle when a vehicle is available that meets operational needs, and the lifecycle cost is equal to or less than the lifecycle cost of the vehicle the local government would otherwise procure.

(c) If the criteria in (a) and (b) cannot be met, it is considered practicable to procure or convert a vehicle to be fueled in whole or in part by natural gas or propane when the lifecycle cost is equal to or less than the lifecycle cost of the vehicle the local government would otherwise procure.

(d) It is considered practicable for local governments to procure natural gas-fueled vehicles regardless of lifecycle cost for the purpose of using primarily renewable natural gas.

(e) When making procurement decisions involving vehicles with diesel engines, local governments are expected to select vehicles with engine warranties covering the highest level of biodiesel use.

(2) Biofuels.

(a) Biodiesel: Unless otherwise limited by law, it is considered practicable for local governments to:

(i) Use a minimum five percent biodiesel-blended fuel (B5) in all applications when the fuel is available at retail or for delivery to on-site storage tanks at a price equal to or less than #2 ultra-low sulfur diesel.

(ii) Use fuel blends up to twenty percent biodiesel (B20) in all applications unless otherwise restricted by warranty or air quality regulation when the fuel is available for delivery to on-site storage tanks at a price equal to or less than #2 ultra-low sulfur diesel, including the cost of any additives necessary to ensure reliable storage and performance.

(b) Ethanol: It is considered practicable for local governments with vehicles capable of using high-blend ethanol fuel (E85) to make good faith efforts to identify sources and purchase E85 when the price is at least twenty percent less than regular gasoline.

(c) Renewable Natural Gas: It is considered practicable for local governments with natural gas-fueled vehicles to purchase renewable natural gas when the fuel is available at a price equal to or less than fossil natural gas.

(3) Local governments are encouraged to install electric vehicle charging infrastructure in all fleet parking and maintenance facilities, and to incorporate charging into all new facility construction and substantial remodeling projects.

Reviser's note: The unnecessary underscoring 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 194-29-080 Demonstration of progress. By July 1 of each year, each local government required to report under this rule must submit to the department an annual report on a form provided by the department documenting how it is complying with the criteria in WAC 194-29-070, including reasons for noncompliance and plans for future compliance.

Reviser's note: The unnecessary underscoring 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.

WSR 15-12-122**PROPOSED RULES****DEPARTMENT OF REVENUE**

[Filed June 3, 2015, 11:37 a.m.]

Continuance of WSR 14-22-085.

Preproposal statement of inquiry was filed as WSR 09-07-088.

Title of Rule and Other Identifying Information: WAC 458-20-153 Funeral directors, this rule explains the application of business and occupation (B&O), retail sales, and use taxes to the business activities of funeral establishment[s] and the application of tax to income from prearrangement funeral service contracts.

WAC 458-20-154 Cemeteries, crematories, columbaria, this rule explains the application of B&O, retail sales, and use taxes to the business activities of cemeteries and the application of tax to income from prearrangement contracts.

Hearing Location(s): Capital Plaza Building, 4th Floor, Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on July 15, 2015, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Call-in option can be provided upon request no later than three days before the hearing date.

Date of Intended Adoption: July 22, 2015.

Submit Written Comments to: Richard Cason, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail RichardC@dor.wa.gov, by July 15, 2015.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-20-153, the purpose of the proposed changes is to include a discussion of the taxability of prearrangement funeral service contracts and when income from such contracts is taxable. The changes also include a few examples.

WAC 458-20-154, the purpose of the proposed changes is to include a discussion of the taxability of prearrangement contracts (commonly referred to as "preneed" or "prepaid" arrangements) and the sale of interment rights, merchandise, and services. The changes also include a few examples.

Reasons Supporting Proposal: To update rule to address current industry practices.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Cason, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1577; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

June 3, 2015

Dylan Waits

Rules Coordinator

AMENDATORY SECTION (Amending WSR 83-07-033, filed 3/15/83)

WAC 458-20-153 Funeral ((directors)) establishments. ((Funeral directors commonly quote a lump sum price for a standard funeral service, which includes the furnishing of a casket, professional services, care of remains, funeral coach, floral car and the securing of permits.

Business and Occupation Tax

Retailing. ~~The gross amount subject to the retail sales tax as outlined below, is taxable under the retailing classification of the business and occupation tax except that there may be deducted, for purposes of the business tax only, amounts received as reimbursement for expenditures for goods or services supplied by others who are not persons employed by, affiliated, or associated with the funeral home, when such amounts were advanced by the funeral home as an accommodation to the person paying for a funeral; but this deduction is allowed only if such expenditures advanced are billed to the person paying for the funeral at the exact amount of the expenditure advanced and such amounts are separately itemized in the billing statement to such person.~~

Service and other business activities. ~~That portion of the gross income derived from engaging in business as a funeral director which is not taxable under the retailing classification is taxable as service and other business activities.~~

Retail Sales Tax

~~Where the funeral director quotes a lump sum price for a standard funeral service, which includes both the sale of tangible personal property and a charge for the rendering of service, the retail sales tax is collected upon one half of such lump sum price. Clothing, outside case (a concrete or metal box into which the casket is placed) and other tangible personal property furnished in addition to the casket must be billed separately and the retail sales tax collected thereon.~~

~~The retail sales tax is not applicable to sales made to funeral directors of tangible personal property which is resold separate and apart from the rendition of professional services, provided the vendor receives from the funeral director a resale certificate in the usual form. The property so purchased includes the casket, clothing, outside case and acknowledgment cards.~~

~~The retail sales tax is applicable to sales to funeral directors of tangible personal property which is consumed in the rendition of professional services. The property so purchased includes all preparation room supplies (embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, cotton, etc.). The sales tax is also applicable to sales to such persons of tools and equipment.~~

Use Tax

~~The use tax applies upon the use within this state of all articles of tangible personal property used in the performance of professional services when such articles have been purchased or acquired under conditions whereby the Washington retail sales tax has not been paid.)~~ (1) **Introduction.** This rule explains:

(a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of funeral establishments; and

(b) The application of tax to income derived from prearrangement funeral service contracts.

For the purposes of this rule, the term "funeral establishment" means a person licensed under RCW 18.39.145. Persons operating cemeteries should refer to WAC 458-20-154 (Cemeteries, crematories, columbaria) for tax-reporting information.

The funeral and cemetery board (board) regulates funeral establishments. For funeral establishments, refer to chapter 18.39 RCW and chapters 308-47, 308-48, and 308-49 WAC for information on the laws and administrative rules governing their business activities.

(2) General tax reporting responsibilities. The gross proceeds attributable to funeral activities are taxable when income is accrued in the books and records or when services are performed or merchandise is delivered, whichever is earlier.

The gross proceeds for funeral services are subject to tax under the service and other activities classification of the B&O tax. The gross proceeds from the retail sales of tangible personal property such as urns, caskets, clothing, outside casket cases, floral arrangements, plants, and acknowledgment cards are subject to tax under the retailing classification of the B&O tax. Funeral establishments are also responsible for collecting and remitting to the department of revenue (department) retail sales tax on retail sales of tangible personal property unless specifically exempt by law.

Funeral establishments commonly quote a lump sum price for a standard funeral service, which includes the furnishing of funeral services and tangible personal property. Where the funeral establishment quotes a lump sum price for a standard funeral service, which includes both the sale of a casket and a charge for the rendering of service, the retail sales tax is collected upon one-half of such lump sum price. Clothing, outside case (a concrete or metal box into which the casket is placed) and other tangible personal property furnished in addition to the casket must be billed separately and the retail sales tax collected thereon.

(a) Reimbursement for accommodation expenditures. Amounts received by a funeral establishment as reimbursement for goods or services provided by persons not employed by, affiliated, or associated with the funeral establishment may be deducted from the measure of the B&O tax if these amounts have been reported as gross income on the funeral establishment's excise tax return. These amounts are deductible if advanced to accommodate the customer and separately itemized on the billing statement or invoice in the exact amount of the expenditure. See RCW 82.04.4296.

(b) In-state services with out-of-state interment. A funeral establishment may perform funeral services or other services such as preparing the remains of a deceased person and placing the remains in a casket within Washington, with the remains subsequently removed to another state for interment. In these cases, the B&O and retail sales taxes generally apply to the income received from the sale of funeral merchandise and services as explained in this subsection. The merchandise (e.g., casket or urn) is delivered to the buyer within Washington when the merchandise is used in performing these services, even if interment subsequently occurs outside the state.

Neither B&O nor retail sales taxes apply to the sale of tangible personal property, without intervening use, delivered by the seller to the buyer at an out-of-state location. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for more information regarding the delivery requirements for out-of-state sales of tangible personal property.

(c) **Sales to the federal government.** Sales of tangible personal property directly to the federal government are exempt from the retail sales tax, though the seller remains subject to B&O tax unless a specific exemption applies. Sales of tangible personal property to other persons, whether paid with federal funds or through a reimbursement arrangement, are fully subject to the retail sales tax. For additional information about the taxability of sales to the federal government, refer to WAC 458-20-190 (Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments).

(3) **Funeral establishments purchasing tangible personal property.** Generally, retail sales tax is due when purchasing items used or consumed by funeral establishments when providing professional services. These items generally include, but are not limited to, equipment, tools, furniture, and all preparation room supplies such as embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, and cotton.

(a) **Items purchased for resale.** Tangible personal property purchased for resale without intervening use is not subject to retail sales tax. Property commonly purchased for resale by funeral establishments includes, but is not limited to, urns, caskets, clothing, outside casket cases, flowers, plants, and acknowledgment cards. A funeral establishment purchasing tangible personal property for resale must provide to the seller, a reseller permit to document the wholesale nature of the sale as provided in WAC 458-20-102 (Reseller permits).

(b) **Deferred sales and use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. For detailed information regarding use tax, refer to WAC 458-20-178 (Use tax).

(4) **Prearrangement contracts and trusts.** Funeral establishments often enter into prearrangement contracts requiring them to provide funeral services and merchandise at some future date. Unless otherwise exempt, the law requires funeral establishments to place a portion of the cash purchase price of the contract (at least ninety percent as of the effective date of this section), excluding retail sales tax, into one or more prearrangement funeral service trusts. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See chapter 18.39 RCW.

(a) **When does tax liability arise?** Amounts placed in prearrangement funeral service trusts are subject to excise tax upon withdrawal from the trust accounts. In other words, the amounts are taxable upon fulfillment or cancellation of the contract. Refer to subsection (2) of this section (General tax reporting responsibilities) for the tax treatment of amounts related to the fulfillment of the contract.

(b) **Retail sales tax - Prearrangement funeral service trust accounts.** If retail sales tax paid by the buyer is placed into a prearrangement funeral service trust account, the tax is reported upon fulfillment of the contract and remitted to the department at that time.

If retail sales tax paid by the buyer is not placed into a prearrangement funeral service trust account, the tax must be reported on the excise tax return for the current reporting period and remitted to the department.

Upon cancellation of a prearrangement contract, a refund of retail sales tax remitted by a funeral establishment to the department is subject to the time limitations on refunds in RCW 82.32.060. For example, the law prohibits the department from refunding retail sales tax to a funeral establishment for a prearrangement contract that is canceled five years after the retail sales tax associated with the contract is remitted to the department. See WAC 458-20-229 (Refunds).

(c) **Contract cancellation and trust administration fees.** Amounts retained by the funeral establishment when a prearrangement funeral service contract is canceled are subject to the service and other activities B&O tax, except that any amounts allocable to a retail sale of merchandise are subject to retailing B&O and retail sales taxes. Administration fees deducted from a prearrangement funeral service trust by the administrator are also subject to the service and other activities B&O tax.

(5) **Sourcing.** In general, the place of sale occurs where the body is placed in the casket. For other sourcing information, refer to WAC 458-20-145.

(6) **Examples.** The following examples identify a number of facts and state a conclusion regarding the taxability of funeral establishments. The tax results of other situations must be determined after a review of all of the facts and circumstances. Use these examples only as a general guide.

(a) **John and Jane Doe contracted with ABC Funeral Home (ABC) for the funeral of a deceased relative. John and Jane also purchased a casket from ABC. Funeral services purchased from ABC included preparing the body of the deceased for viewing, arranging for the final disposition, providing facilities for the visitation and funeral service, and transporting the deceased and the mourners to the place of final disposition.**

(i) **ABC owes service and other activities B&O tax for the funeral services charge.**

(ii) **The charge for the casket is subject to retailing B&O and retail sales taxes.**

(b) **John and Jane Doe entered into a prearrangement funeral service contract with ABC for the purchase of funeral merchandise and services to be provided upon their deaths. John and Jane made a down payment when signing the contract and agreed to pay the balance in sixty monthly installments. The merchandise and services John and Jane purchased include a casket, preparing the body of the deceased for viewing, arranging for the final disposition, providing facilities for the visitation and funeral service, and transporting the deceased and the mourners to the place of final disposition. The contract itemizes retail sales tax and provides for a finance charge on the unpaid balance of the contract. ABC places all receipts under the contract, including finance charges, into a prearrangement funeral service trust account.**

ABC must report:

- (i) The charges for funeral services and the finance charges under the service and other activities B&O tax classification at the time they perform the services; and
- (ii) The charge for the casket is subject to retailing B&O and retail sales tax at the time it is used.

AMENDATORY SECTION (Amending WSR 78-06-083, filed 6/1/78)

WAC 458-20-154 Cemeteries, crematories, columbaria.

((Business and Occupation Tax

Retailing. The gross proceeds derived from the sale of tangible personal property taxable under the retail sales tax are also taxable under the retailing classification:

Service and other business activities. Income derived from rendition of interment services is taxable under the service and other business activities classification. Sales or transfers of plots, crypts, and niches for interment of human remains, irrespective of whether the document of transfer is called a deed or certificate of ownership, are charges for the right of interment, an interest similar to a license to use real estate, and the entire gross income therefrom is taxable under the service and other activities classification without any deduction for amounts set aside to funds for perpetual care.

Retail Sales Tax

Cemeteries, crematories and columbaria are subject to the provisions of the retail sales tax with respect to retail sales of boxes, urns, markers, vases, plants, shrubs, flowers, and other tangible personal property.

Revised June 1, 1978:

Effective July 1, 1978:)) **(1) Introduction.** This rule explains:

(a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of cemeteries;

(b) The application of B&O and retail sales taxes to amounts derived by cemeteries from prearrangement contracts (commonly referred to as "preneed" or "prepaid" arrangements) for the sale of interment rights, merchandise, and services.

For purposes of this rule, the term "cemeteries" includes cemeteries, burial parks, crematories, columbaria, and mausoleums. Refer to WAC 458-20-153 (Funeral establishments) for funeral establishment tax-reporting information.

The funeral and cemetery board regulates private cemeteries. Refer to Title 68 RCW and Title 98 WAC for information on the laws and administrative rules governing cemeteries.

(2) General tax reporting responsibilities.

(a) Sales of interment services and interment rights. The gross proceeds attributable to cemetery activities are taxable when the amounts are shown as income in the books and records or when services are performed or merchandise is delivered, whichever is earlier.

Amounts derived from interment services such as document recording, opening and closing the interment space, and placing grave liners or vaults in the interment space are sub-

ject to the service and other activities B&O tax. Sales or transfers of plots, crypts, and niches for the interment of human remains, irrespective of how the document of transfer is described (e.g., deed, certificate of ownership, or certificate of interment rights), are charges for the right of interment, an interest similar to a license to use real estate. Thus, the gross income from sales of interment rights is subject to B&O tax under the service and other activities classification.

(b) Sales of merchandise, including installing, repairing, cleaning, altering, or improving property. The gross proceeds from retail sales of tangible personal property such as monuments, markers, memorials, nameplates, outer burial containers (e.g., vaults or grave liners), boxes, urns, vases, benches, plants, shrubs, and flowers are subject to B&O tax under the retailing classification. Retailing B&O tax also applies to charges by cemeteries for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers. Cemeteries are also responsible for collecting and remitting to the department of revenue (the department) retail sales tax on retail sales of tangible personal property and charges for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers unless specifically exempt by law. Thus, charges for installing markers and monuments are subject to retailing B&O and retail sales taxes.

(c) Sales to the federal government. Sales of tangible personal property directly to the federal government are exempt from the retail sales tax, though the seller remains subject to B&O tax unless a specific exemption applies. Sales of tangible personal property to other persons, whether paid with federal funds or through a reimbursement arrangement, are fully subject to the retail sales tax. For additional information about the taxability of sales to the federal government, refer to WAC 458-20-190 (Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments).

(3) Cemeteries purchasing tangible personal property. Generally, retail sales tax is due when purchasing tangible personal property such as tools and supplies used or consumed by cemeteries when providing interment services.

(a) Items purchased for resale. Tangible personal property purchased for resale without intervening use is not subject to retail sales tax. Property commonly purchased for resale by cemeteries includes, but is not limited to, monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, benches, plants, shrubs, and flowers. Cemeteries purchasing tangible personal property for resale must provide to the seller a reseller permit to document the wholesale nature of the sale as provided in WAC 458-20-102 (Reseller permits).

(b) Deferred sales and use tax. If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. For detailed information about use tax, refer to WAC 458-20-178 (Use tax).

(4) Prearrangement contracts. Cemeteries often enter into prearrangement contracts with customers for the purchase of merchandise and services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date.

Executed contracts are paid in either a lump sum or in installments. Unless otherwise exempt, the law requires cemeteries to place a percentage of all funds collected in payment of each prearrangement contract in a prearrangement trust account. As of the effective date of this section, the amount required in a prearrangement trust account is equal to the greater of (for merchandise) fifty percent of the contract price or the wholesale cost of the item, (for services) fifty percent of the contract price, or the direct cost of providing the service. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See chapter 68.46 RCW.

(a) **When does tax liability arise?** Amounts placed into prearrangement trust accounts are subject to excise tax upon withdrawal from the prearrangement trust accounts. In other words, the amounts are taxable upon fulfillment or cancellation of the contract. Refer to subsection (2) of this section (General tax reporting responsibilities) for the tax treatment of amounts related to the fulfillment of the prearrangement contract.

(b) **Retail sales tax - Prearrangement trust accounts.** If retail sales tax paid by the buyer is placed into a prearrangement trust account, the retail sales tax is reported and remitted to the department upon fulfillment of the prearrangement contract.

If retail sales tax paid by the buyer is not placed into a prearrangement trust account, the tax must be reported on the excise tax return for the current reporting period and remitted to the department.

Upon cancellation of a prearrangement contract, a refund of retail sales tax remitted by a cemetery to the department is subject to the time limitations on refunds provided by RCW 82.32.060. For example, the law prohibits the department from refunding retail sales tax to a cemetery for a prearrangement contract that is canceled five years after the retail sales tax associated with the contract is remitted to the department. See also WAC 458-20-229 (Refunds).

(c) **Contract cancellation and trust administration fees.** Amounts retained by a cemetery from a canceled prearrangement contract are subject to service and other activities B&O tax, except that any amount allocable to a retail sale of merchandise is subject to retailing B&O and retail sales taxes. Administration fees deducted from a prearrangement trust fund by the administrator are also subject to the B&O tax under the service and other activities classification.

(5) **Examples.** The following examples identify a number of facts and then state a general conclusion regarding the taxability of cemeteries. The tax results of other situations must be determined after a review of all of the facts and circumstances. Use these examples only as a general guide.

(a) John and Jane Doe contracted with ABC Cemetery Association (ABC) for the interment of a deceased relative. The interment rights, merchandise, and services provided by ABC include an interment plot, an outer burial container, burial of the decedent, a marker, and installation of the marker. In addition, ABC charges a document-recording fee.

(i) ABC is subject to service and other activities B&O tax on charges for the interment plot, burial of the decedent, and the document-recording fee.

(ii) The charges for the outer burial container, marker, and marker installation are subject to retailing B&O and retail sales taxes.

(b) John and Jane Doe entered into a prearrangement contract with ABC for the purchase of interment rights, merchandise, and services provided upon their deaths. John and Jane made a down payment when signing the contract and agreed to pay the balance in sixty monthly installments. The interment rights, merchandise, and services purchased by John and Jane include interment plots, outer burial containers, burial of their remains, markers, and installation of the markers. The contract itemizes retail sales tax and provides for a finance charge on the unpaid balance.

ABC places all receipts under prearrangement contracts, including the finance charges, into a prearrangement trust account.

ABC must report:

(i) The amounts received for the interment plots under the service and other activities B&O tax classification at the time the income is recognized on the books and records or upon fulfillment of the contract, whichever is earlier;

(ii) The amounts received for the burial of remains, the document-recording fee, and the finance charges under the service and other activities B&O tax classification at the time they perform the services; and

(iii) Retailing B&O and retail sales taxes on the sale of the outer burial containers, markers, and marker installation in the reporting period during which they deliver the merchandise and perform the installation.