

WSR 23-03-013
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed January 6, 2023, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-113.

Title of Rule and Other Identifying Information: WAC

388-101D-0065 Background check—General, 388-825-020 Definitions, 388-825-0571 What services am I eligible to receive from DDA if I am under the age of 18, have been determined to meet DDA eligibility requirements, and I am a subject of a state court dependency proceeding pursuant to chapter 13.34 RCW or a similar proceeding in a tribal court?, 388-825-058 What services does DDA authorize?, 388-825-0581 What programs does DDA authorize services under?, 388-825-059 How will I know which paid services I will receive?, 388-825-067 What are medicaid state plan services?, 388-825-068 What medicaid state plan services can DDA authorize?, 388-825-072 Where do I find information on DDA's home and community-based services (HCBS), eligibility rules, and definitions?, 388-825-073 What is a "state-only funded" service?, 388-825-074 Am I eligible for state-only funded services?, 388-825-079 If I am not on a DDD HCBS waiver, can I receive services that are available through the DDD HCBS waivers with state-only funding?, 388-825-081 Can I receive state-only funded services that are not available in a DDD HCBS waiver?, 388-825-082 What state-only funded services may DDA authorize?, 388-825-120 When may I appeal a decision made by the developmental disabilities administration?, 388-825-150 When may the department proceed to take action during my appeal?, 388-825-300 What is the purpose of WAC 388-825-300 through 388-825-400?, 388-825-305 Who is governed by WAC 388-825-305 through 388-825-400?, 388-825-310 What are the provider qualifications, responsibilities, and training requirements for a home care agency provider?, 388-825-315 What is your responsibility when you hire an individual provider?, 388-825-325 What are the required skills and abilities for individuals and agencies contracted to provide community first choice services, medicaid personal care, respite care, or attendant care services?, 388-825-330 What is required for agencies to provide community first choice services, medicaid personal care, or respite services?, 388-825-340 Can a provider deliver respite services in the provider's home?, 388-825-375 When will the department deny payment for services?, 388-825-385 When may the department terminate an individual respite care, attendant care, or personal care provider's contract?, 388-825-395 What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, or personal care?, 388-825-396 When does a home care agency have a right to an administrative hearing?, 388-825-600 What definitions apply to WAC 388-825-600 through 388-825-690 of this chapter?, 388-825-605 What background check requirements apply to providers?, 388-825-610 Who must have a background check and a background check renewal?, 388-825-615 What type of background check is required?, 388-825-620 How often must a background check be renewed?, 388-825-621 May a DDA-contracted agency applicant or employee have access to clients before the completion of the Washington state name and date of birth background checks?, 388-825-625 What happens if an individual receives a

disqualifying background check result?, 388-825-630 What does the background check cover?, 388-825-635 Who pays for the background check?, 388-825-650 What does a character, competence, and suitability review include?, 388-825-655 How will someone know if they have been disqualified by the background check?, 388-825-660 May a provider appeal DDA's decision to deny a contract or payment based on the results of the background check?, 388-825-670 May a person receive a copy of their criminal background check results?, and 388-845-1615 Who may be qualified providers of respite care?

Hearing Location(s): On March 7, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than March 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6085, by 5:00 p.m. on March 7, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6036, TTY 711 relay service, email tenczsa@dshs.wa.gov, by 5:00 p.m. on February 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to WAC 388-101D-0065 replace details about background checks in WAC 388-101D-0065 with cross-references to chapter 388-113 and 388-825 WAC for consistency. Amendments to chapter 388-825 WAC: Replace inaccurate cross-references; add, remove, and amend definitions; clarify service eligibility for state-only funded services, medicaid state plan services, and developmental disabilities administration (DDA) services provided to children in foster care; update rules about home care agencies and individual providers to align with chapters 388-71, 388-113, and 388-115 WAC; amend appeal related rules; add exemptions allowable under statute for enrolled members of federally recognized Indian tribes; amend background check rules, particularly those for residential habilitation center (RHC) employees; and create comprehensive lists of DDA-authorized services.

Reasons Supporting Proposal: Amendments to these rules are necessary to: Align with the creation of the consumer-directed employer; require new background check processes for RHC employees; align with amendments to chapters 388-71, 388-113, and 388-115 WAC; and clarify processes for hearings, authorize state-only funded services, and correct outdated language and broken cross-references.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 43.43.837, 71A.12.015, 71A.12.020, 71A.12.040, 71A.12.050, 71A.12.110, 71A.12.161, 43.20A.710.

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

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Jaime Bond, P.O. Box 45310, Olympia, WA 98504-5310, 360-688-6204.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email chantelle.diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW RCW 19.85.025(5).

Explanation of exemptions: The proposed amendments impose no costs on small businesses; a small business economic impact statement is not required.

Scope of exemption for rule proposal:

Is fully exempt.

January 4, 2023
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 23-04 issue of the Register.

WSR 23-03-035
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed January 9, 2023, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-21-126.

Title of Rule and Other Identifying Information: Disclaiming beneficiary benefits, creating WAC 415-02-261.

Hearing Location(s): On February 22, 2023, at 9:00 a.m., Zoom <https://us02web.zoom.us/j/84525091902>, Meeting ID 845 2509 1902, Dial In 1-253-205-0468. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details.

Date of Intended Adoption: February 23, 2023.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by February 22, 2023.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by February 15, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Occasionally, a beneficiary decides that they do not want to receive a benefit when a retirement member passes away. This rule will clarify how any disclaimed benefit will pass to other beneficiaries and/or the estate of the deceased.

Reasons Supporting Proposal: Adds additional clarity to the disclaiming process and ensures a defined process is shared with beneficiaries in advance of any decision to disclaim their benefits.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.40.700, 41.40.835, 41.35.460, 41.35.710, 41.32.522, 41.32.805, 41.32.895, 41.26.510, 41.37.250.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7124.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by DRS.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: DRS' rules only impact members and beneficiaries of the state retirement systems and participating public employers, and do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

January 9, 2023
Bianca Stoner
Rules Coordinator

OTS-4204.2

NEW SECTION

WAC 415-02-261 What happens if a beneficiary disclaims a lump sum benefit? (1) A beneficiary may disclaim a payment in writing with the department as prescribed by the department. If the beneficiary was a primary beneficiary and there are other living primary beneficiaries, the disclaimed benefit will be split among the other primary beneficiaries in the same proportion (rounded) awarded by the member or retiree.

(2) General formula: A member has n beneficiaries, with each beneficiary receiving a percentage and the total percentage equal to 100. When one beneficiary disclaims their benefit, there are then $n-1$ beneficiaries. The sum of these percentages is now less than 100. To determine the new percentages, divide the original percentage for each beneficiary by the new total of the remaining percentages.

Example: Chris has listed three people as primary beneficiaries: Tom at 34 percent, Carl at 33 percent, and Wilma at 33 percent. Chris passed away. Tom disclaims the benefit with the department. Carl and Wilma each receive 50 percent of the contributions.

Example: Chris has listed three people as primary beneficiaries: Tom at 50 percent, Carl at 25 percent, and Wilma at 25 percent. Chris passed away. Carl disclaims the benefit with the department. Tom receives 67 percent and Wilma 33 percent of the contributions.

Example: Chris has listed four people as primary beneficiaries: Tom at 40 percent, Carl at 30 percent, Wilma at 20 percent, and Liam at 10 percent. Chris passed away. Carl disclaims their 30 percent of the benefit with the department. Tom receives 57 percent (40 divided by 70), Wilma receives 29 percent (20 divided by 70) and Liam receives 14 percent (10 divided by 70) of the contributions.

Example: Chris has listed four people as primary beneficiaries with the following percentages: Person A with "a" percent, person B with "b" percent, person C with "c" percent, and person D with "d" percent.

Chris passed away. Person B disclaims the benefit with the department. Person A receives $a/(a+c+d)$, person C receives $c/(a+c+d)$, and person D receives $d/(a+c+d)$.

(3) If the primary beneficiary disclaims the benefit and there are no other primary beneficiaries, the benefit will pass to the contingent beneficiary designation made by the member or retiree. If there are no contingents, it will pass to the estate of the retiree or per the succession in law for the retirement system and plan of the member.

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WSR 23-03-036
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed January 9, 2023, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-21-120.

Title of Rule and Other Identifying Information: Retirement account correction after retirement or separation from service, creating WAC 415-02-075.

Hearing Location(s): On February 22, 2023, at 11:00 a.m., Zoom <https://us02web.zoom.us/j/87329443267>, Meeting ID 873 2944 3267, Dial In 1-253-215-8782. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details.

Date of Intended Adoption: February 23, 2023.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by February 22, 2023.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by February 15, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies when the department can correct a member's record in cases where the member has been underpaid or overpaid.

Reasons Supporting Proposal: More clearly defines process for members.

Statutory Authority for Adoption: RCW 41.50.130.

Statute Being Implemented: RCW 41.50.130.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7124.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by DRS.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

January 9, 2023
Bianca Stoner
Rules Coordinator

OTS-4203.2

NEW SECTION

WAC 415-02-075 Is my retirement account subject to correction after retirement or separation from service? (1) When can the department correct a member's record? The department can correct your retirement account at any time when an error has been discovered.

(2) What will happen if I have been underpaid?

(a) If the underpayment is related to an on-going monthly benefit, the department will correct all future payments and compute the additional amount due from prior payments and pay you in a lump sum.

Example 1:

Chris retired September 1st and Chris' monthly retirement benefit was initially determined to be \$2,500. In November, Chris' former employer reported additional earnings. The department used that additional reporting to recalculate Chris' benefit, which is now set at \$2,525 per month. Chris will receive the new amount for the November and future monthly benefits. Chris will also receive a payment of \$50 to cover the additional \$25 amount for September and October.

(b) If the underpayment is related to a one-time payment, the additional amount will be paid once identified.

Example 2:

When separating from employment, Sandy chose to withdraw all retirement contributions instead of receiving an on-going benefit at retirement age. After the withdrawal, Sandy's employer submitted \$130 of additional retirement contributions that had been deducted from Sandy's paycheck. The department will pay that \$130 to Sandy.

(3) What will happen I have been overpaid?

(a) If the overpayment is related to an on-going monthly benefit, the department will correct the payment amount for all future months. An invoice will be created for the amount of the overpayment and you will normally have at least 90 days to return the amount of the overpayment to the department. If you cannot make payment in full within those 90 days, you can contact the department to discuss a payment plan which would allow deductions from your monthly benefit. Or you may choose to have your benefit permanently, actuarially reduced to pay the overpayment. Repayment options will be provided on the invoice you receive. If you do not establish a payment plan (which will include interest) or make payment in full by the invoice due date, the department will apply the actuarial reduction and permanently reduce your monthly benefit.

If you or the department identify that your full monthly benefit payment was in error (for example you were not eligible to retire), the department may ask your bank to reverse the payment (depending on the timing and banking rules) and return the funds to pay your invoice.

Example 3:

Pat retired July 1st, with a calculated retirement benefit of \$3,000 per month. However, Pat used vacation leave until August 15th, and so, Pat was not separated from employment and eligible to retire until September 1st. Once Pat's employer provided the department with their final reporting on Pat, the department invoiced Pat for \$6,000 representing the July and August pension payments (2 x \$3,000).

(b) If the overpayment is not related to an on-going monthly benefit payment, the department will invoice you and expect payment in

full within 90 days and will apply interest to any balance outstanding after those 90 days have elapsed.

(4) **What will happen if an overpayment is received by someone other than a member or beneficiary?** The overpayment will be a debt from the person or entity to the department and the department will invoice accordingly.

Example 4:

J. Smith passed on June 3rd, but with no knowledge of the death, the department deposited the on-going benefit into J. Smith's bank account on the last business day of June. When notified of the death during July, the department requested J. Smith's bank return the June deposit. Banking rules require the department request the deposit amount in full regardless of how much may be ultimately due to an estate.

The department will invoice J. Smith's estate for the June payment and any deductions taken from that payment (such as medical payments) but will apply any amounts received back from the bank or deduction vendors against that invoice. The department will calculate the amount owed to the estate for the month of death and pay J. Smith's estate for those days (three days of 30 for the month of June). Since J. Smith's June payment was \$5,000, the estate will be entitled to \$500 after all other amounts have been collected back by the department. Any amounts the department cannot collect will be a debt of the estate.

(5) **Is there any limit on how much of an overpayment the department may collect?**

(a) The department will calculate the total overpayment amount but may only collect three years back from the point of discovery of an error.

(b) In cases of fraud, the department may collect the entire overpayment amount.

Example 5:

Jordan retired April 1, 2018. In October 2021, the department discovered their former employer removed erroneous earnings from Jordan's account, causing the department to recalculate Jordan's monthly benefit. After adjusting Jordan's benefit to the correct amount, the monthly overpayment amount was determined to be \$57 per month for 42 months for a total of \$2,394. The department will only invoice Jordan for three years back from the date of discovery in October 2021 for a total of \$2,052 (36 months x \$57).

(6) **How much can the department reduce my benefit to collect an overpayment?**

(a) Your monthly benefit cannot be reduced by more than half of the corrected benefit.

(b) If half of your corrected monthly benefit is less than the full actuarial reduction necessary to recover the overpayment you received, the department will reduce your benefit by half, and may put a claim against your estate.

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WSR 23-03-046
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 10, 2023, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-020.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-460-0005 Can I choose someone to apply for basic food for my assistance unit?

Hearing Location(s): On February 21, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than February 22, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by February 21, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by February 7, 2023, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This change will more accurately align with updated agency protocols for approving authorized representatives for basic food.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510.

Statute Being Implemented:

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Joyce Hensen, P.O. Box 45470, Olympia, WA 98504-5470, 425-999-5162.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii), which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

January 6, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4961.1

AMENDATORY SECTION (Amending WSR 03-22-038, filed 10/28/03, effective 12/1/03)

WAC 388-460-0005 Can I choose someone to apply for basic food for my assistance unit? Your basic food assistance unit (AU) can choose an adult who is not a member of the AU to act on their behalf. This is called an authorized representative.

(1) A responsible member of the AU can name, in writing, an authorized representative. A responsible member of the AU is either:

- (a) The applicant;
- (b) The applicant's spouse;

(c) Another member of the AU the applicant states is able to conduct business on behalf of all members in the AU.

(2) The AU's authorized representative has the authority to apply for basic food on the AU's behalf.

(3) If you receive basic food benefits in a qualified drug and alcohol treatment facility under WAC 388-408-0040, you **must** have an employee of the facility as your authorized representative for basic food.

(4) If the authorized representative provides information to the department that causes an AU to have an overpayment, the AU members are liable for the overpayment.

(5) An authorized representative may act on behalf of more than one basic food AU (~~(only if the community services office administrator approves)~~).

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-22-038, § 388-460-0005, filed 10/28/03, effective 12/1/03; WSR 03-03-072, § 388-460-0005, filed 1/15/03, effective 3/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-460-0005, filed 7/31/98, effective 9/1/98.]

WSR 23-03-049
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 10, 2023, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-075.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-444-0055 What are the penalties if I refuse or fail to meet basic food work requirements?

Hearing Location(s): On February 21, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than February 22, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by February 21, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by February 7, 2023, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments will more accurately align with federal regulations related to basic food disqualification and clarify that a basic food sanction can be lifted effective the first of the following month when a client meets work requirements or becomes exempt from work requirements during a basic food sanction.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Joyce Hensen, P.O. Box 45470, Olympia, WA 98504-5470, 425-999-5162.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or

regulation and description of the consequences to the state if the rule is not adopted: 7 C.F.R. 273.7(g).

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

January 9, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4959.1

AMENDATORY SECTION (Amending WSR 13-21-126, filed 10/22/13, effective 11/22/13)

WAC 388-444-0055 What are the penalties if I refuse or fail to meet basic food work requirements? (1) If we register you for work you must meet the work requirements under WAC 388-444-0005 or 388-444-0030 unless you have good cause as defined in WAC 388-444-0050. If you do not follow these rules, you will become an ineligible assistance unit member as described under WAC 388-408-0035. The remaining members of the assistance unit continue to be eligible for basic food.

(2) If you do not meet basic food work requirements and we find that you did not have good cause, you cannot receive basic food for the following periods of time and until you meet program requirements:

- (a) For the first failure, one month;
- (b) For the second failure, three months; and
- (c) For the third or subsequent failure, six months.

(3) If you become exempt under WAC 388-444-0010 and are otherwise eligible, you may begin to receive basic food.

(4) If you do not comply with the work requirements of the following programs, you cannot receive basic food unless you meet one of the conditions described under WAC 388-444-0010 (~~except subsections (4) or (5)~~):

- (a) WorkFirst;
- (b) Unemployment compensation;
- (c) The refugee cash assistance program.

(5) Within (~~ten~~) 10 days after learning of your refusal to participate in your program, (~~the financial worker~~) we will send you a notice that your basic food benefits will end unless you comply with your program requirements.

(6) If you do not comply within (~~ten~~) 10 days, you will be issued a notice disqualifying you from receiving basic food until you comply with your program, or until you meet the work registration disqualification requirements in subsection (2) of this section.

(7) (~~After the penalty period in subsection (2) of this section is over, and you meet work requirements and you are otherwise eligible, you may receive basic food:~~

~~(a) If you are alone in the assistance unit and apply to reestablish eligibility; or~~

~~(b) If you are a member of an assistance unit, you may resume receiving basic food.~~

~~(8)) During the penalty period, if you begin to participate in ((one)) any of the programs listed in subsection (4)(a) through (c) ((and that penalty is removed)) of this section or meet one of the conditions described under WAC 388-444-0010, the work registration disqualification also ends. If you are otherwise eligible, you may begin to receive basic food effective the first of the month following the change.~~

~~(8) After the penalty period in subsection (2) of this section is over, and you meet work requirements, and you are otherwise eligible, you may receive basic food:~~

~~(a) If you are alone in the assistance unit and apply to reestablish eligibility; or~~

~~(b) If you are a member of an assistance unit, you may resume receiving basic food.~~

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.7. WSR 13-21-126, § 388-444-0055, filed 10/22/13, effective 11/22/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.515, 74.08.090, 74.08A.120, 74.08A.903, and 7 U.S.C. 2015 (d)(1); 7 C.F.R. § 273.7. WSR 10-18-048, § 388-444-0055, filed 8/26/10, effective 10/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-05-010, § 388-444-0055, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.04.050 and 74.04.510. WSR 00-04-006, § 388-444-0055, filed 1/20/00, effective 3/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-444-0055, filed 7/31/98, effective 9/1/98.]

WSR 23-03-060
PROPOSED RULES
GAMBLING COMMISSION
[Filed January 11, 2023, 3:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-079.

Title of Rule and Other Identifying Information: Amending WAC 230-15-140 Wagering limits for house-banked card games.

Hearing Location(s): On March 9, 2023, at 9:30 a.m., at Washington State Gambling Commission (WSGC), 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location is tentative. Visit our website at www.wsgc.wa.gov approximately seven days prior to the meeting and select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: March 9, 2023.

Submit Written Comments to: Jess Lohse, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, by February 28, 2023.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email Julie.anderson@wsgc.wa.gov, www.wsgc.wa.gov, by February 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendment would increase the maximum wagering limit for house-banked card games from \$300 to \$500 for a single wager.

Reasons Supporting Proposal: WSGC received a petition from a licensee proposing to amend rules to raise wagering limits for house-banked card games. Wagering limits have not been increased since 2009. According to the petitioner, the cost of doing business has increased significantly since 2009 to include higher minimum wages, food and beverage costs, along with other costs associated with running a card room/business.

Statutory Authority for Adoption: RCW 9.46.070.

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

Name of Proponent: Vicki Christophersen, representing Maverick Gaming in Kirkland, Washington, public.

Name of Agency Personnel Responsible for Drafting: Jess Lohse, SA, 4565 7th Avenue S.E., Lacey, WA 98503, 206-786-3530; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-507-3456; and Enforcement: Gary Drumheller, AD, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The amendment to WAC 230-15-140 increases wagering limits for house-banked card games. If approved, house-banked card rooms will be able to offer higher wagering limits which may increase revenue for the business. Therefore, licensees will not incur any additional costs if the rule amendment is approved.

January 11, 2023

Jess Lohse
Special Agent
Acting Rules Coordinator

OTS-4273.1

OPTION B

AMENDATORY SECTION (Amending WSR 21-11-057, filed 5/14/21, effective 6/14/21)

- WAC 230-15-140 Wagering limits for house-banked card games.** (1)
A single wager must not exceed (~~three hundred dollars~~) \$500.
- (2) A player may make a single wager for each decision before the dealer deals or reveals additional cards. Wagers must be placed on the table layout on an approved betting spot, except for:
- (a) In Blackjack games, players may place an additional wager next to their original wager when doubling down or splitting pairs; or
 - (b) Tip wagers made on behalf of a dealer; or
 - (c) As authorized in approved card games rules.

[Statutory Authority: RCW 9.46.070. WSR 21-11-057, § 230-15-140, filed 5/14/21, effective 6/14/21; WSR 08-20-025 (Order 631), § 230-15-140, filed 9/19/08, effective 1/1/09; WSR 07-09-033 (Order 608), § 230-15-140, filed 4/10/07, effective 1/1/08.]

WSR 23-03-091
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed January 17, 2023, 8:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-01-197.

Title of Rule and Other Identifying Information: Chapter 296-115 WAC, Safety requirements for charter boats.

Hearing Location(s): On February 21, 2023, at 11:00 a.m., join electronically [Date of Intended Adoption: April 18, 2023.](https://teams.microsoft.com/l/meetup-join/19%3ameeting_Mjc0OWIwMzAtOGU5MS00MwVlLWJmNDgtMWMxYmQ0OWIwNzdm%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22b7b6be27-83d6-4a62-9a88-547215f94392%22%7d; join by phone +1 253-372-2181, Meeting ID 261 081 208 477, Passcode vtWzWa. The meeting will begin at 11:00 a.m., and will continue until all oral comments are received.</p>
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Submit Written Comments to: Cathy Coates, Administrative Regulations Analyst, Department of Labor and Industries (L&I), Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, email Cathy.coates@lni.wa.gov, fax 360-902-5619, by March 3, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Cathy Coates, administrative regulations analyst, phone 360-902-5432, fax 360-902-5619, email Cathy.coates@lni.wa.gov, by February 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to better align chapter 296-115 WAC, Safety requirements for charter boats, with chapter 88.04 RCW, the Charter Boat Safety Act, United States Coast Guard (USCG) requirements under 46 C.F.R. chapter 49.17 RCW; and the Washington Industrial Safety and Health Act.

The proposed amendments also address items from an audit of the charter boat program. Additionally, this rule making will incorporate housekeeping and formatting changes.

Chapter 49.17 RCW grants the director of L&I the authority to propose and adopt these rules. In addition, RCW 88.04.005(3) and 88.04.330 authorizes L&I to adopt rules regulating the use of charter boats operating on state waters and establish fees for the inspection of vessels.

Amended Sections:

WAC 296-115-005 Scope and purpose.

- Grammatical correction in subsection (2)(a), change "is" to "are."
- Add subsection (4) to provide contact information and means to submit documents electronically. New email address specific to charter boat program created and included in the proposed language.

WAC 296-115-015 Definitions.

- Add numbers to defined words.
- Add definition of "consideration" to align with USCG requirements found in 46 C.F.R. 175.400.
- Update definition of "equipment" to align with RCW 88.04.015.

- Add definition of "flammable liquid" from NFPA 306 USCG regulations incorporated NFPA 306 by reference in 46 C.F.R. Part 125.180 (i)(4).
- Update definition of "passenger" to align with RCW 88.04.015.
- Add definition of "passenger for hire" to align with USCG requirements found in 46 C.F.R. 175.400.
- Update definition of "state waters" to align with RCW 88.04.015.

WAC 296-115-025 Vessel inspection and certification.

- Update subsection (5), add "and complies with the provisions of this chapter and with the applicable state and federal laws and regulations;" and modify language regarding the length the certificate is valid to align with RCW 88.04.035(2).
- Update subsection (6), add "or with the applicable state and federal laws and regulations" to align with RCW 88.04.035(2).
- Update subsection (6)(a), change "may" to "shall" to align with RCW 88.04.035(4).
- Update subsection (6)(b), add "or the applicable state and federal laws and regulations" to align with RCW 88.04.035(4); and add the following sentence: "The notification will be made on the notice of deficiencies form and signed by the attending maritime inspector" to align with USCG regulations in 46 C.F.R. Chapter 1, Subchapter A, Part 2, Subpart 2.01-10.
- Add new subsection (9), add reference to WAC 296-115-005(4) for instructions on how to submit documents to the department, request inspection, etc.

WAC 296-115-040 Vessel construction and arrangement.

- Update subsection (3)(a), update formatting of numbers.

WAC 296-115-050 General requirements.

- Update formatting of numbers throughout.
- Update subsection (5)(c), update wording regarding "fire axe" to better align with the fire axe requirements in USCG regulations found in 46 C.F.R. 181.600.

WAC 296-115-060 Operations.

- Update formatting of numbers throughout.
- Update subsection (3)(f), update language regarding "no smoking" to align with RCW 70.160.020, Smoking in public places.
- Add new subsection (3)(g), add information regarding storage of flammable liquids to align with federal requirements of the Occupational Safety and Health (OSHA) in 29 C.F.R. 1926.152 Flammable liquids; and USCG requirements in 46 C.F.R..
- Update subsequent subsections due to insertion of the above; "(g)" became "(h)," etc.

WAC 296-115-100 Penalties for certificate of inspection and operator's license violations.

- Update formatting of numbers throughout.

WAC 296-115-110 Appeal of decisions.

- Update subsection (1), proposed amendments align the standard with RCW 88.04.085 which requires the department to use the process in chapter 49.17 RCW for penalties, violations, citations and appeals and other administrative procedures. The changes detail

the process for an aggrieved person to request an evidentiary hearing with the assistant director or designee.

- o Add (a)(i)(ii)(iii)(iv) to subsection (1), add information on process to submit a request via mail, fax, email, or in person.
- o Add subsection (1)(b), "Any request made under this subsection must be received by the department within 15 working days from the receipt of this decision." Sets deadline for submission of an appeal to L&I.
- o Add subsection (1)(c), "A hearing held under this subsection will include a recorded conference during which the aggrieved party can explain their position and provide any additional information they would like the department to consider." Sets a hearing standard.
- o Reformat subsequent subsections; "(c)" changed to "(e)," "(d)" changed to "(f)," etc.
- o Subsection (1)(e), add that following the evidentiary hearing, the department will issue a final decision "in writing within 75 working days from the date the request was filed." Aligns the standard with RCW 88.04.085, which requires the department to use the process in chapter 49.17 RCW for penalties, violations, citations, and appeals and other administrative procedures.
- o Subsection (1)(f), add [that] a final department decision issued under this section may be appealed to the "board of industrial insurance appeals within 15 working days following communication of the decision, following the process in RCW 49.17.140. The decision of the board may be appealed following the process in RCW 49.17.150." Aligns the standard with chapter 88.04.085 RCW, which requires L&I to use the process in chapter 49.17 RCW for penalties, violations, citations, and appeals and other administrative procedures.
- o Subsection (1)(g), change "action" to "decision" and add clarification regarding presenting proof to the department. Aligns the standard with RCW 88.04.085, which requires L&I to use the process in chapter 49.17 RCW for penalties, violations, citations, and appeals and other administrative procedures.
- Update subsection (2), remove "For all other citations, follow the appeal process in chapter 49.17 RCW" and add "Other than department decisions under subsection (1) of this section, an aggrieved person may appeal department decisions under this chapter following the appeal process in chapter 49.17 RCW. The decision being appealed will remain in effect until the aggrieved person presents proof to the department that the specified requirements are met, or, until the appeal is otherwise resolved." Proposed amendments align the standard with RCW 88.04.085 which requires L&I to use the process in chapter 49.17 RCW for penalties, violations, citations, and appeals and other administrative procedures.

WAC 296-115-120 Annual fee schedule.

- Proposed amendments include an increase in fees, effective June 1, 2023. Currently, the charter boat program is operating at a loss. An audit of the charter boat program identified the need to increase fees 173 percent to cover the current costs of the program. The projected fee increase equally distributes a 200 per-

cent increase in fees over the next 10 years. The increase incorporates the 173 percent increase needed to cover current costs, and provides for inflation during the 10-year period. The proposed amendments align with RCW 88.04.310 which states, *"The owner or operator of every vessel inspected by the department shall pay the department a fee for each inspection. The fee shall be established by rule and shall cover the full cost of the inspection program including travel, per diem, and administrative and legal support costs for the program."*

Reasons Supporting Proposal: Proposed changes align chapter 296-115 WAC, Safety requirements for charter boats, with chapter 88.04 RCW, the Charter Boat Safety Act; and USCG requirements under 46 C.F.R. Aligning the standard with federal standards and law will eliminate confusion among L&I staff, stakeholders, and the public, thereby ensuring safety of employees in the charter boat industry as well [as] the public.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 88.04.005(3), and 88.04.330.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Teri Neely, Tumwater, Washington, 360-902-6652; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The rule is exempt from a cost-benefit analysis per RCW 34.05.328

(5)(b)(iii) because the rule making is proposing to adopt without material change language from USCG requirements under 46 C.F.R., chapter 88.04 RCW, The Charter Boat Safety Act; and per RCW 34.05.328

(5)(b)(iv) as this rule making proposes to clarify language without changing its effect.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: The proposed rule amendments incorporate without material change USCG requirements under 46 C.F.R. as well as chapter 88.04 RCW, The Charter Boat Safety Act; and makes house-

keeping changes like updating the way numbers are written so the rule is clear and easy to comply with.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: WAC 296-115-015(18) is not exempt because it is an interpretive rule under RCW 34.05.328 (5) (c) (ii).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The single provision not exempt from analysis is a definition and interpretive rule under RCW 34.05.328 (5) (c) (ii) which does not subject anyone to a penalty or cost.

January 17, 2023

Joel Sacks

Director

OTS-3461.10

AMENDATORY SECTION (Amending WSR 08-20-123, filed 10/1/08, effective 11/1/08)

WAC 296-115-005 Scope and purpose. This chapter generally sets requirements according to chapter 88.04 RCW to protect the safety and health of passengers and crew on board charter boats, and provides penalties for violations of these requirements. Specifically, this chapter:

(1) Applies to vessels for hire that carry seven or more passengers when operated in state waters which are not regulated by the United States Coast Guard.

(2) Does not apply to:

(a) Vessels that are charter boats but (~~is~~) are being used by the documented or registered owner exclusively for their own noncommercial or personal pleasure purposes;

(b) Vessels owned by people or corporate entities which are donated and used by people or nonprofit organizations to transport passengers for charitable or noncommercial purposes, regardless of whether consideration is directly or indirectly paid to the owner;

(c) Vessels that are rented, leased, or hired by operators to transport passengers for noncommercial or personal pleasure purposes;

(d) Vessels used exclusively for, or incidental to, educational purposes; or

(e) Bare boat charter boats.

(3) Is intended to be consistent with, and prevails in the event of a conflict with, the rules adopted by the United States Coast Guard under 46 C.F.R. Subchapters K and T, in effect at the time the vessel's keel was laid.

(4) **General information:**

All forms and applications related to charter boat operations may be requested from the department or are available on the website at <https://lmi.wa.gov/licensing-permits/other-licenses-permits/charter-boats>.

All correspondence related to charter boat operations may be submitted to:

Department of Labor and Industries
DOSH-Charter Boats
P.O. Box 44650
Olympia, WA 98504-4650; or
Submitted electronically to:
Email: Charterboats@lni.wa.gov

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 88.04.005. WSR 08-20-123, § 296-115-005, filed 10/1/08, effective 11/1/08. Statutory Authority: RCW 49.17.010, [49.17].040, [49.17].050 and 1999 c 111. WSR 00-23-100, § 296-115-005, filed 11/21/00, effective 1/1/01. Statutory Authority: Chapter 49.17 RCW. WSR 91-24-017 (Order 91-07), § 296-115-005, filed 11/22/91, effective 12/24/91; WSR 91-03-044 (Order 90-18), § 296-115-005, filed 1/10/91, effective 2/12/91. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 42.30 and 43.22 RCW. WSR 80-17-014 (Order 80-20), § 296-115-005, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 17-16-132, filed 8/1/17, effective 9/1/17)

WAC 296-115-015 Definitions. (1) Approved. Approved by the assistant director or an authorized representative. However, if a provision of this chapter requires approval by an agency or organization other than the department, such as nationally recognized testing laboratories or the United States Coast Guard, then approval by the specified authority will be accepted.

(2) Assistant director. The assistant director of the division of occupational safety and health (DOSH) within the department of labor and industries.

(3) Authorized person. A person approved or assigned by the employer to perform a specific type of duty or duties or be at a specific location or locations at the workplace.

(4) Bare boat charter. The unconditional lease, rental, or charter of a boat by the owner, or owner's agent, to a person who by written agreement, or contract, assumes all responsibility and liability for the operation, navigation, and provisioning of the boat during the term of the agreement or contract, except when a captain or crew is required or provided by the owner or owner's agents to be hired by the charterer to operate the vessel.

(5) Carrying passengers or cargo. The transporting of any person or persons or cargo on a vessel for a fee or other consideration.

(6) C.F.R. Code of Federal Regulations.

(7) Charter boat. A vessel or barge operating on waters of the state of Washington which is:

(a) Not inspected or licensed by the United States Coast Guard and over which the United States Coast Guard does not exercise jurisdiction; and

(b) Rented, leased, or chartered to carry seven or more persons, or cargo.

(8) Commercial. Any activity from which the operator, or the person chartering, renting, or leasing a vessel derives a profit, and/or

which qualifies as a legitimate business expense under the Internal Revenue Statutes.

(9) **Competent person.** Someone who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt action to eliminate them.

(10) **Confined space.** A space that is all of the following:

(a) Large enough and arranged so that an employee could fully enter the space and perform work; and

(b) Has limited or restricted means for entry or exit. Examples of spaces with limited or restricted entry are tanks, vessels, silos, storage bins, hoppers, vaults, and pits; and

(c) Not primarily designed for human occupancy.

(11) **Consideration.** An economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.

(12) **Defect.** Any characteristic or condition that tends to weaken or reduce the strength of the tool, object, or structure of which it is a part.

(13) **Department.** The department of labor and industries.

(14) **Employee:**

(a) Someone who is employed in the business of an employer; and

(b) Every person in this state who is working for an employer under an independent contract for personal labor.

(15) **Employer.** Any person, firm, corporation, partnership, business trust, legal representative, or other business entity that operates a passenger vessel for hire in this state and employs one or more employees or contracts with one or more persons for personal labor. Any person, partnership, or business entity that has no employees, and is covered by the Industrial Insurance Act is considered both an employer and an employee.

(16) **Enclosed space.** Any space, other than a confined space, which is enclosed by bulkheads and overhead. It includes cargo holds, tanks, quarters, and machinery and boiler spaces.

(17) **Equipment.** A system, part, or component of a vessel as originally manufactured, or a system, part, or component manufactured or sold for replacement, repair, or improvement of a system, part, or component of a vessel; an accessory or equipment for, or appurtenance to a vessel; or a marine safety article, accessory, or equipment, including radio equipment, intended for use by a person on board a vessel.

(18) **Flammable liquid.** As defined in National Fire Protection Association (NFPA) 306, a liquid that has a closed-cup flash point that is below 37.8°C (100°F) and a maximum vapor pressure of 2,068 mm Hg (40 psia (pounds per square inch absolute) at 37.8°C (100°F)).

(19) **Hazard.** A condition, potential or inherent, that is likely to cause injury, death, or occupational disease.

(20) **Hazardous substance.** A substance that, because it is explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful, is likely to cause death or injury, including all substances listed on the USCG hazardous materials list.

(21) **Inspection.** The examination of vessels by the assistant director or an authorized representative of the assistant director.

(22) **Keel laid.** The date a vessel's keel was laid or the vessel was at a similar stage of construction.

(23) Maritime safety specialist. A technical and operations specialist in maritime issues located in the department.

(24) Master. The individual having command of the vessel and who is the holder of a valid license that authorizes the individual to serve as master of a small passenger vessel.

(25) Passenger. ~~((A passenger who pays for carriage on a vessel, whether directly or indirectly to the owner, charterer, operator, agent, or any other person having an interest in the vessel.))~~ A person carried on board a charter boat except (a) the owner of the vessel or the owner's agent, or (b) the captain and members of the vessel's crew.

(26) Passenger for hire. A passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

(27) Should. Recommended.

(28) Standard safeguard. A device intended to remove a hazard incidental to the machine, appliance, tool, or equipment to which the device is attached. Standard safeguards must be constructed of either metal, wood, other suitable material, or a combination. The final determination of the sufficiency of any safeguard rests with the assistant director.

(29) State waters. All ((nonnavigable)) waters within the territorial limits of the state of Washington, and not subject to the jurisdiction of the United States Coast Guard.

(30) Substantial. An object is constructed of such strength, material, and workmanship that it will withstand all normal wear, shock, and usage.

(31) Suitable. That which fits, or has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

(32) Under way. A vessel is not at anchor, made fast to the shore, or aground.

(33) USCG. The United States Coast Guard.

(34) United States Coast Guard Navigation. Rules International/Inland, Commandants Instruction M16672.2D as now adopted, or legally amended by the United States Coast Guard.

(35) Vessel. Every description of motorized watercraft, other than a bare boat charter boat, seaplane, or sailboat, used or capable of being used to transport seven or more passengers, or cargo, on water for rent, lease, or hire.

(36) Working day. A calendar day, except Saturdays, Sundays, and legal holidays as described in RCW 1.16.050. The time within which an act must be done is computed by excluding the first working day and including the last working day.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 17-16-132, § 296-115-015, filed 8/1/17, effective 9/1/17. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 88.04.005. WSR 08-20-123, § 296-115-015, filed 10/1/08, effective 11/1/08. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 07-03-163, § 296-115-015, filed 1/24/07, effective 4/1/07. Statutory Authority: RCW 49.17.010, [49.17].040, [49.17].050 and 1999 c 111. WSR 00-23-100, § 296-115-015, filed 11/21/00, effective 1/1/01. Statutory Authority: Chapter 49.17 RCW. WSR 95-04-007, § 296-115-015, filed 1/18/95, effective 3/1/95; WSR 91-24-017 (Order 91-07), § 296-115-015, filed 11/22/91, effective

12/24/91; WSR 91-03-044 (Order 90-18), § 296-115-015, filed 1/10/91, effective 2/12/91. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 42.30 and 43.22 RCW. WSR 80-17-014 (Order 80-20), § 296-115-015, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 18-04-096, filed 2/6/18, effective 3/9/18)

WAC 296-115-025 Vessel inspection and certification. (1) The department must inspect all vessels subject to this chapter to ensure they are safe and seaworthy at least once each year.

(2) The department may also inspect a vessel:

(a) If requested to do so by the owner, operator, or master of the vessel;

(b) After an explosion, fire, or any other accident involving the vessel;

(c) Upon receipt of a complaint from any person;

(d) At the discretion of the department.

(3) The department will charge the owner of a vessel a fee for each certification or recertification inspection. See WAC 296-115-120 for fee schedule.

(4) No person will operate a passenger or cargo vessel if the vessel does not have a valid certificate of inspection issued by the department.

(5) After inspecting a vessel and determining it is safe and seaworthy and complies with the provisions of this chapter and with the applicable state and federal laws and regulations, the department will issue a certificate of inspection for that vessel. The certificate will be valid for one year (~~(after)~~) from the date of (~~(inspection and contain-)~~) issuance.

(a) The certificate must set forth the date of the inspection;

(b) The names of the vessel and the owner;

(c) The number of lifeboats, if required;

(d) The number of life preservers required;

(e) The number of passengers allowed; and

(f) Any other information the department requires by rule.

(6) Any time a vessel is found to be not safe or seaworthy, or not in compliance with the provisions of this chapter or with the applicable state and federal laws and regulations:

(a) The department (~~(may)~~) shall refuse to issue a certificate of inspection until the deficiencies have been corrected and (~~(may)~~) shall cancel any certificate of inspection currently issued.

(b) The department must give the owner a written statement why the vessel was found to be unsafe, unseaworthy, or not in compliance with the provisions of this chapter or the applicable state and federal laws and regulations, including a specific reference to the statute or rule. The notification will be made on the notice of deficiencies form and signed by the attending maritime inspector.

(7) Department inspectors may, upon presenting their credentials to the owner, master, operator, or agent in charge of a vessel, board the vessel without delay to make an inspection.

(a) Inspectors must inform the owner, master, operator, or agent in charge that their intent is to inspect the vessel.

(b) During the inspection, inspectors must have access to all areas of the vessel. Inspectors may question privately the owner, mas-

ter, operator, or agent in charge of the vessel, or any crew member of or passenger on the vessel.

(c) If any person refuses to allow inspectors to board a vessel for an inspection, or refuses to allow access to any areas of the vessel, the department may request a warrant from the superior court for the county in which the vessel is located. The court will grant the warrant if:

(i) There is evidence that the vessel has sustained a fire, explosion, unintentional grounding, or has been involved in any other accident;

(ii) There is evidence that the vessel is not safe or seaworthy; or

(iii) The department shows that the inspection furthers a general administrative plan for enforcing the safety requirements of chapter 88.04 RCW, the Charter Boat Safety Act.

(8) The owner or master of a vessel must post the certificate of inspection behind glass or other suitable transparent material in a conspicuous area of the vessel.

(9) Please see WAC 296-115-005(4) for instructions on how to submit documents to the department to request an inspection, submit a complaint, or notify the department of repairs or alterations.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 18-04-096, § 296-115-025, filed 2/6/18, effective 3/9/18; WSR 17-16-132, § 296-115-025, filed 8/1/17, effective 9/1/17. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 88.04.005. WSR 08-20-123, § 296-115-025, filed 10/1/08, effective 11/1/08. Statutory Authority: RCW 49.17.010, [49.17].040, [49.17].050 and 1999 c 111. WSR 00-23-100, § 296-115-025, filed 11/21/00, effective 1/1/01. Statutory Authority: Chapter 49.17 RCW. WSR 91-03-044 (Order 90-18), § 296-115-025, filed 1/10/91, effective 2/12/91. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 42.30 and 43.22 RCW. WSR 80-17-014 (Order 80-20), § 296-115-025, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 08-20-123, filed 10/1/08, effective 11/1/08)

WAC 296-115-040 Vessel construction and arrangement. (1) Application.

(a) These requirements apply to all vessels contracted for construction on or after June 7, 1979.

(b) Vessels constructed before the effective date of this chapter must be brought into substantial compliance with the requirements of this section. Where strict compliance is impractical, the assistant director may grant a temporary variance to allow a modification or a permanent variance if the intent of these requirements is met.

(c) The intent of these requirements is to provide for a sound, seaworthy vessel, reasonably fit for the service it is intended to provide, and to ensure that the materials, scantlings, fastenings, and workmanship meet this intent. Primary consideration must be given to the provision of a seaworthy hull, protection against fire, means of escape in case of casualty, guards and rails in hazardous places, ventilation of closed spaces, and necessary facilities for passengers and crew.

(2) Hull structure.

(a) In general, complying with the standards of the United States Coast Guard rules for small passenger vessels or with the standards of a recognized classification society is considered satisfactory evidence of the structural adequacy of a vessel.

(b) Special consideration will be given by the assistant director to materials or structural requirements not specified by the standards of a recognized classification society.

(3) Watertight integrity and subdivision.

(a) All vessels carrying more than (~~forty-nine~~) 49 passengers must have a collision bulkhead and watertight bulkheads (or sufficient air tankage or other internal flotation) so the vessel will remain afloat (with positive stability) with any one main compartment flooded.

(b) All watertight bulkheads required by this part must be of substantial construction so they remain watertight with water to the top of the bulkhead.

(c) Watertight bulkheads must extend intact to the bulkhead deck. Penetrations must be kept to a minimum and must be watertight.

(d) The weather deck on a flush deck vessel must be watertight and must not obstruct overboard drainage.

(e) Cockpits must be watertight except that companionways may be fitted if they are provided with watertight coamings and weathertight doors. Also, ventilation openings may be provided if they are situated as high in the cockpit as possible and the opening height does not exceed two inches.

(f) Cockpits must be self-bailing. The scuppers installed for this purpose must be located so they are effective considering probable list and trim.

(g) Well decks must be watertight. Freeing ports may be installed if the provisions of applicable United States Coast Guard standards are followed.

(h) Weather deck hatches may be weathertight. All hatches must be provided with covers capable of being secured.

(i) The number of openings in the vessel's sides below the weather deck must be kept to a minimum.

(j) Any openings in a vessel's sides, such as portlights, must comply with applicable United States Coast Guard standards.

(4) Stability.

(a) All charter vessels must have a stability test, unless the assistant director determines that a test is not required because sufficient evidence is provided by the owner that the vessel's stability is satisfactory for the service for which it is intended.

(b) A letter stating that the vessel has met these stability requirements must be posted in the pilothouse of each vessel.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 88.04.005. WSR 08-20-123, § 296-115-040, filed 10/1/08, effective 11/1/08. Statutory Authority: RCW 49.17.010, [49.17].040, [49.17].050 and 1999 c 111. WSR 00-23-100, § 296-115-040, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 42.30 and 43.22 RCW. WSR 80-17-014 (Order 80-20), § 296-115-040, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 17-16-132, filed 8/1/17, effective 9/1/17)

WAC 296-115-050 General requirements. (1) Where an existing charter vessel does not meet a particular requirement of this section, the assistant director may grant:

(a) A temporary variance to allow time for modifications to be made.

(b) A permanent variance if the degree of protection afforded is judged to be adequate for the service in which the vessel is used.

(2) Lifesaving equipment required by this section must be approved by the USCG.

(3) The following lifesaving equipment is required:

(a) All vessels carrying passengers must carry life floats or buoyant apparatus for all persons on board.

(i) All life floats or buoyant apparatus must be international orange in color.

(ii) Vessels operating not more than one mile from land are not required to carry life floats or buoyant apparatus.

(iii) Lifeboats, life rafts, dinghies, dories, skiffs, or similar type craft may be substituted for the required life floats or buoyant apparatus if the substitution is approved by the assistant director.

(iv) Life floats, buoyant apparatus, or any authorized substitute must be U.S. Coast Guard approved and have the following equipment:

(A) Two paddles or oars not less than four feet in length.

(B) A painter of at least one-half inch diameter and (~~thirty~~) 30 feet in length.

(b) All vessels must have a USCG-approved adult life preserver for the number of people the vessel is certified to carry, with at least (~~ten~~) 10 percent additional of a type suitable for children or greater number to provide a life jacket for each child-sized person on board.

(i) Life preservers must be stowed in readily accessible places in the upper part of the vessel; and

(ii) Each life preserver must be marked with the vessel's name.

(c) All vessels must carry in a readily accessible location at least one ring life buoy of an approved type with (~~sixty~~) 60 feet of buoyant line attached. The ring life buoy must:

(i) Be ready to cast loose at any time; and

(ii) Have a floating water light, unless operation is limited to daytime.

(4) Fire protection general.

(a) The general construction of a vessel must minimize fire hazards.

(b) Internal combustion engine exhausts, boiler and galley uptakes, and similar sources of ignition must be kept clear of and suitably insulated from woodwork or other combustible material.

(c) Lamp, paint, and oil lockers and similar storage areas for flammable liquids must be constructed of metal or lined with metal.

(5) Fire protection equipment. Equipment required to be of an approved type must be approved by the USCG or other agency acceptable to the director.

(a) Fire pumps.

(i) All vessels carrying more than (~~forty-nine~~) 49 passengers must carry an approved power fire pump capable of reaching any part of the vessel.

(ii) All other vessels must carry an approved hand fire pump. These pumps must be provided with a suitable suction and discharge hose, and may also serve as bilge pumps.

(b) Fixed fire extinguishing system.

(i) The following vessels must have a fixed fire extinguishing system to protect the machinery and fuel tank spaces:

(A) Those powered by internal combustion engines using gasoline or other fuel having a flashpoint of 110°F or lower; and

(B) Those with hulls constructed of fiber-reinforced plastic (FRP) or wood.

(ii) This system must be an approved type and have a capacity sufficient to protect the space.

(iii) Controls for the fixed system must be installed in an accessible location outside the space protected.

(iv) A device must be provided to automatically shut down power ventilation serving the protected space and engines that draw intake air from the protected space prior to release of the extinguishing agent into the space.

(c) Fire axe. (~~All vessels must have one fire axe located in or near the pilothouse.~~) A vessel of more than 19.8 meters (65 feet) in length must have at least one fire axe located in or adjacent to the primary operating station.

(d) Portable fire extinguishers.

(i) All vessels must have a minimum number of portable fire extinguishers of an approved size and type. The number required will be determined by Table 1, Portable Fire Extinguishers.

(ii) Portable fire extinguishers must be inspected at least once a month. Extinguishers found defective must be serviced or replaced.

(iii) Portable fire extinguishers must be serviced at least once a year. The required service must consist of discharging and recharging foam and dry chemical extinguishers and weighing and inspecting carbon dioxide extinguishers.

(iv) Portable fire extinguishers must be hydrostatically tested at intervals not to exceed those specified in WAC 296-800-300 in the safety and health core rules.

(v) Portable fire extinguishers of the vaporizing liquid type such as carbon tetrachloride and other toxic vaporizing liquids are prohibited and must not be carried on any vessel.

(vi) Portable fire extinguishers must be mounted in brackets or hangers near the space protected. The location must be marked in a manner satisfactory to the assistant director.

**Table 1
Portable Fire Extinguishers**

Space Protected	Minimum # Required	Type Extinguisher Permitted		
		CG Class	Medium	Minimum Size
Operating station	1	B-I, C-I	Halon CO ₂ Dry chemical	2.5 lb. 4 lb. 2 lb.
Machinery space	1 Located just outside exit	B-II, C-II	CO ₂ Dry chemical	15 lb. 10 lb.
Open vehicle deck	1 for every 10 vehicles	B-II	Foam Halon CO ₂ Dry chemical	2.5 gal. 10 lb. 15 lb. 10 lb.

Space Protected	Minimum # Required	Type Extinguisher Permitted		
		CG Class	Medium	Minimum Size
Accommodation space	1 for each 2,500 sq. ft. or fraction thereof	A-II	Foam Dry chemical	2.5 gal. 10 lb.
Galley, pantry, concession stand	1	A-II, B-II	Foam Dry chemical	2.5 gal. 10 lb.

(6) Means of escape.

(a) All vessels must have at least two avenues of escape from all general areas accessible to the passengers or where the crew may be quartered or normally employed. The avenues must be located so that if one is not available the other may be. At least one of the avenues should be independent of watertight doors.

(b) One vertical means of escape is acceptable where the length of the compartment is less than (~~twelve~~) 12 feet under the following conditions:

(i) There is no source of fire in the space, such as a galley stove or heater and the vertical escape is remote from the engine and fuel tank space; or

(ii) The arrangement is such that the installation of two means of escape does not materially improve the safety of the vessel or those aboard.

(7) Ventilation.

(a) All enclosed spaces within the vessel must be properly vented or ventilated. Where such openings would endanger the vessel under adverse weather conditions, means must be provided to close them.

(b) All crew and passenger space must be adequately ventilated in a manner suitable to the purpose of the space.

(8) Crew and passenger accommodations.

(a) Vessels with crew members living aboard must have suitable accommodations.

(b) Vessels carrying passengers must have fixed seating for the maximum number of passengers permitted, installed as follows:

(i) Spacing that provides for ready escape in case of fire or other casualty.

(ii) Aisles not over (~~fifteen~~) 15 feet long must be not less than (~~twenty-four~~) 24 inches wide.

(iii) Aisles over (~~fifteen~~) 15 feet long must be not less than (~~thirty~~) 30 inches wide.

(iv) Where seats are in rows the distance from seat front to seat front must be not less than (~~thirty~~) 30 inches.

(v) The assistant director may grant special exception to fixed seating spacing requirements if escape over the side can be readily accomplished through windows or other openings in the way of the seats.

(c) Portable or temporary seating may be installed but must be arranged as provided for fixed seating.

(9) Toilet facilities and drinking water.

(a) Vessels must be provided with toilets and wash basins as specified in WAC 296-800-230 unless vessels are used exclusively on short runs of approximately (~~thirty~~) 30 minutes or less.

(b) All toilets and wash basins must be fitted with adequate plumbing. Facilities for men and women must be in separate compartments, except in the case of vessels carrying (~~forty-nine~~) 49 passengers and less, the assistant director may approve other arrangements.

(c) Potable drinking water must be provided for all passengers and crew according to WAC 296-800-23005.

(d) Covered trash containers must be provided in passenger areas.

(10) Rails and guards.

(a) Rails or equivalent protection must be installed near the periphery of all weather decks accessible to passengers and crews. Where space limitations make deck rails impractical for areas designed for crew only, such as at narrow catwalks in the way of deckhouse sides, hand grabs may be substituted.

(b) Rails must consist of evenly spaced courses. The spacing must not be greater than four inches except as provided in WAC 296-115-050 (10)(d). Lower rail courses may not be required if all or part of the space below the upper rail course is fitted with a bulwark, chain link fencing, wire mesh or the equivalent.

(c) On passenger decks of vessels engaged in ferry or excursion type operation, rails must be at least (~~forty-two~~) 42 inches high. The top rail must be pipe, wire, chain, or wood and must withstand at least (~~two hundred~~) 200 pounds of side loading. The space below the top rail must be fitted with bulwarks, chain link fencing, wire mesh, or the equivalent.

(d) On vessels engaged in other than passenger service, the rails must be not less than (~~thirty-six~~) 36 inches high. Where vessels are used in special service, the assistant director may approve other arrangements, but in no case less than (~~thirty~~) 30 inches high.

(e) Suitable storm rails or hand grabs must be installed where necessary in all passageways, at deckhouse sides, and at ladders and hatches where passengers or crew might have normal access.

(f) Suitable covers, guards, or rails must be installed in the way of all exposed and hazardous places such as gears or machinery. (See chapter 296-806 WAC, Machine safety for detailed requirements.)

(11) Machinery installation.

(a) Propulsion machinery.

(i) Propulsion machinery must be suitable in type and design for the propulsion requirements of the hull of the vessel in which it is installed. Installations meeting the requirements of the USCG or USCG-recognized classification society are considered acceptable to the assistant director.

(ii) Installations using gasoline or diesel as a fuel must meet the requirements of applicable USCG standards.

(b) Auxiliary machinery and bilge systems.

(i) All vessels must be provided with a suitable bilge pump, piping, and valves for removing water from the vessel.

(ii) Vessels carrying more than (~~forty-nine~~) 49 passengers must have a power operated bilge pump. The source of power must be independent of the propulsion machinery. Other vessels must have a hand operated bilge pump, but may have a power operated pump if it is operated by an independent power source.

(c) Steering apparatus and miscellaneous systems.

(i) All vessels must be provided with a suitable steering apparatus.

(ii) All vessels must be provided with navigation lights and shapes, whistles, fog horns, and fog bells as required by the USCG rules of navigation.

(iii) All vessels must be equipped with a suitable number of portable battery lights for emergency purposes. There should be at least two, one located at the operating station and the other at the access to the propulsion machinery.

(d) Electrical installations. The electrical installations of all vessels must be at least equal to applicable USCG standards, or as approved by the assistant director.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 17-16-132, § 296-115-050, filed 8/1/17, effective 9/1/17. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and 29 C.F.R. 1910 Subpart Z. WSR 14-07-086, § 296-115-050, filed 3/18/14, effective 5/1/14. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 88.04.005. WSR 08-20-123, § 296-115-050, filed 10/1/08, effective 11/1/08. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 07-03-163, § 296-115-050, filed 1/24/07, effective 4/1/07; WSR 04-14-028, § 296-115-050, filed 6/29/04, effective 1/1/05; WSR 03-18-090, § 296-115-050, filed 9/2/03, effective 11/1/03. Statutory Authority: RCW 49.17.010, [49.17].040, [49.17].050 and 1999 c 111. WSR 00-23-100, § 296-115-050, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 42.30 and 43.22 RCW. WSR 80-17-014 (Order 80-20), § 296-115-050, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 17-16-132, filed 8/1/17, effective 9/1/17)

WAC 296-115-060 Operations. (1) No person will rent, lease, or hire out a charter boat, carry, advertise for carrying, or arrange for carrying, more than six passengers on a vessel for a fee or other consideration on state waters unless the vessel meets the requirements of this chapter.

(2) Notice of casualty.

(a) The owner or person in charge of any vessel involved in a marine accident or casualty involving any of the following must report the incident immediately to the department:

(i) Damage to property in excess of (~~one thousand five hundred dollars~~) \$1,500.

(ii) Major damage affecting the seaworthiness or safety of the vessel.

(iii) Loss of life or an injury to a person that requires medical treatment beyond first aid.

(iv) Fire on board the vessel.

(b) The report must be in writing to the assistant director. Upon receipt of the report the assistant director may request an investigation by a marine dock inspector.

(c) For work-related injuries and illness involving any employee that resulted in death, inpatient hospitalization, amputation or loss of an eye, you must comply with the recordkeeping and reporting regulations in chapter 296-27 WAC.

(3) Miscellaneous operations.

(a) In the case of collision, accident, or other casualty involving a vessel, the operator must:

(i) So far as possible without serious danger to the vessel or persons aboard, render any necessary assistance to other persons affected by the collision, accident, or casualty to save them from danger.

(ii) Provide the name and address of the vessel owner and the name of the vessel to any person injured and to the owner of any property damaged.

(b) The person in charge of the vessel must see that the provisions of the certificate of inspection are strictly adhered to. This will not limit the person in charge from taking any action in an emergency judged necessary to help vessels in distress or to prevent loss of life.

(c) The operator of a vessel must comply with the provisions of the USCG Navigation Rules International/Inland, Commandants Instruction M16672.2D.

(d) The operator of a vessel must test the vessel's steering gear, signaling whistle, controls, and communication system before getting under way for the day's operation.

(e) Vessels using fuel with a flashpoint of 110°F or lower must not take on fuel when passengers are on board.

(f) All vessels must enforce "no smoking" provisions when fueling and as otherwise required by chapter 70.160 RCW. Locations on the vessel where flammable liquids are stored must be posted "No smoking." "Smoke" or "smoking" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment.

(g) Flammable liquids must be stored in a U.S. Department of Transportation approved container or flammable storage locker securely connected to the deck. See 46 C.F.R. 142.225 and 29 C.F.R. 1926.152.

(h) All vessels must prepare and post emergency check-off lists in a conspicuous place accessible to crew and passengers, covering the following:

(i) Man overboard.

(ii) Fire.

~~((h))~~ (i) The persons in charge must conduct emergency drills to ensure that the crew is familiar with their duties in an emergency and must document the drills.

~~((i))~~ (j) Carrying hazardous substances is prohibited on vessels. However, the assistant director may authorize a vessel to carry specific types and quantities of hazardous substances if the assistant director approves the type, quantity, and manner in which it is carried.

~~((j))~~ (k) All areas accessible to passengers or crew must be kept in a clean and sanitary condition. All walking surfaces must be free of slipping or tripping hazards and in good repair.

(4) First aid.

(a) All passenger vessels at all times must have a person holding a valid certificate of first-aid/CPR training.

(b) A first-aid kit or first-aid room must be provided on all vessels. The size and quantity of first-aid supplies or equipment required must be determined by the number of persons normally dependent upon each kit or equipment. The first-aid kit or supplies must be in a weatherproof container with individually sealed packages for each type of item. The location of the first-aid station or kit must be posted or marked "first aid" on the container.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 17-16-132, § 296-115-060, filed 8/1/17, effective 9/1/17. Statutory Authority: RCW 49.17.010, 49.17.040, and 49.17.050. WSR 15-11-066, § 296-115-060, filed 5/19/15, effective 7/1/15. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and 29

C.F.R. 1910 Subpart Z. WSR 14-07-086, § 296-115-060, filed 3/18/14, effective 5/1/14. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 88.04.005. WSR 08-20-123, § 296-115-060, filed 10/1/08, effective 11/1/08. Statutory Authority: RCW 49.17.010, [49.17].040, [49.17].050 and 1999 c 111. WSR 00-23-100, § 296-115-060, filed 11/21/00, effective 1/1/01. Statutory Authority: Chapter 49.17 RCW. WSR 91-03-044 (Order 90-18), § 296-115-060, filed 1/10/91, effective 2/12/91. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 42.30 and 43.22 RCW. WSR 80-17-014 (Order 80-20), § 296-115-060, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 08-20-123, filed 10/1/08, effective 11/1/08)

WAC 296-115-100 Penalties for certificate of inspection and operator's license violations. (1) For owners of vessels, any violation of the certification and inspection provisions of this chapter is punishable according to the penalties provided under the Washington Industrial Safety and Health Act, chapter 49.17 RCW.

(2) The following fixed schedule penalties apply:

(a) For failing to display certificate of inspection as required in WAC 296-115-025(8), (~~fifty dollars~~) \$50 to owner of the vessel.

(b) For a nonowner who operates vessel without a valid certificate of inspection, (~~one hundred dollars~~) \$100 per violation.

(c) For operating a vessel in passenger service without a valid USCG/state of Washington operator's license, (~~one hundred dollars~~) \$100 per violation to the owner of the vessel.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 88.04.005. WSR 08-20-123, § 296-115-100, filed 10/1/08, effective 11/1/08. Statutory Authority: RCW 49.17.010, [49.17].040, [49.17].050 and 1999 c 111. WSR 00-23-100, § 296-115-100, filed 11/21/00, effective 1/1/01. Statutory Authority: Chapter 49.17 RCW. WSR 91-03-044 (Order 90-18), § 296-115-100, filed 1/10/91, effective 2/12/91. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 42.30 and 43.22 RCW. WSR 80-17-014 (Order 80-20), § 296-115-100, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 08-20-123, filed 10/1/08, effective 11/1/08)

WAC 296-115-110 Appeal of decisions. (1) (~~Within fifteen working days after receipt of the decision, a~~) An aggrieved person may request ((a)) an evidentiary hearing with the assistant director or their designee regarding denial of a certificate of inspection or license, or a (~~decision on~~) determination of the maximum passengers, crew, or total capacity of a charter boat.

(~~(a) At the hearing the department must give the opportunity to produce witnesses and give testimony.~~

~~(b))~~ Such a request must be made prior to filing any other appeal from such a decision.

(a) A request made under this subsection must be submitted in one of the following ways:

(i) By mail to:

DOSH Appeals
P.O. Box 44604
Olympia, WA 98504-4604

(ii) By fax transmission to: 360-902-5581

(iii) Electronically to: DOSHappeals@lni.wa.gov; or

(iv) Take to any department service location.

(b) Any request made under this subsection must be received by the department within 15 working days from the receipt of the decision.

(c) A hearing held under this subsection will include a recorded conference during which the aggrieved party can explain their position and provide any additional information they would like the department to consider.

(d) The hearing will be held at the department's headquarters office or at another location designated by the assistant director and presided over by an authorized representative of the assistant director.

~~((e))~~ (e) Following the ~~((informal))~~ evidentiary hearing the department will issue a final decision in writing within 75 working days from the date the request was filed.

~~((d))~~ (f) A final department decision issued under this section may be appealed to the ~~((superior court for the state of Washington in either the county in which the certificate holder resides or in Thurston County within thirty days after the suspension or revocation order is entered))~~ board of industrial insurance appeals within 15 working days following communication of the decision, following the process in RCW 49.17.140. The decision of the board may be appealed following the process in RCW 49.17.150.

~~((e))~~ (g) The ~~((action))~~ decision being appealed will remain in effect until the applicant presents proof to the department that the specified requirements are met, or until the appeal is otherwise resolved.

~~((2))~~ ((For all other citations, follow the appeal process in chapter 49.17 RCW.)) Other than department decisions under subsection (1) of this section, an aggrieved person may appeal department decisions under this chapter following the appeal process in chapter 49.17 RCW. The decision being appealed will remain in effect until the aggrieved person presents proof to the department that the specified requirements are met, or, until the appeal is otherwise resolved.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 88.04.005. WSR 08-20-123, § 296-115-110, filed 10/1/08, effective 11/1/08.]

AMENDATORY SECTION (Amending WSR 08-20-123, filed 10/1/08, effective 11/1/08)

WAC 296-115-120 Annual fee schedule. The following fees must be paid by, or on behalf of, the owner or user of the vessel(s).

Effective June 1, 2023

(1) The annual certification fee for passenger vessels or barges is ~~((two hundred fifty dollars plus two dollars))~~ \$300 plus \$2.40 per ton for each vessel.

(2) The fee for an operator's license for passenger vessels or barges is ~~((fifty dollars))~~ \$60 for the first year; this covers application and test costs. The renewal fee is ~~((twenty-five dollars))~~ \$30 annually.

(3) Additional inspection service when required is at the rate of ~~((twenty-five dollars))~~ \$30 per hour, plus travel and per diem.

Effective June 1, 2025

(1) The annual certification fee for passenger vessels or barges is \$350 plus \$2.80 per ton for each vessel.

(2) The fee for an operator's license for passenger vessels or barges is \$70 for the first year; this covers application and test costs. The renewal fee is \$35 annually.

(3) Additional inspection service when required is at the rate of \$35 per hour, plus travel and per diem.

Effective June 1, 2027

(1) The annual certification fee for passenger vessels or barges is \$400 plus \$3.20 per ton for each vessel.

(2) The fee for an operator's license for passenger vessels or barges is \$80 for the first year; this covers application and test costs. The renewal fee is \$40 annually.

(3) Additional inspection service when required is at the rate of \$40 per hour, plus travel and per diem.

Effective June 1, 2029

(1) The annual certification fee for passenger vessels or barges is \$450 plus \$3.60 per ton for each vessel.

(2) The fee for an operator's license for passenger vessels or barges is \$90 for the first year; this covers application and test costs. The renewal fee is \$45 annually.

(3) Additional inspection service when required is at the rate of \$45 per hour, plus travel and per diem.

Effective June 1, 2031

(1) The annual certification fee for passenger vessels or barges is \$500 plus \$4 per ton for each vessel.

(2) The fee for an operator's license for passenger vessels or barges is \$100 for the first year; this covers application and test costs. The renewal fee is \$50 annually.

(3) Additional inspection service when required is at the rate of \$50 per hour, plus travel and per diem.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.210, and 88.04.005. WSR 08-20-123, § 296-115-120, filed 10/1/08, effective 11/1/08. Statutory Authority: Chapter 49.17 RCW. WSR 89-21-018 (Order 89-10), § 296-115-120, filed 10/10/89, effective 11/24/89. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 42.30 and 43.22 RCW. WSR 80-17-014 (Order 80-20), § 296-115-120, filed 11/13/80.]

WSR 23-03-095
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-16—Filed January 17, 2023, 9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-21-046 on October 11, 2022.

Title of Rule and Other Identifying Information: The department is amending several regulations in WAC chapters that affect harvesting clams, mussels, and oysters for personal use and include the following: WAC 220-330-110 Clam, other than razor clams, and mussels—Areas and seasons, 220-330-140 Oysters—Areas and seasons, 220-340-130 Oyster drill restricted shellfish areas—Puget Sound, and 220-340-170 European green crab (*Carcinus maenas*) restricted shellfish areas.

Hearing Location(s): On February 21, 2023, at 5:30 p.m., Zoom webinar. Register in advance for this webinar <https://us02web.zoom.us/j/84869547873?pwd=YWZNNGZ2L3BCSEx5bytFU0lRc3gzdz09>. The public may participate in the meeting.

Date of Intended Adoption: No sooner than February 22, 2023.

Submit Written Comments to: Camille Speck, P.O. Box 43152, Olympia, WA 98502, email clam-oyster-greencrab-areas-23@PublicInput.com, web page <https://publicinput.com/clam-oyster-greencrab-areas-23>, voicemail comments 855-925-2801, project code 6666, by February 21, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, by February 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In accordance with recent clam and oyster survey data, recreational harvest projections, comanagement agreements, and public health considerations, recreational clam and oyster seasons require extension or shortening on some public beaches. This rule proposal reflects these changes. Additionally, this proposal updates beach status according to shellfish pest status by updating oyster drill and European green crab restricted shellfish area designations. These designations are necessary to prevent the spread of pest infestations harmful to shellfish.

Reasons Supporting Proposal: The amendments to the rules will perpetuate shellfish resources while maximizing recreational fishing opportunity and protecting public health; and help to prevent the spread of a harmful shellfish pest organisms.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 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: Governmental.

Name of Agency Personnel Responsible for Drafting: Camille Speck, 375 Hudson Street, Port Townsend, WA 98368, 360-302-3030; **Implementation:** Kelly Cunningham, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2325; **Enforcement:** Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule proposal does not require a cost-benefit analysis per RCW 34.05.328 (5) (a) (i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: With respect to the recreational clam and oyster seasons portion of this proposal (WAC 220-330-110 and 220-330-140), the department is exempt from the requirements of chapter 19.85 RCW because the proposed recreational fishing rules do not regulate small businesses; these rule changes clarify dates for anticipated open and closed periods and areas for harvesting clams and oysters for personal use. There are no anticipated professional services required to comply.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	Proposed WAC Sections and Title	This proposed rule section is not exempt. Analysis is required.	This proposed rule section is exempt. Provide RCW to support this exemption.
1.	220-330-110 Clam, other than razor clams, and mussels—Areas and seasons	<input type="checkbox"/>	x RCW 19.85.025(4)
2.	220-330-140 Oysters—Areas and seasons	<input type="checkbox"/>	x RCW 19.85.025(4)
3.	220-340-130 Oyster drill restricted shellfish areas—Puget Sound	x Brief summary of agency's minor cost analysis in Section 3.	<input type="checkbox"/>
4.	220-340-170 European green crab (<i>Carcinus maenas</i>) restricted shellfish areas	x Brief summary of agency's minor cost analysis in Section 3.	<input type="checkbox"/>

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. A. With respect to the oyster drill shellfish restricted areas portions of this proposal (WAC 220-340-130), the updates to existing designations of oyster drill restricted shellfish areas do not have an anticipated more-than-minor impact on small business for the following reasons: (1) These areas are off-limits to the public as being on United States Navy property; (2) these areas do not host any commercial activity with the exception of some tribal harvest by several Treaty tribes; (3) the transfer of shellfish from these locations is already unlawful without a no-cost permit per WAC 220-340-150; (4) these areas are used for periodic tribal commercial and C&S harvest, which already operate with consideration to the restricted area landscape under conditions long-established and agreed-to in comanagement plans; and (5) most of the proposed changes are administrative "housekeeping" changes that do not affect the substance of existing rules.

B. With respect to the European green crab restricted shellfish areas portions of the proposal (WAC 220-340-170), the updates to designation of European green crab restricted shellfish areas do not have an anticipated more-than-minor impact on small business for the following reasons: (1) The designations do not come with prohibitions on movement of shellfish or any specifically prescribed requirements, but rather are updates to area definitions used to indicate a need for additional precautions in permitting under WAC 220-340-150; (2) the movement of shellfish and shellfish products already requires a no-cost permit under WAC 220-340-150 and industry has long operated under this system (decades); (3) precautionary permitting measures for these

areas are already in place under WAC 220-340-150; (4) the designations are already in effect through requirements of WAC 220-340-150 and industry already operates with consideration to the restricted area landscape under conditions long-established; (5) Washington department of fish and wildlife works directly with permittees to develop effective management approaches that minimize additional costs in permitting under WAC 220-340-150; (6) this proposal simply updates permanent rule definitions to reflect what is already defined under existing permitting authorities; and (7) some of the proposed changes are administrative "housekeeping" changes that do not affect the substance of existing rules.

January 17, 2022
Chris Fredley
Acting Agency Rules Coordinator

OTS-4294.3

AMENDATORY SECTION (Amending WSR 22-06-010, filed 2/18/22, effective 3/21/22)

WAC 220-330-110 Clams other than razor clams, and mussels—Areas and seasons. It is lawful to take, dig for, and possess clams and mussels for personal use from public tidelands year-round, except the following restrictions apply to the public tidelands at the beaches listed below:

- (1) Ala Spit: All public tidelands of Ala Spit are open May 1 through May 31 only.
- (2) Alki Park: Closed year-round.
- (3) Alki Point: Closed year-round.
- (4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.
- (5) Bay View State Park: Closed year-round.
- (6) Belfair State Park: Open (~~(July 15)~~) August 1 through September 30 only.
- (7) Billy Frank Jr. Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.
- (8) Blaine Marine Park: Closed year-round.
- ~~((8))~~ (9) Blake Island State Park Marina: Closed year-round.
- ~~((9))~~ (10) Blowers Bluff North: Closed year-round.
- ~~((10))~~ (11) Brown's Point Lighthouse: Closed year-round.
- ~~((11))~~ (12) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn from the southern boundary of Burfoot Park west to the opposite shore near 68th Avenue N.W. are closed year-round.
- ~~((12))~~ (13) Cama Beach State Park: Closed year-round.
- ~~((13))~~ (14) Camano Island State Park: Closed year-round.
- ~~((14))~~ (15) Chuckanut Bay: All tidelands of Chuckanut Bay north of the railroad trestle are closed year-round.
- ~~((15))~~ (16) Coupeville: Closed year-round.
- ~~((16))~~ (17) Cultus Bay: Closed year-round.

- ((17)) (18) Dash Point County Park: Closed year-round.
- ((18)) (19) Dash Point State Park: Open September 1 through May 31 only.
- ((19)) (20) Dave Mackie County Park: Closed year-round.
- ((20)) (21) Deception Pass State Park: Open year-round, except the tidelands of Rosario Bay from the northern park boundary, south to Rosario Head (48.4172°, -122.6663°) are closed year-round.
- ((21)) (22) Des Moines City Park: Closed year-round.
- ((22)) (23) Discovery Park: Closed year-round.
- ((23)) (24) DNR-142: Closed year-round.
- ((24)) (25) DNR-144 (Sleeper): Closed year-round.
- ((25)) (26) Dockton County Park: Closed year-round.
- ((26)) (27) Dosewallips State Park: The area defined by boundary markers and signs posted on the beach is open July ~~(4)~~ 15 through September 30 only.
- ((27)) (28) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers and signs posted on the beach.
- ((28)) (29) Drayton Harbor: All public tidelands of Drayton Harbor are open year-round, except tidelands identified as prohibited by the department of health and defined by boundary markers and signs posted on the beach are closed year-round.
- ((29)) (30) Duckabush: Open November 1 through April 30 only.
- ((30)) (31) Dungeness Spit and Dungeness National Wildlife Refuge Tidelands: Open May 15 through September 30 only.
- ((31)) (32) Eagle Creek: Open July 1 through August 31 only.
- ((32)) (33) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.
- ((33)) (34) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.
- ((34)) (35) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.
- ((35)) (36) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.
- ((36)) (37) Fay Bainbridge Park: Closed year-round.
- ((37)) (38) Fort Flagler State Park: Open January 1 through April 15 and ~~(July 1)~~ June 15 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.
- ((38)) (39) Freeland County Park: Open October 1 through May 31 only.
- ((39)) (40) Frye Cove County Park: Open May 1 through May 31 only.
- ((40)) (41) Fudge Point State Park: Closed year-round.
- ((41)) (42) Gertrude Island: All tidelands of Gertrude Island are closed year-round.
- ((42)) (43) Golden Gardens: Closed year-round.
- ((43)) (44) Graveyard Spit: Closed year-round.
- ((44)) (45) Guillemot Cove Nature Reserve: Closed year-round.
- ((45)) (46) Guss Island: All tidelands of Guss Island are closed year-round.
- ((46)) (47) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.
- ((47)) (48) Howarth Park/Darlington Beach: Closed year-round.

- ((48)) (49) Illahee State Park: Open April 1 through July 31 only.
- ((49)) (50) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open ~~((September))~~ April 1 through ((September-30)) May 31 only.
- ((50)) (51) Ingvald J. Gronvold Park: Open April 1 through ~~((April-30))~~ May 31 only.
- ((51)) (52) Joemma Beach State Park: Closed year-round.
- ((52)) (53) Kayak Point County Park: Closed year-round.
- ((53)) (54) Kitsap Memorial State Park: Closed year-round.
- ((54)) (55) Kopachuck State Park: Open April 1 through May 31 only.
- ((55)) (56) Lent Landing (Port Washington Narrows): Closed year-round.
- ((56)) (57) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round, except the western shoreline of Liberty Bay from the unincorporated Kitsap County line south to Virginia Point is open October 1 through April 30 only.
- ((57)) (58) Lincoln Park: Closed year-round.
- ((58)) (59) Lions Park (Bremerton): Closed year-round.
- ((59)) (60) Lofall: Closed year-round.
- ((60)) (61) Long Island Oyster Reserve, Diamond Point and Pinnacle Rock (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.
- ((61)) (62) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.
- ((62)) (63) Long Point West: Closed year-round.
- ((63)) (64) Lower Roto Vista Park: Closed year-round.
- ((64)) (65) March Point Recreation Area: Closed year-round.
- ((65)) (66) McNeil Island: All tidelands of McNeil Island are closed year-round.
- ((66)) (67) Meadowdale County Park: Closed year-round.
- ((67)) (68) Mee-Kwa-Mooks Park: Closed year-round.
- ((68)) (69) Monroe Landing: Closed year-round.
- ((69)) (70) Mukilteo: Closed year-round.
- ((70)) (71) Mystery Bay State Park: Open October 1 through April 30 only.
- ((71)) (72) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are closed year-round.
- ((72)) (73) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.
- ~~((73)) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.))~~
- (74) North Bay (Case Inlet): All state-owned tidelands north of the power transmission lines and those extending 1,900 feet south of the power transmission lines along the eastern shore are open March 1 through April 30 and September 1 through ~~((September-30))~~ October 15, from one hour before official sunrise until one hour after official sunset only.
- (75) North Beach County Park: Closed year-round.

- (76) Oak Bay County Park: Closed year-round.
- (77) Oak Harbor: Closed year-round.
- (78) Oak Harbor Beach Park: Closed year-round.
- (79) Oak Harbor City Park: Closed year-round.
- (80) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.
- (81) Old Mill County Park (Silverdale): Closed year-round.
- (82) Olympia Shoal: Closed year-round.
- (83) Pat Carey Vista Park: Closed year-round.
- (84) Penrose Point State Park: (~~Open March 1 through April 30 only, except that portion of Mayo Cove within the commercially prohibited growing area is~~) Closed year-round.
- (85) Picnic Point County Park: Closed year-round.
- (86) Pitship Point: Closed year-round.
- (87) Pitt Island: All tidelands on Pitt Island are closed year-round.
- (88) Pleasant Harbor State Park: Closed year-round.
- (89) Pleasant Harbor WDFW Boat Launch: Closed year-round.
- (90) Point Defiance: Closed year-round.
- (91) Point Whitney Tidelands and Point Whitney Lagoon: Closed year-round.
- (92) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.
- (93) Port Gamble Heritage Park Tidelands: Open (~~(September)~~) August 1 through September 30 only.
- (94) Port Gardner: Closed year-round.
- (95) Port Townsend Ship Canal/Portage Beach: Open (~~(September)~~) April 1 through ((September 30)) May 31 only.
- (96) Post Point: Closed year-round.
- (97) Potlatch State Park and Potlatch DNR tidelands: Open April 1 through May (~~(15))~~ 31 only.
- (98) (~~(Priest Point County Park: Closed year-round.~~
- ~~(99))~~) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.
- (~~(100))~~) (99) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed to the harvest of clams year-round, except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open year-round.
- (~~(101))~~) (100) Quilcene Bay Boat Ramp: Open January 1 through (~~(April 30))~~) May 31 only.
- (~~(102))~~) (101) Retsil: Closed year-round.
- (~~(103))~~) (102) Richmond Beach Saltwater Park: Closed year-round.
- (~~(104))~~) (103) Salt Creek Recreation Area (DNR-419): Closed year-round.
- (~~(105))~~) (104) Saltair Beach (Kingston Ferry Terminal): Closed year-round.
- (~~(106))~~) (105) Saltwater State Park: Closed year-round.
- (~~(107))~~) (106) Samish Bay: Public tidelands of Samish Bay between Scotts Point and a point on the shore (48.5745°, -122.4440°) are closed year-round.
- (~~(108))~~) (107) Scenic Beach State Park: Closed year-round.
- (~~(109))~~) (108) Seahurst County Park: Closed year-round.
- (~~(110))~~) (109) Semiahmoo County Park: Closed year-round.
- (~~(111))~~) (110) Semiahmoo Marina: Closed year-round.

- ((~~112~~)) (111) Sequim Bay State Park: Open January 1 through April (~~(30)~~) 15 only.
- ((~~113~~)) (112) Shine Tidelands State Park: Open January 1 through May 15 only.
- ((~~114~~)) (113) Silverdale Waterfront Park: Closed year-round.
- ((~~115~~)) (114) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.
- ((~~116~~)) (115) Skagit Bay Estuary Wildlife Areas: All public tidelands of Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.
- ((~~117~~)) (116) South Carkeek Park: Closed year-round.
- ((~~118~~)) (117) Southworth: Closed year-round.
- ((~~119~~)) (118) Spencer Spit State Park: Open March 1 through July 31 only.
- (119) Squaxin Park (Priest Point County Park): Closed year-round.
- (120) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.
- (121) Taylor Bay: Closed year-round.
- (122) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.
- (123) Triton Cove Tidelands: Open June 1 through August 31 only.
- (124) Twanoh State Park: Open August 1 through September 30 only.
- (125) Walker County Park: Closed year-round.
- (126) WDFW Hoodspport Hatchery: Tidelands at Hoodspport Salmon Hatchery are closed year-round.
- (127) West Dewatto: DNR Beach 44A open July 1 through September 30 only.
- (128) West Pass Access: Closed year-round.
- (129) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road is open July 15 through (~~August 31~~) September 30 only.
- (130) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.
- (131) Wolfe Property State Park: Open January 1 through May 15 only.
- (132) Woodard Bay Natural Resource Conservation Area: Closed year-round.
- (133) It is lawful to take, dig for, and possess clams and mussels, not including razor clams, for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

[Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 22-06-010 (Order 22-20), § 220-330-110, filed 2/18/22, effective 3/21/22; WSR 21-06-060 (Order 21-24), § 220-330-110, filed 2/26/21, effective 3/29/21; WSR 20-05-019 (Order 20-21), § 220-330-110, filed 2/7/20, effective 3/9/20; WSR 19-08-044 (Order 19-51), § 220-330-110, filed 3/29/19, effective 4/29/19; WSR 18-11-077 (Order 18-99), § 220-330-110, filed 5/17/18, effective 6/17/18; WSR 17-18-004 (Order 17-214), § 220-330-110, filed 8/24/17, effective 9/24/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), re-

codified as § 220-330-110, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04-055 [77.04.055], 77.12.045, and 77.12.047. WSR 16-07-012 (Order 16-41), § 220-56-350, filed 3/4/16, effective 4/4/16. Statutory Authority: RCW 77.04.012, 77.04.055, and 77.12.047. WSR 15-09-046, § 220-56-350, filed 4/10/15, effective 5/11/15. Statutory Authority: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047. WSR 14-07-057 (Order 14-61), § 220-56-350, filed 3/14/14, effective 4/14/14. Statutory Authority: RCW 77.04.020 and 77.12.047. WSR 13-06-034 (Order 13-44), § 220-56-350, filed 3/1/13, effective 4/1/13. Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 12-07-011 (Order 12-31), § 220-56-350, filed 3/12/12, effective 4/12/12; WSR 11-09-073 (Order 11-66), § 220-56-350, filed 4/19/11, effective 5/20/11. Statutory Authority: RCW 77.12.047. WSR 10-07-105 (Order 10-64), § 220-56-350, filed 3/19/10, effective 5/1/10; WSR 09-06-042 (Order 09-27), § 220-56-350, filed 2/25/09, effective 5/1/09; WSR 08-07-003, § 220-56-350, filed 3/5/08, effective 4/5/08; WSR 07-05-051 (Order 07-22), § 220-56-350, filed 2/16/07, effective 3/19/07; WSR 06-05-085 (Order 06-23), § 220-56-350, filed 2/14/06, effective 5/1/06; WSR 05-05-035 (Order 05-15), § 220-56-350, filed 2/10/05, effective 5/1/05; WSR 04-07-009 (Order 04-39), § 220-56-350, filed 3/4/04, effective 5/1/04; WSR 03-05-057 (Order 03-24), § 220-56-350, filed 2/14/03, effective 5/1/03; WSR 02-17-019 (Order 02-193), § 220-56-350, filed 8/9/02, effective 9/9/02; WSR 02-08-048 (Order 02-53), § 220-56-350, filed 3/29/02, effective 5/1/02; WSR 01-06-036 (Order 01-24), § 220-56-350, filed 3/5/01, effective 5/1/01. Statutory Authority: 2000 c 107 § 7. WSR 00-16-091 (Order 00-134), § 220-56-350, filed 7/31/00, effective 8/31/00. Statutory Authority: RCW 75.08.080, 77.12.040. WSR 00-08-038 (Order 00-29), § 220-56-350, filed 3/29/00, effective 5/1/00; WSR 99-08-029 (Order 99-13), § 220-56-350, filed 3/30/99, effective 5/1/99; WSR 98-06-031, § 220-56-350, filed 2/26/98, effective 5/1/98. Statutory Authority: RCW 75.08.080. WSR 97-07-078 (Order 97-53), § 220-56-350, filed 3/19/97, effective 5/1/97; WSR 96-11-078 (Order 96-44), § 220-56-350, filed 5/13/96, effective 6/13/96; WSR 95-12-027 (Order 95-46), § 220-56-350, filed 5/31/95, effective 7/1/95; WSR 94-14-069, § 220-56-350, filed 7/1/94, effective 8/1/94; WSR 93-15-011, § 220-56-350, filed 7/8/93, effective 8/8/93; WSR 93-08-034 (Order 93-20), § 220-56-350, filed 3/31/93, effective 5/1/93; WSR 92-11-012 (Order 92-19), § 220-56-350, filed 5/12/92, effective 6/12/92; WSR 91-08-054 (Order 91-13), § 220-56-350, filed 4/2/91, effective 5/3/91; WSR 90-06-026, § 220-56-350, filed 2/28/90, effective 3/31/90; WSR 89-07-060 (Order 89-12), § 220-56-350, filed 3/16/89; WSR 88-10-013 (Order 88-15), § 220-56-350, filed 4/26/88; WSR 87-09-066 (Order 87-16), § 220-56-350, filed 4/21/87; WSR 86-09-020 (Order 86-08), § 220-56-350, filed 4/9/86; WSR 85-12-046 (Order 85-57), § 220-56-350, filed 6/5/85; WSR 83-07-043 (Order 83-16), § 220-56-350, filed 3/17/83; WSR 81-05-027 (Order 81-13), § 220-56-350, filed 2/17/81, effective 4/1/81; WSR 80-03-064 (Order 80-12), § 220-56-350, filed 2/27/80, effective 4/1/80. Formerly WAC 220-56-082.]

AMENDATORY SECTION (Amending WSR 22-06-010, filed 2/18/22, effective 3/21/22)

WAC 220-330-140 Oysters—Areas and seasons. It is lawful to take and possess oysters for personal use from public tidelands year-round except the following restrictions apply to the public tidelands at the beaches listed below:

(1) Ala Spit: All public tidelands of Ala Spit open May 1 through May 31 only.

(2) Alki Park: Closed year-round.

(3) Alki Point: Closed year-round.

(4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.

(5) Bay View State Park: Closed year-round.

(6) Belfair State Park: Open (~~(July 15)~~) August 1 through September 30 only.

(7) Billy Frank Jr. Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.

(8) Blaine Marine Park: Closed year-round.

~~((8))~~ (9) Blake Island State Park Marina: Closed year-round.

~~((9))~~ (10) Blowers Bluff North: Closed year-round.

~~((10))~~ (11) Brown's Point Lighthouse: Closed year-round.

~~((11))~~ (12) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn from the southern boundary of Burfoot Park west to the opposite shore near 68th Avenue N.W. are closed year-round.

~~((12))~~ (13) Cama Beach State Park: Closed year-round.

~~((13))~~ (14) Camano Island State Park: Closed year-round.

~~((14))~~ (15) Chuckanut Bay: All tidelands of Chuckanut Bay north of the railroad trestle are closed year-round.

~~((15))~~ (16) Coupeville: Closed year-round.

~~((16))~~ (17) Cultus Bay: Closed year-round.

~~((17))~~ (18) Dash Point County Park: Closed year-round.

~~((18))~~ (19) Dash Point State Park: Open September 1 through May 31 only.

~~((19))~~ (20) Dave Mackie County Park: Closed year-round.

~~((20))~~ (21) Deception Pass State Park: Open year-round, except the tidelands of Rosario Bay from the northern park boundary to Rosario Head (48.4172°, -122.6663°) are closed year-round.

~~((21))~~ (22) Des Moines City Park: Closed year-round.

~~((22))~~ (23) Discovery Park: Closed year-round.

~~((23))~~ (24) DNR-142: Closed year-round.

~~((24))~~ (25) DNR-144 (Sleeper): Closed year-round.

~~((25))~~ (26) Dockton County Park: Closed year-round.

~~((26))~~ (27) Dosewallips State Park: Open year-round only in the area defined by boundary markers and signs posted on the beach.

~~((27))~~ (28) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers and signs posted on the beach.

~~((28))~~ (29) Drayton Harbor: All public tidelands of Drayton Harbor are open year-round, except the tidelands identified as prohibited by the department of health and defined by boundary markers and signs posted on the beach are closed year-round.

~~((29))~~ (30) Duckabush: Open November 1 through April 30 only.

- ((+30+)) (31) Dungeness Spit/National Wildlife Refuge: Open May 15 through September 30 only.
- ((+31+)) (32) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.
- ((+32+)) (33) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.
- ((+33+)) (34) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.
- ((+34+)) (35) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.
- ((+35+)) (36) Fay Bainbridge Park: Closed year-round.
- ((+36+)) (37) Fort Flagler State Park: Open January 1 through April 15 and ((July 1)) June 15 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.
- ((+37+)) (38) Freeland County Park: Open October 1 through May 31 only.
- ((+38+)) (39) Frye Cove County Park: Open May 1 through May 31 only.
- ((+39+)) (40) Fudge Point State Park: Closed year-round.
- ((+40+)) (41) Gertrude Island: All tidelands of Gertrude Island are closed year-round.
- ((+41+)) (42) Golden Gardens: Closed year-round.
- ((+42+)) (43) Graveyard Spit: Closed year-round.
- ((+43+)) (44) Guillemot Cove Nature Reserve: Closed year-round.
- ((+44+)) (45) Guss Island: All tidelands of Guss Island are closed year-round.
- ((+45+)) (46) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.
- ((+46+)) (47) Howarth Park/Darlington Beach: Closed year-round.
- ((+47+)) (48) Illahee State Park: Open April 1 through July 31 only.
- ((+48+)) (49) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open ((September)) April 1 through ((September 30)) May 31 only.
- ((+49+)) (50) Ingvald J. Gronvold Park: Open April 1 through ((April 30)) May 31 only.
- ((+50+)) (51) Joemma Beach State Park: Closed year-round.
- ((+51+)) (52) Kayak Point County Park: Closed year-round.
- ((+52+)) (53) Kitsap Memorial State Park: Closed year-round.
- ((+53+)) (54) Kopachuck State Park: Open April 1 through May 31 only.
- ((+54+)) (55) Lent Landing (Port Washington Narrows): Closed year-round.
- ((+55+)) (56) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round, except the western shoreline of Liberty Bay from the unincorporated Kitsap County line south to Virginia Point is open October 1 through April 30 only.
- ((+56+)) (57) Lincoln Park: Closed year-round.
- ((+57+)) (58) Lions Park (Bremerton): Closed year-round.
- ((+58+)) (59) Lofall: Closed year-round.
- ((+59+)) (60) Long Island Oyster Reserve, Diamond Point and Pinnacle Rock (Willapa Harbor reserves): Diamond Point on the northwest

side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.

~~((60))~~ (61) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.

~~((61))~~ (62) Long Point West: Closed year-round.

~~((62))~~ (63) Lower Roto Vista Park: Closed year-round.

~~((63))~~ (64) March Point Recreation Area: Closed year-round.

~~((64))~~ (65) McNeil Island: All tidelands of McNeil Island are closed year-round.

~~((65))~~ (66) Meadowdale County Park: Closed year-round.

~~((66))~~ (67) Mee-Kwa-Mooks Park: Closed year-round.

~~((67))~~ (68) Monroe Landing: Closed year-round.

~~((68))~~ (69) Mukilteo: Closed year-round.

~~((69))~~ (70) Mystery Bay State Park: Open October 1 through April 30 only.

~~((70))~~ (71) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are open year-round.

~~((71))~~ (72) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.

~~((72) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.))~~

(73) North Bay (Case Inlet): All state-owned tidelands north of the power transmission lines and those extending 1,900 feet south of the power transmission lines along the eastern shore are open March 1 through April 30 and September 1 through ~~((September 30))~~ October 15, from one hour before official sunrise until one hour after official sunset only.

(74) North Beach County Park: Closed year-round.

(75) Oak Bay County Park: Closed year-round.

(76) Oak Harbor: Closed year-round.

(77) Oak Harbor Beach Park: Closed year-round.

(78) Oak Harbor City Park: Closed year-round.

(79) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.

(80) Old Mill County Park (Silverdale): Closed year-round.

(81) Olympia Shoal: Closed year-round.

(82) Pat Carey Vista Park: Closed year-round.

(83) Penrose Point State Park: ~~((Open March 1 through April 30 only, except that part of Mayo Cove within the commercially prohibited growing area is))~~ Closed year-round.

(84) ~~((Pitship))~~ Picnic Point County Park: Closed year-round.

(85) ~~((Pienie))~~ Pitship Point ((County Park)): Closed year-round.

(86) Pitt Island: Closed year-round.

(87) Pleasant Harbor State Park: Closed year-round.

(88) Pleasant Harbor WDFW Boat Launch: Closed year-round.

(89) Point Defiance: Closed year-round.

(90) Point Whitney Tidelands and Point Whitney Lagoon: Open January 1 through June 30 only.

(91) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.

(92) Port Gamble Heritage Park Tidelands: Open ~~((September))~~ August 1 through September 30 only.

- (93) Port Gardner: Closed year-round.
- (94) Port Townsend Ship Canal/Portage Beach: Open ((September)) April 1 through ((September 30)) May 31 only.
- (95) Post Point: Closed year-round.
- (96) Potlatch State Park and Potlatch DNR tidelands: Open April 1 through May ((15)) 31 only.
- (97) ((Priest Point County Park: Closed year-round.
- ~~(98)~~) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.
- ((99)) (98) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed year-round except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open year-round.
- ((100)) (99) Quilcene Boat Ramp: Open January 1 through ((April 30)) May 31 only.
- ((101)) (100) Retsil: Closed year-round.
- ((102)) (101) Richmond Beach Saltwater Park: Closed year-round.
- ((103)) (102) Salt Creek Recreation Area (DNR-419): Closed year-round.
- ((104)) (103) Saltair Beach (Kingston Ferry Terminal): Closed year-round.
- ((105)) (104) Saltwater State Park: Closed year-round.
- ((106)) (105) Samish Bay: Public tidelands of Samish Bay between Scotts Point and a point on the shore (48.5745°, -122.4440°) are closed year-round.
- ((107)) (106) Scenic Beach State Park: Closed year-round.
- ((108)) (107) Seahurst County Park: Closed year-round.
- ((109)) (108) Semiahmoo County Park: Closed year-round.
- ((110)) (109) Semiahmoo Marina: Closed year-round.
- ((111)) (110) Sequim Bay State Park: Open January 1 through April ((30)) 15 only.
- ((112)) (111) Shine Tidelands State Park: Open January 1 through May 15 only.
- ((113)) (112) Silverdale Waterfront Park: Closed year-round.
- ((114)) (113) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.
- ((115)) (114) Skagit Bay Estuary Wildlife Areas: All public tidelands of the Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.
- ((116)) (115) South Carkeek Park: Closed year-round.
- ((117)) (116) Southworth: Closed year-round.
- ((118)) (117) Spencer Spit State Park: Open March 1 through July 31 only.
- ((119)) (118) Squaxin Park (Priest Point County Park): Closed year-round.
- (119) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.
- (120) Taylor Bay: Closed year-round.
- (121) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.
- (122) Walker County Park: Closed year-round.

(123) WDFW Hoodspport Hatchery: Open April 1 through (~~April 30~~) May 31, from one hour before official sunrise until one hour after official sunset only.

(124) West Pass Access: Closed year-round.

(125) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road is open July 15 through (~~August 31~~) September 30 only.

(126) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.

(127) Wolfe Property State Park: Open January 1 through May 15 only.

(128) Woodard Bay Natural Resource Conservation Area: Closed year-round.

(129) It is lawful to take and possess oysters for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

[Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 22-06-010 (Order 22-20), § 220-330-140, filed 2/18/22, effective 3/21/22; WSR 21-06-060 (Order 21-24), § 220-330-140, filed 2/26/21, effective 3/29/21; WSR 20-05-019 (Order 20-21), § 220-330-140, filed 2/7/20, effective 3/9/20; WSR 19-08-044 (Order 19-51), § 220-330-140, filed 3/29/19, effective 4/29/19; WSR 18-11-077 (Order 18-99), § 220-330-140, filed 5/17/18, effective 6/17/18; WSR 17-18-004 (Order 17-214), § 220-330-140, filed 8/24/17, effective 9/24/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-330-140, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04-055 [77.04.055], 77.12.045, and 77.12.047. WSR 16-07-012 (Order 16-41), § 220-56-380, filed 3/4/16, effective 4/4/16. Statutory Authority: RCW 77.04.012, 77.04.055, and 77.12.047. WSR 15-09-046, § 220-56-380, filed 4/10/15, effective 5/11/15. Statutory Authority: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047. WSR 14-07-057 (Order 14-61), § 220-56-380, filed 3/14/14, effective 4/14/14. Statutory Authority: RCW 77.04.020 and 77.12.047. WSR 13-06-034 (Order 13-44), § 220-56-380, filed 3/1/13, effective 4/1/13. Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 12-07-011 (Order 12-31), § 220-56-380, filed 3/12/12, effective 4/12/12; WSR 11-09-073 (Order 11-66), § 220-56-380, filed 4/19/11, effective 5/20/11. Statutory Authority: RCW 77.12.047. WSR 10-07-105 (Order 10-64), § 220-56-380, filed 3/19/10, effective 5/1/10; WSR 09-06-042 (Order 09-27), § 220-56-380, filed 2/25/09, effective 5/1/09; WSR 08-07-003, § 220-56-380, filed 3/5/08, effective 4/5/08; WSR 07-05-051 (Order 07-22), § 220-56-380, filed 2/16/07, effective 3/19/07; WSR 06-05-085 (Order 06-23), § 220-56-380, filed 2/14/06, effective 5/1/06; WSR 05-05-035 (Order 05-15), § 220-56-380, filed 2/10/05, effective 5/1/05; WSR 04-07-009 (Order 04-39), § 220-56-380, filed 3/4/04, effective 5/1/04; WSR 03-05-057 (Order 03-24), § 220-56-380, filed 2/14/03, effective 5/1/03; WSR 02-08-048 (Order 02-53), § 220-56-380, filed 3/29/02, effective 5/1/02; WSR 01-06-036 (Order 01-24), § 220-56-380, filed 3/5/01, effective 5/1/01. Statutory Authority: 2000 c 107 § 7. WSR 00-16-091 (Order 00-134), § 220-56-380, filed 7/31/00, effective 8/31/00. Statutory Authority: RCW 75.08.080, 77.12.040. WSR 00-08-038 (Order 00-29),

§ 220-56-380, filed 3/29/00, effective 5/1/00; WSR 99-08-029 (Order 99-13), § 220-56-380, filed 3/30/99, effective 5/1/99; WSR 98-06-031, § 220-56-380, filed 2/26/98, effective 5/1/98. Statutory Authority: RCW 75.08.080. WSR 97-07-078 (Order 97-53), § 220-56-380, filed 3/19/97, effective 5/1/97; WSR 96-11-078 (Order 96-44), § 220-56-380, filed 5/13/96, effective 6/13/96; WSR 95-12-027 (Order 95-46), § 220-56-380, filed 5/31/95, effective 7/1/95; WSR 94-14-069, § 220-56-380, filed 7/1/94, effective 8/1/94; WSR 93-08-034 (Order 93-20), § 220-56-380, filed 3/31/93, effective 5/1/93; WSR 92-11-012 (Order 92-19), § 220-56-380, filed 5/12/92, effective 6/12/92; WSR 91-08-054 (Order 91-13), § 220-56-380, filed 4/2/91, effective 5/3/91; WSR 90-06-026, § 220-56-380, filed 2/28/90, effective 3/31/90; WSR 89-07-060 (Order 89-12), § 220-56-380, filed 3/16/89; WSR 88-10-012 and 88-10-013 (Orders 88-14 and 88-15), § 220-56-380, filed 4/26/88; WSR 87-09-066 (Order 87-16), § 220-56-380, filed 4/21/87; WSR 86-09-020 (Order 86-08), § 220-56-380, filed 4/9/86; WSR 84-09-026 (Order 84-22), § 220-56-380, filed 4/11/84; WSR 82-13-040 (Order 82-61), § 220-56-380, filed 6/9/82; WSR 82-07-047 (Order 82-19), § 220-56-380, filed 3/18/82; WSR 81-05-027 (Order 81-13), § 220-56-380, filed 2/17/81, effective 4/1/81; WSR 80-03-064 (Order 80-12), § 220-56-380, filed 2/27/80, effective 4/1/80. Formerly WAC 220-56-086.]

OTS-4288.3

AMENDATORY SECTION (Amending WSR 22-06-010, filed 2/18/22, effective 3/21/22)

WAC 220-340-130 Oyster drill restricted shellfish areas—Puget Sound. All waters, tidelands, shellfish handling facilities and equipment (including aquaculture vehicles and vessels) operated in conjunction with said waters and tidelands of Puget Sound within the following areas are designated as Oyster Drill Restricted Shellfish Areas:

(1) Dungeness Bay—Inside and bounded westerly of a line projected from the most easterly tip of Dungeness Spit true-south to the mainland.

(2) Drayton Harbor—Inside and southerly of a line projected from the north most tip of Semiahmoo Spit to where the International Boundary line intersects the mainland.

(3) Lummi Bay—Inside the Lummi Dike and inside and bounded by a line projected from 48.7756°, -122.6667°; thence to 48.7653°, -122.6667°; thence to 48.7653°, -122.6533°; then following the shoreline northerly to the point of origin.

(4) Samish Bay—Inside and easterly of a line starting at the most westerly tip of Governor's Point and projected in a southerly direction to the most westerly tip of William Point on Samish Island.

(5) Padilla Bay—Easterly (including the Swinomish Channel) of a line starting at the most westerly tip of William Point on Samish Island and projected southerly to the most northerly tip of March Point on Fidalgo Island.

(6) Similk and Skagit Bays—Northerly of a line projected across Skagit Bay following latitude 48.333° ($48^{\circ}20'N$) and easterly of the Deception Pass bridge.

(7) Liberty Bay—Inside and westerly of a line projected true south from the most southerly point on the Lemolo shoreline, near the powerline tower.

(8) Dyes Inlet—Inside and northerly of a line projected true east from the most northerly tip of Rocky Point to the mainland.

(9) Carr Inlet—

(a) Burley Lagoon—Inside and northerly of the Purdy bridge.

(b) Minter Creek—Inside and westerly of a line projected from the west shore of Carr Inlet at -122.6833° longitude true south to 47.3500° latitude, then true west to shore.

(10) Case Inlet—

(a) Rocky Bay and North Bay—Northerly of a line projected across Case Inlet following latitude 47.3456° ($47^{\circ}20'44"N$).

(b) Vaughn Bay—Easterly of a line projected true north from the most northerly point of the southern spit at the mouth of Vaughn Bay to the mainland on the north shore.

(11) Hammersley Inlet and Oakland Bay—Inside, westerly and northerly of a line starting at the shore at (~~(47.2070°)~~) 47.2071° , (~~(-123.0600°)~~) -123.0627° on the north shore of Hammersley Inlet and projected true south to the south shore of Hammersley Inlet.

(12) Totten Inlet, Oyster Bay and Little Skookum Inlet—Inside and southerly of a line starting at the most southeasterly point on Windy Point and projected northeasterly to the most northerly tip of Sandy Point (i.e., the southern base of the Steamboat Island Bridge).

(13) Eld Inlet—

(a) Mud Bay—Inside and westerly of a line projected from the most easterly point of Flapjack Point and projected true south to the mainland.

(b) Sanderson Harbor—Lying inside and westerly of a line starting at the most northern point on Sanderson Spit and projected northeasterly to the mainland.

(14) Nisqually Flats—Inside and southerly of a line starting on the east shore at 47.1182° , -122.6657° and projected true west to the mainland.

(15) Hood Canal—

(a) Quilcene Bay—Inside, northerly and easterly of a line starting at the Port of Port Townsend boat ramp north of Coast Seafoods company shellfish hatchery projected easterly to a point at (~~(48.8028°)~~) 48.8052° , -122.8583° and then projected southeasterly to the most westerly tip of Fisherman's Point.

(b) Tarboo Bay—Inside, northerly and easterly of a line starting at the most northerly tip of Long Spit and then projected true west to the mainland.

(c) The Great Bend to Lynch Cove—Inside and bounded southerly and easterly by a line projected from the western most point at Musqueti Point true west to the mainland.

(d) Hamma Hamma Flats and Jorstad Creek—Inside and westerly of a line projected from 47.5547° , -123.0289° ; thence to 47.5483° , -123.0183° ; thence to 47.5483° , -123.0300° ; thence to 47.5167° , -123.0300° ; then true west to shore.

(e) Dosewallips Delta—Inside and westerly of lines projected from 47.6842°, -122.8993°; thence to 47.6842°, -122.8733°; thence to 47.7121°, -122.8733°; thence to 47.7121°, -122.8861°.

(f) Point Whitney (including all portions of seawater ponds, lagoon, and shellfish cultivation facilities)—Inside and southerly of lines projected from 47.7619°, -122.8513°; thence to 47.7644°, -122.8513°; thence to 47.7644°, -122.8550°; thence to 47.7625°, -122.8550°.

(g) Duckabush River Mouth—Inside and westerly of a line projected from 47.6467°, -122.9044°; thence to 47.6319°, -122.9417°.

(h) East Dabob Bay—Inside and easterly of a line projected from 47.8283°, -122.7997°; thence to 47.8264°, -122.8050°; thence to 47.8131°, -122.7989°; thence to the shore at 47.8136°, -122.7958°.

(i) Guillemot Cove—((Inside and easterly of lines projected from 47.6119°, -122.8848°; thence to 47.6119°, -122.9208°; thence to 47.6075°, -122.9225°; thence returning to shore at 47.6069° latitude)) South of a line extending westward from the shoreline at 47.6123° latitude to a point at 47.6120°, -122.9207°; east of a line extending southward from 47.6120°, -122.9207° to 47.6075°, -122.9223°; north of a line extending east from 47.6075°, -122.9223° to the shoreline at 47.6071° latitude; west of a line extending northward from 47.6075°, -122.9223° and tracing the shoreline north to the point of origin.

(j) Bywater Bay—Inside and northerly of a line projected true east from latitude 47.8819° (47°52'55"N) to the west shoreline of Hood Head.

(16) Henderson Inlet—South Bay—Inside and southerly of a line commencing at 47.1268°, -122.8412° on the west shore of Henderson Inlet, thence projected true east across Henderson Inlet to the east shoreline.

(17) Birch Bay—Inside and bounded by a line projected from 48.8997°, -122.7761°; thence following the shoreline northeasterly to 48.9105°, -122.7521°; thence to 48.9156°, -122.7586°; thence to 48.9028°, -122.7815°; thence returning to the origin at 48.8997°, -122.7761°.

(18) Scow Bay (Kilisut Harbor)—Scow Bay in Kilisut Harbor southward of a line from 48.0274°, -122.7039° on the east shore of Indian Island to 48.0274°, -122.6931° on the west shore of Marrowstone Island.

[Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 22-06-010 (Order 22-20), § 220-340-130, filed 2/18/22, effective 3/21/22. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-130, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047. WSR 14-07-092 (Order 14-63), § 220-72-011, filed 3/18/14, effective 4/18/14. Statutory Authority: RCW 77.12.047. WSR 05-01-113 (Order 04-318), § 220-72-011, filed 12/15/04, effective 1/15/05; WSR 03-10-041 (Order 03-86), § 220-72-011, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080. WSR 97-08-078 (Order 97-56), § 220-72-011, filed 4/2/97, effective 5/3/97.]

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-170 European green crab (*Carcinus maenas*) restricted shellfish area. (~~The European green crab restricted shellfish areas are as follows:~~

~~The waters and tidelands of Grays Harbor inside and)~~

All waters, embayments, sloughs, tidelands, shellfish handling facilities and equipment within the following are designated as European Green Crab Restricted Shellfish Areas:

(1) Coastal waters: From west of a line projected true north-south through Buoy 10 located between the north and south jetties at the mouth of the Columbia River, northward to the Bonilla-Tatoosh line as defined in WAC 220-300-360;

(2) Lower Columbia River: That area within the state of Washington from the Astoria-Megler Bridge west to a line projected true north-south through Buoy 10 located between the north and south jetties at the mouth of the Columbia River.

(3) Willapa Bay: Easterly of a line projected from the most northern tip of Leadbetter Point true north to Cape Shoalwater.

(4) Grays Harbor: Easterly of a line projected from the outermost end of the north jetty of Grays Harbor to the outermost end of the south jetty ((and from the waters and tidelands of Willapa Bay inside and easterly of a line projected from the most northern tip of Leadbetter Point true north to Cape Shoalwater)) of Grays Harbor.

(5) Puget Sound: All Washington waters eastward from the Bonilla-Tatoosh line as defined in WAC 220-300-360 and southward from the International Boundary at 49° north latitude to a line drawn between Tala Point, Foulweather Bluff, and Double Bluff on Whidbey Island, excluding the waters to the east of Whidbey Island (defined as all waters east of the Deception Pass Bridge and north of a line from the southern tip of Possession Point (47.9061°, -122.3846°) to the shipwreck located 0.8 nautical miles north of Picnic Point (47.8931°, -122.3286°) on the opposite shore).

(6) Hood Canal: South of a line drawn between Foulweather Bluff and Tala Point.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-170, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 03-10-041 (Order 03-86), § 220-72-086, filed 4/30/03, effective 5/31/03.]

WSR 23-03-096
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 17, 2023, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-23-108.

Title of Rule and Other Identifying Information: The department is proposing to adopt WAC 388-439-0005 What is the pandemic EBT program?, 388-439-0015 General information about pandemic EBT benefits, 388-439-0020 Eligibility of pandemic EBT benefits for children under age six, and 388-439-0025 Eligibility of pandemic EBT benefits during the 2022 summer period.

Hearing Location(s): At February 21, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than February 22, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by February 21, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tenczsa@dshs.wa.gov, by February 7, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed adoption of these rules supports implementation and extension of the pandemic EBT program for eligible children who do not have access to regular free or reduced-price school meals or childcare meals due to limited onsite learning or attendance as a result of the COVID-19 pandemic (as allowed under Section 1101 of H.R. 6201, Families First Coronavirus Response Act and amended by Section 1108 of H.R. 1319, American Rescue Plan Act of 2021).

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Troy Burgess, P.O. Box 45470, Olympia, WA 98504-5470, 360-584-5162.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

January 13, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4858.10

**Chapter 388-439 WAC
PANDEMIC EBT (P-EBT) PROGRAM**

NEW SECTION

WAC 388-439-0005 What is the pandemic EBT program? (1) The pandemic electronic benefits transfer (P-EBT) program is a temporary federally funded nutrition program authorized through the families first coronavirus act that provides food benefits to eligible children who do not have access to meals at a covered childcare center or free or reduced-price school meals due to the COVID-19 public health emergency. P-EBT is administered by the department of social and health services (department) and is not bound by regulations governing the supplemental nutrition assistance program.

(2) The following definitions apply to this program:

(a) "Benefit level" means the P-EBT benefit amount provided to an eligible child;

(b) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:

(i) Receiving a benefit from a federal-means tested assistance program, including the supplemental nutrition assistance program (SNAP), temporary assistance for needy families (TANF), food distribution program on Indian reservations (FDPIR), some medicaid programs; or

(ii) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program (ECEAP);

(c) "Eligible student" means a child or student, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program (NSLP) and school breakfast program (SBP) during the school year, who is:

(i) Enrolled in a school or registered in a program in Washington state that normally participates in the NSLP;

(ii) Attending a school that has been closed or has reduced attendance or hours for five or more consecutive days during the school year due to the COVID-19 public health emergency designation; and

(iii) Determined by the school to be eligible for free or reduced-priced school meals or attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program. Students are identified as eligible for free or reduced-price school meals using direct certification or free or reduced-price school meals application;

(d) "Free or reduced-price school meals" means meals provided to students qualified as eligible by the Richard B. Russell National School Lunch Act;

(e) "Meal service" means the typical meals (SBP and NSLP) served when school is in session and consumed onsite as part of the school day. Meal service includes both breakfast and lunch.

(f) "Operating days" are days a school regularly operates, excluding weekends, breaks, and holidays;

(g) "P-EBT card" means the unique electronic benefit transfer (EBT) card that accesses P-EBT food benefits issued to eligible students or children under age six;

(h) "Public health emergency" means a federal declaration of a public health emergency due to the COVID-19 pandemic as issued by the secretary of health and human services;

(i) "School" means any public or nonprofit private schools, charter schools, and tribal compact schools within the state of Washington;

(j) "School closure" means that the school was closed for in-person or remote learning with no meal service available to students enrolled in the school;

(k) "Summer period" means the months between the end of the school year and the start of the next school year during which there was a public health emergency.

[]

NEW SECTION

WAC 388-439-0015 General information about pandemic EBT benefits. (1) Pandemic electronic benefit transfer (P-EBT) benefits will be deposited into an account accessible with a debit card called a P-EBT card. A P-EBT card will be issued to each eligible student or child under age six. Each P-EBT card will be:

(a) Linked to an EBT account for each eligible student or child under age six for P-EBT benefits; and

(b) Mailed to either:

(i) The address on file with the school for the eligible student;

or

(ii) The address on file with the department for the basic food case for the child under age six.

(2) To use a P-EBT account:

(a) The P-EBT card can be used by the eligible student or child under age six or responsible household member, such as a parent or caregiver, on behalf of the eligible student or child under age six, to access the benefits in their EBT account;

(b) A personal identification number (PIN) has to be created that must be used with the P-EBT card to purchase food items;

(c) P-EBT benefits must be accessed from the P-EBT card of an eligible student or child under age six. P-EBT benefits cannot be transferred to a bank account or issued as a check;

(d) P-EBT benefits must be used within 274 days from the last purchase or deposit activity on the eligible child's account;

(e) P-EBT benefits not used within 274 days will be removed; and information about the removal of benefits is included in the notice of approval.

(f) P-EBT benefits cannot be replaced once redeemed, removed, lost, or stolen.

(g) Families are responsible for keeping the P-EBT card and PIN of an eligible student or child under age six in a safe and secure place.

(3) The purpose of P-EBT benefits is to help low-income families or individuals have a more nutritious diet by providing food benefits to eligible children during the COVID-19 public health emergency.

(a) P-EBT benefits are used to buy food items for an eligible child (or youth) from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. department of agriculture food and nutrition service (FNS).

(b) Use P-EBT benefits the same as other food benefits under WAC 388-412-0046 (2)(c).

(c) It is not legal to use P-EBT benefits as described under WAC 388-412-0046 (2)(d).

(d) If people intentionally misuse P-EBT benefits, they may be:

(i) Subject to fines; or

(ii) Subject to legal action, including criminal prosecution. Department of social and health services (DSHS) will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking P-EBT benefits.

[]

NEW SECTION

WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six. (1) To be eligible for federally funded pandemic electronic benefits transfer (P-EBT) benefits for children under age six, a child must be:

(a) A member of a household that received supplemental nutrition assistance program (SNAP) between October 1, 2021, and June 30, 2022;

(b) Under the age of six.

(2) Children who do not qualify for federally funded P-EBT benefits because they are on state-funded food assistance program (FAP) may be eligible for state-funded P-EBT.

(a) State-funded P-EBT follows the same eligibility rules as subsection (1) of this section, except that the child must be a member of a household that received FAP, instead of SNAP, between October 1, 2021, and June 30, 2022.

(b) State-funded P-EBT benefits are contingent on the availability of state funds.

(3) We calculate a standard benefit level for each month of P-EBT eligibility by:

- (a) Using the full daily meal reimbursement rate of seven dollars and ten cents for breakfast, lunch, and snack;
- (b) Multiplied by the statewide average operating days of 18 days per month;
- (c) Multiplied using a percentage of benefit reimbursement based on statewide child and adult care food program (CACFP) reported meal service prior to the COVID-19 public health emergency compared to the current school year, a 34 percent reduction, as follows:

Daily Reimbursement Rate	Average Operating Days	Reduction in CACFP Claims	Average Monthly Benefits
\$7.10	18	34%	\$43

- (d) P-EBT benefits are issued for each month that the household receives a SNAP or FAP benefit more than zero dollars.
- (4) P-EBT benefits are issued for a child under age six for a retroactive period of time as follows:
 - (a) An initial one-time P-EBT allotment is issued for the months of September 2021, to June 2022;
 - (b) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.
 - (5) Benefits for a child under age six will be placed on a P-EBT card under WAC 388-439-0015.
 - (6) Issuance of P-EBT benefits beyond September 30, 2022, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.

[]

NEW SECTION

WAC 388-439-0025 Eligibility for pandemic EBT benefits during the 2022 summer period. (1) During the summer period of July and August 2022, schools and covered childcare centers will be deemed as closed.

(2) To be eligible for the pandemic electronic benefits transfer (P-EBT) benefit during the summer period after the 2021-2022 school year, prior to August 31, 2022, a child must be:

- (a) An eligible student as defined under WAC 388-439-0005(c) in June 2022; or
- (b) A child under age six, as defined under WAC 388-439-0020(1), between June 1, 2022, and August 31, 2022.

(3) A child determined eligible in subsection (2) of this section will receive a one-time, lump sum payment of \$391 for the 2022 summer period.

(4) Summer P-EBT benefits for an eligible student or a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(5) Issuance of summer period benefits beyond September 30, 2022, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.

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WSR 23-03-097

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed January 17, 2023, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-070.

Title of Rule and Other Identifying Information: WAC 182-543-8200
Billing for clients eligible for medicare and medicaid.

Hearing Location(s): On February 21, 2023, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_039grFzsQQio-J3HHuB5xQ. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: February 22, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by February 21, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by February 10, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this rule to remove subsections (1) and (2) regarding payment for services covered by medicare. The proposed rule replaces these subsections with a reference to HCA's general rules for medicare coinsurance, payments, and deductibles in WAC 182-502-0110, which is consistent with the federal requirements for cost sharing with qualified medicare beneficiaries.

Reasons Supporting Proposal: This amendment aligns WAC 182-543-8200 with federal requirements.

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.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

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: Erin Mayo, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1729.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how

costs were calculated. This rule does not impose any costs on small businesses.

January 17, 2023
Wendy Barcus
Rules Coordinator

OTS-4209.1

AMENDATORY SECTION (Amending WSR 18-24-021, filed 11/27/18, effective 1/1/19)

WAC 182-543-8200 Billing for clients eligible for medicare and medicaid. If a client is eligible for both medicare and medicaid(~~(1) The medicaid agency requires a provider to accept medicare assignment before any medicaid reimbursement;~~
~~(2) In accordance with WAC 182-502-0110(3):~~
~~(a) If the service provided is covered by medicare and medicaid, the agency pays only the deductible or coinsurance up to medicare's or medicaid's allowed amount, whichever is less.~~
~~(b) If the service provided is covered by medicare but is not covered by the agency, the agency pays only the deductible or coinsurance up to medicare's allowed amount)), see WAC 182-502-0110 Conditions of payment and prior authorization requirements—Medicare coinsurance, copayments, and deductibles.~~

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Part 440.70; 42 U.S.C. section 1396 (b) (i) (27). WSR 18-24-021, § 182-543-8200, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021 and 2013 c 178. WSR 14-08-035, § 182-543-8200, filed 3/25/14, effective 4/25/14. WSR 11-14-075, recodified as § 182-543-8200, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 11-14-052, § 388-543-8200, filed 6/29/11, effective 8/1/11.]

WSR 23-03-106

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed January 17, 2023, 5:10 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 246-915A-010

Physical therapy licensure compact—Compact commission rules. The board of physical therapy (board) is proposing to update the effective date in WAC 246-915A-010 for the physical therapy compact per RCW 18.74.500, Article IX(2). This proposed rule will update the compact effective date to October 30, 2022.

Hearing Location(s): On February 27, 2023, at 10:15 a.m., at Lacey Community Center, 6729 Pacific Avenue S.E., Lacey, WA 98502; or virtual. Please follow this link to register for the virtual hearing which will give you instructions to either join the meeting on a device, or to call in to the meeting on the phone, https://us02web.zoom.us/webinar/register/WN_2-X17yG-Siavk27o6YaZFQ. The board will provide a virtual and physical location for this hearing to promote social distancing and the safety of the citizens of Washington state.

Date of Intended Adoption: February 27, 2023.

Submit Written Comments to: Allyson McIver, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, email physical.therapy@doh.wa.gov, fax 360-236-2901, by February 20, 2023.

Assistance for Persons with Disabilities: Contact Allyson McIver, program manager, phone 360-236-2878, fax 360-236-2901, TTY 711, email physical.therapy@doh.wa.gov, by February 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update the effective date in WAC to the compact rules most recent version, October 30, 2022. The compact commission rules are not effective in Washington unless the board approves and adopts the rules.

The physical therapy compact commission rules, effective October 30, 2022, amended existing rules to:

(1) Conform with the model compact language.

(2) Change the time frame for reporting disciplinary actions to the compact commission.

(3) Clarify the change of home state notification requirements.

(4) Add a new definition of "Initial."

(5) Clarify the jurisprudence requirements.

(6) Clarify the National Physical Therapy Examination (NPTE) as the requirement for licensure.

Reasons Supporting Proposal: The board is proposing amendments to comply with RCW 18.74.500, Article IX(2), which mandates that the board must update the effective date of the compact rules to participate in the compact in the state of Washington.

Statutory Authority for Adoption: RCW 18.74.500, Article IX(2) and 18.74.023.

Statute Being Implemented: RCW 18.74.500, Article IX(2).

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

Name of Proponent: Board of physical therapy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Allyson McIver, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2878.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Please explain: RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: The proposed changes adopt without change amendments made to the physical therapy licensure compact. The proposed rule references the compact rules most recent adopted version.

Scope of exemption for rule proposal:
Is fully exempt.

January 17, 2023
Harold Wright, Jr.
Executive Director

OTS-4268.1

AMENDATORY SECTION (Amending WSR 22-10-021, filed 4/25/22, effective 4/25/22)

WAC 246-915A-010 Physical therapy licensure compact—Compact commission rules. (1) The physical therapy licensure compact (compact) is established in Washington under RCW 18.74.500. Its purpose is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services.

(2) The rules of the physical therapy compact commission, in effect as of October ((24, 2021)) 30, 2022, are adopted and incorporated by reference.

(3) A copy of the rules is available for public inspection from the department of health at <https://www.doh.wa.gov/LicensesPermitsandCertificates/ProfessionsNewReneworUpdate/PhysicalTherapyLicensureCompact/RulesInProgress> or by calling the department of health's office of customer service at 360-236-4700.

(4) A licensee may exercise a compact privilege as provided in RCW 18.74.500, Article IV. Applicable fees are set forth in WAC 246-915A-990.

[Statutory Authority: RCW 18.74.023 and 18.74.500, Article IX(2). WSR 22-10-021, § 246-915A-010, filed 4/25/22, effective 4/25/22; WSR 21-11-006, § 246-915A-010, filed 5/7/21, effective 5/7/21; WSR 20-11-063, § 246-915A-010, filed 5/19/20, effective 6/19/20. Statutory Authority: RCW 18.74.500, 18.74.023, and 2017 c 108. WSR 19-12-056, § 246-915A-010, filed 5/31/19, effective 7/1/19.]

WSR 23-03-109

PROPOSED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed January 18, 2023, 7:56 a.m.]

Supplemental Notice to WSR 22-20-100.

Preproposal statement of inquiry was filed as WSR 20-17-143.

Title of Rule and Other Identifying Information: New WAC

246-945-486 Return and reuse of unexpired medications—Department of corrections and 246-945-488 Safe donation of unexpired prescription drugs. The pharmacy quality assurance commission (commission) is proposing new sections in chapter 246-945 WAC for the implementation of SSB 6526, an act relating to the reuse and donation of unexpired prescription drugs. The supplemental proposal removes a prescriber notification requirement from WAC 246-945-488 (2)(h)(i).

Hearing Location(s): On March 3, 2023, at 9:20 a.m., at Capital Region ESD 113, 6005 Tye Drive S.W., Tumwater, WA 98512; or virtual. Please download and import the following iCalendar (.ics) fields to your calendar system. Daily: <https://us02web.zoom.us/webinar/tZIsdu2hqzMuHNJh1lH4KKYkCjwBU5J0e2Ps/ics?icsToken=98tyKuGurzouE9GdtB-BRpwABYj4LPPwmFxbgo13lBppK3R4Str9FehVEIcqOojV>. Topic: PQAC Business Meeting 2022. To access the meeting on March 3, 2023, at 9 a.m., go to <https://zoom.us/join> or <https://us02web.zoom.us/j/86114958466> and use the webinar ID 861 1495 8466. The access options include one-tap mobile: US: +12532158782,,86114958466# or +16699009128,,86114958466# or phone, dial (for higher quality, dial a number based on your current location) US: +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799, Webinar ID 861 1495 8466. International numbers available <https://us02web.zoom.us/join>. The commission will provide a virtual and physical location for this hearing to promote social distancing and the safety of the citizens of Washington state.

Date of Intended Adoption: March 3, 2023.

Submit Written Comments to: Joshua Munroe, P.O. Box 47582, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by February 17, 2023.

Assistance for Persons with Disabilities: Contact Joshua Munroe, phone 360-236-2987, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov, by February 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2020 Washington state legislature passed SSB 6526, an act relating to the reuse and donation of unexpired prescription drugs. SSB 6526 permits the department of corrections (DOC) pharmacy to accept returns of unit dose packages. The law also allows the commission to adopt rules to allow the safe donation of prescription drugs under chapter 69.70 RCW including, but not limited to, allowing pharmacy donation of unexpired prescription drug stock.

The proposed WAC 246-945-486 specifically allows the DOC pharmacy to accept for return and reuse noncontrolled unexpired legend drugs in unit dose packages, or full or partial multiple dose medication cards from the facilities it serves. The DOC pharmacy must ensure product integrity by adhering to RCW 69.70.050 (1), (2), and (5).

The proposed language in WAC 246-945-488 adopts the required conditions for donated prescription drugs outlined in chapter 69.70 RCW,

but also adds a requirement that participating pharmacies must submit an additional form to the commission as notification of participation in the program. They must also notify the commission when terminating participation in the program. The proposed rule also directs participating pharmacies to develop policies and procedures that facilitate compliance with the statutory requirements. The policies and procedures must also include an additional requirement to notify the prescriber when donated medications are dispensed to a patient.

In addition, WAC 246-945-488 contains measures to ensure patient safety and product integrity such as separating the donated drugs from the rest of the pharmacy's drug stock and maintaining a separate inventory. Finally, the rule also adds the clarification that practitioners, pharmacists, medical facilities, manufacturers, wholesalers, or persons to whom a prescription drug was prescribed are not required to obtain a wholesaler license when donating drugs to a pharmacy.

Following the public rules hearing held on November 17, 2022, the commission determined that the proposed rule language required an amendment to WAC 246-945-488 (2)(h)(i) to remove a prescriber notification requirement that was deemed unnecessary in order to provide donated prescription drugs to patients with a valid standing prescription.

Reasons Supporting Proposal: SSB 6526 requires the commission to adopt rules allowing the DOC pharmacy to accept returns of unit dose packages or full or partial multiple dose medication cards from the facilities it serves and reuse the unexpired medication. The bill also allows the commission to adopt rules allowing the safe donation of prescription drugs under chapter 69.70 RCW including, but not limited to, allowing pharmacy-to-pharmacy donations of unexpired prescription drug stock. The proposed rules improve accessibility and visibility of the drug donation program under chapter 69.70 RCW while ensuring optimal patient safety and product integrity.

The commission determined during the November 17, 2022, public rules hearing that the prescriber notification requirement found in WAC 246-945-488 (2)(h)(i) was superfluous if a patient already has a valid prescription for the drug donated via the prescription donation program. Furthermore, it was decided that any delay caused by notifying prescribers for a prescription they have already issued could be deleterious to the patient's health.

Statutory Authority for Adoption: RCW 18.64.005; SSB 6526 (chapter 264, Laws of 2020) codified as RCW 18.64.610 and 69.70.110.

Statute Being Implemented: SSB 6526 (chapter 264, Laws of 2020) codified as RCW 18.64.610 and 69.70.110.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joshua Munroe, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2987; Enforcement: Marlee O'Neill, 111 Israel Road S.E., Tumwater, WA 98501, 360-480-9108.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Munroe, P.O. Box 47852, Olympia, WA 98504-47852, phone 360-236-2987, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not require changes to a licensee's or a pharmacy's existing practices or infrastructure. For pharmacies that choose to participate in the prescription donation program, costs are limited to one-time costs, procuring additional shelving/storage, time taken creating policies and procedures, and time taken to fill out the necessary registration form, and the recurring cost of maintaining a separate inventory for donated items. The agency estimates that the probable one-time cost to comply with the optional program could be as high as \$733.50 which is significantly less than the minor cost threshold of either one percent of average annual payroll (\$6,639.73) or .3 percent of average annual gross business income (\$53,119.28). The agency determined that the requirements to comply with the optional program did not impose more-than-minor costs on small businesses.

It was further determined that the proposed amendment to WAC 246-945-488 (2)(h)(i) to remove the prescriber notification requirement would not affect existing cost estimates.

January 17, 2023
Teri Ferreira, RPh
Pharmacy Quality Assurance Chair

OTS-3189.3

NEW SECTION

WAC 246-945-486 Return and reuse of unexpired medications—Department of corrections. (1) For the purposes of this section, the term "facilities" includes all facilities served by the Washington state department of corrections pharmacy.

(2) The Washington state department of corrections pharmacy may accept for return and reuse noncontrolled legend drugs in unit dose packages, or full or partial multiple dose medication cards from the facilities it serves, if product integrity can be assured and the Washington state department of corrections pharmacy complies with RCW 69.70.050 (1), (2), and (5).

[]

NEW SECTION

WAC 246-945-488 Safe donation of unexpired prescription drugs. (1) For the purposes of this section, the definitions in RCW 69.70.010 apply.

(2) A pharmacy that accepts, distributes, or dispenses prescription drugs and supplies under WAC 246-945-485 (1)(b) that are donated shall:

(a) Comply with the requirements in RCW 69.70.020, 69.70.030, 69.70.040, and 69.70.050, when applicable;

(b) Complete and return an attestation form developed and supplied by the commission attesting to participation in the drug donation program;

(c) Notify the commission in writing if it is no longer accepting donated prescription drugs and supplies. This notification must occur within thirty calendar days of the pharmacy no longer accepting donated prescription drugs and supplies;

(d) Not accept donations of prescription drugs and supplies via a drop box;

(e) Ensure that prescription drugs and supplies donated by the person to whom the prescription drug was prescribed or the person's representative are accompanied by the department's drug donation form in accordance with RCW 69.70.020(2);

(f) Ensure clear separation of the pharmacy's donated prescription drug stock from the rest of the pharmacy's drug stock;

(g) Maintain a separate inventory of all prescription drugs and supplies donated to the pharmacy; and

(h) Develop and implement policies and procedures addressing:

(i) When prescription drugs or supplies may be accepted and dispensed. The policy and procedure shall require a pharmacist to inspect the donated prescription drugs and supplies; and

(ii) How the pharmacy will respond when it is informed of a recall for donated prescription drugs and supplies.

(3) Practitioners, pharmacists, medical facilities, drug manufacturers, drug wholesalers, persons to whom a prescription drug was prescribed, or the person's representative, are not required to obtain a wholesaler license when donating prescription drugs to a pharmacy.

[]

WSR 23-03-110

PROPOSED RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed January 18, 2023, 8:11 a.m.]

Supplemental Notice to WSR 22-04-087.

Preproposal statement of inquiry was filed as WSR 20-01-013.

Title of Rule and Other Identifying Information: WAC 246-933-501 through 246-933-550, authorizing animal care and control agencies and nonprofit humane societies to provide limited veterinary services. The veterinary board of governors (board) is proposing rule amendments and the repeal of WAC 246-933-550 to implement SSB 5004 (chapter 142, Laws of 2019) to allow animal care and control agencies and nonprofit humane societies (entities) to provide full veterinary service at reduced costs to low-income households. The supplemental proposal streamlines and clarifies recordkeeping and reporting requirements for agencies to allow more flexibility to comply with statute.

Hearing Location(s): On March 6, 2023, at 10:00 a.m., at The Olympia Center, 222 Columbia Street N.W., Room TBD, Olympia, WA 98501; or join on your computer, mobile app, or room device. Link to join the meeting [Date of Intended Adoption: March 6, 2023.](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_ZDNjZmI3MmItNjcyMy00NGI2LWE4OTAtYzRiZTk2NmFiZjIx%2540thread.v2%2F0%3Fcontext%3D%257b%2522tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522oid%2522%253a%2522b0a413cc-861e-438f-ad33-52df6d9a4283%2522%257d&data=05%7C01%7CJennifer.Santiago%40doh.wa.gov%7Cd4dd5c85a44e4f1fc13e08daa1807d28%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C637999870476936757%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=Sdo38Gf5uRmBObHAn7CatY2Xh1inN8a%2FLTm3kijuzPE%3D&reserved=0, phone 833-322-1218,,886947631# United States (toll-free), phone conference ID 886 947 631#.</p></div><div data-bbox=)

Submit Written Comments to: Lorelei Walker, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, loralei.walker@doh.wa.gov, by February 24, 2023.

Assistance for Persons with Disabilities: Contact Lorelei Walker, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, fax 360-236-2901, TTY 711, email loralei.walker@doh.wa.gov, by February 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing rule amendments to WAC 246-933-501 through 246-933-550 for authorizing animal care and control agencies and nonprofit humane societies to provide limited veterinary services to implement SSB 5004. Previously, entities were limited to providing electronic identification, surgical sterilization, and vaccinations at reduced cost to low-income households. SSB 5004 now allows entities to provide full veterinary services to low-income households. Reporting requirements are included to demonstrate that entities provide services at a reduced cost exclusively to low-income households. The supplemental proposal changes are a simplification of requirements originally proposed in WAC 246-933-520 regarding a client establishing proof of low-income status or eligibility of receipt of benefits, a client attestation, and an agency reporting such

information to the board. The effect of the tracking and reporting requirements remain the same but are simplified to allow participating facilities the flexibility to establish their own processes.

Reasons Supporting Proposal: The supplemental proposed rule identifies methods in which the agency may verify service to low-income clients and sets reporting requirements to provide clearer and more enforceable standards for these veterinary services. The proposal also clarifies that entities are allowed to provide emergency, life-preserving care and short-term post-adoption care, when needed, to households not qualifying as low-income. Enforcement requirements are consolidated without changing their effect, allowing the repeal of WAC 246-933-550. Following the hearing on March 21, 2021, the board determined more clarification and flexibility in the rule was necessary.

Statutory Authority for Adoption: RCW 18.92.030 and 18.92.260.

Statute Being Implemented: SSB 5004 (chapter 142, Laws of 2019) as codified as RCW 18.92.250 and 18.92.260.

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

Name of Proponent: Veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lorelei Walker, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4947.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lorelei Walker, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4947, fax 360-236-2901, TTY 711, email lorelei.walker@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: Proposed rule amendments to WAC 246-933-501, 246-933-510, and 246-933-530 are exempt under RCW 34.05.310 (4) (d).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Proposed rule amendment to WAC 246-933-501, 246-933-510, and 246-933-530 are exempt under RCW 34.05.310 (4) (d) because they correct or clarify language.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. 2017 Industry NAICS code 813312 calculates the annual minimal cost threshold of these businesses to be \$1,546.87. This threshold represents 0.3 percent of the average annual gross business income.

The board assumes that the proposed rule amendments to WAC 246-933-520 will not impose more-than-minor costs exceeding \$1,546.87 per year on nonprofit human[e] societies and animal care and control agencies as defined in RCW 16.52.001.

The board does not have an adequate estimate as to how many low-income clients (new or existing) would need verification after implementation of the proposed rule, making the annual cost of low-income verification unknown. The unit cost per household verification to comply with this rule ranges from \$0 (for entities providing veterinary

services that are already in compliance with the rule) and \$2.83 (for entities providing veterinary services that are not currently in compliance with the rule). This estimate is based on an average hourly salary of \$17 for a humane society employee and up to 10 minutes spent per household verified. The one-time cost of developing a tracking system (spreadsheet) to comply with the rule ranges from \$0 (for entities providing veterinary services that are already in compliance with the rule) and \$68 (for entities providing veterinary services that are not currently in compliance with the rule), based on four hours of a humane society employee's time to develop a spreadsheet. The board intends to have a brief and streamlined process for reporting to reduce the monetary burden on agencies.

January 18, 2023

Kim Morgan, LVT

Chairperson, Veterinary Board of Governors

OTS-3372.4

AUTHORIZING ANIMAL CARE AND CONTROL AGENCIES AND NONPROFIT HUMANE SOCIETIES TO PROVIDE ((LIMITED)) VETERINARY SERVICES

AMENDATORY SECTION (Amending WSR 03-14-035, filed 6/23/03, effective 7/24/03)

WAC 246-933-501 Intent. It is the intent of the legislature to allow qualified animal control agencies and humane societies to provide ~~((limited))~~ veterinary services to low-income ~~((members of))~~ households in our communities. It is not the intent of the legislature to allow these ~~((agencies))~~ entities to provide veterinary services to the public at large, except for in emergency situations and when providing postadoption care as described in RCW 18.92.260 (1)(c).

[Statutory Authority: RCW 18.92.030 and 18.92.260. WSR 03-14-035, § 246-933-501, filed 6/23/03, effective 7/24/03.]

AMENDATORY SECTION (Amending WSR 03-14-035, filed 6/23/03, effective 7/24/03)

WAC 246-933-510 Definitions. ~~((As used in))~~ The definitions in this section apply throughout this chapter((+)) unless the context clearly requires otherwise.

(1) "Entity" means animal care and control agencies as defined in RCW 16.52.011 and nonprofit humane societies, which have qualified under section 501 (c)(3) of the Internal Revenue Code.

(2) "Emergency care" as referred to in RCW 18.92.260 (1)(b) means an unexpected, serious occurrence or situation which urgently requires prompt action in order to prevent an animal's death or permanent injury, unless defined otherwise by local ordinance.

(3) "Low-income household" as defined in RCW 43.185A.010 means a single person, family or unrelated persons living together whose adjusted family income is less than ((eighty)) 80 percent of the median family income, adjusted for household size, for the county where the project is located ((RCW 43.185A.010(5))).

[Statutory Authority: RCW 18.92.030 and 18.92.260. WSR 03-14-035, § 246-933-510, filed 6/23/03, effective 7/24/03.]

AMENDATORY SECTION (Amending WSR 03-14-035, filed 6/23/03, effective 7/24/03)

WAC 246-933-520 Registration, household eligibility, and auditing. ((A qualified animal care, control agency, or nonprofit humane society may)) (1) An entity must obtain a registration credential in order to provide veterinary services as described in RCW 18.92.260. ((Refer to the requirements of chapter 246-12 WAC, Part 3.)) To obtain a registration the entity must comply with WAC 246-12-060.

(2) To provide veterinary services, a registered entity must adopt procedures to verify a household qualifies as a low-income household as defined in WAC 246-933-510(3). Procedures may include, but are not limited to:

(a) Reviewing proof of income;

(b) Reviewing proof of eligibility for or receipt of benefits based on low-income status; or

(c) Accepting attestation of low-income status.

(3) Upon request, entities must provide the board information demonstrating they have verified low-income status of households served.

[Statutory Authority: RCW 18.92.030 and 18.92.260. WSR 03-14-035, § 246-933-520, filed 6/23/03, effective 7/24/03.]

AMENDATORY SECTION (Amending WSR 14-13-016, filed 6/6/14, effective 7/7/14)

WAC 246-933-530 Purchase and use of legend drugs and controlled substances. (1) For purposes of this section, "drugs" includes both legend drugs and controlled substances.

(a) "Legend drugs" means any drugs that are required by state law or regulation of the pharmacy quality assurance commission to be dispensed on prescription only or are restricted to use by practitioners only.

(b) "Controlled substances" means a drug, substance, or immediate precursor in Schedule I through V of Article II of chapter 69.50 RCW.

(2) A licensed veterinarian shall be responsible for the policies and procedures regarding the ordering, purchasing, safe storage, dispensing and administration of all drugs used at an entity registered under RCW 18.92.260 in connection with surgical sterilization or emer-

gency care. Entities are responsible for the ordering, purchasing, and safe storage of all drugs.

(a) The veterinarian shall comply with the pharmacy quality assurance commission requirements for controlled substances in chapter 69.50 RCW, and legend drugs in chapter 69.41 RCW.

(b) All drugs shall be stored in accordance with WAC 246-933-320.

(c) All controlled substances shall be stored, maintained, administered, dispensed and prescribed in compliance with federal and Washington state laws.

(d) All legend drugs shall be dispensed in accordance with RCW 18.92.012, 18.92.013, and WAC 246-933-340(5).

(e) A record of all drugs administered (~~and/or~~) or dispensed shall be kept in the individual animal's record.

(f) All records are subject to inspection by the pharmacy quality assurance commission investigators.

[Statutory Authority: RCW 18.92.030(2). WSR 14-13-016, § 246-933-530, filed 6/6/14, effective 7/7/14. Statutory Authority: RCW 18.92.030 and 18.92.260. WSR 03-14-035, § 246-933-530, filed 6/23/03, effective 7/24/03.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-933-550 Investigation.

WSR 23-03-114

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed January 18, 2023, 8:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-113.

Title of Rule and Other Identifying Information: Chapter 308-10 WAC; and WAC 308-39-087.

Hearing Location(s): On February 21, 2023, at 11 a.m., Zoom meeting [https://dol-wa.zoom.us/j/89529607195?](https://dol-wa.zoom.us/j/89529607195?pwd=RDZTbHI1NHF4dXJCb25ISE00RVJaQT09)

[pwd=RDZTbHI1NHF4dXJCb25ISE00RVJaQT09](https://dol-wa.zoom.us/j/89529607195?pwd=RDZTbHI1NHF4dXJCb25ISE00RVJaQT09), Meeting ID 895 2960 7195, Passcode 015389, One-tap mobile +12532158782,,89529607195#,,,,*015389# US (Tacoma), +12532050468,,89529607195#,,,,*015389# US; dial by your location +1 253 215 8782 US (Tacoma). Find your local number [https://dol-wa.zoom.us/u/kcVLhnrLb5](https://dol-wa.zoom.us/j/89529607195?pwd=RDZTbHI1NHF4dXJCb25ISE00RVJaQT09). If you have trouble accessing the hearing via Zoom, please call 360-902-3846 at the time of the public hearing. People wishing to attend in person can also come to the Highways-Licenses Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: February 22, 2023.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by February 21, 2023.

Assistance for Persons with Disabilities: Contact Ellis Starrett, email rulescoordinator@dol.wa.gov, by February 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this chapter is to establish rules for the department of licensing (department) to implement the requirements of the Public Records Act, chapter 42.56 RCW. The department adopts these rules to provide full access to public records concerning the conduct of government, mindful of individuals' privacy rights. RCW 42.56.120 was updated in 2017 to clarify and expand what agencies may charge for creating copies of records.

Reasons Supporting Proposal: This WAC update will align the department's fee schedule with the RCW. This update also clarifies the department's implementation of RCW 46.12.635. In addition, these WAC were last updated in 2006, whereas the RCW has been updated four times since then. During this review we also clarified, reorganized, and updated sections.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Karen Landis, 8005 River Drive, Olympia, WA 98502, 360-902-7062; Implementation and Enforcement: Megan Jackson, 8005 River Drive, Olympia, WA 98502, 360-902-7066.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. See exemptions referenced below. These rules adopt changes specifically dictated by statute and internal administrative procedures.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to vio-

lation by a nongovernment party; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

January 18, 2023

Ellis Starrett

Rules and Policy Manager

OTS-4094.2

AMENDATORY SECTION (Amending WSR 10-10-040, filed 4/27/10, effective 5/28/10)

WAC 308-10-005 Authority and purpose. (~~((1) RCW 42.56.070(1) requires each agency to make available for inspection and copying non-exempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency.~~

~~(2) The purpose of these rules is to establish the procedures the department of licensing will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the department of licensing and establish processes for both requestors and the department of licensing staff that are designed to best assist members of the public in obtaining such access.~~

~~(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the department of licensing will be guided by the provisions of the act describing its purposes and interpretation.)~~ (1) The purpose of this chapter is to establish rules for the department of licensing to implement the requirements of the Public Records Act, chapter 42.56 RCW.

(2) The department adopts these rules to provide full access to public records concerning the conduct of government, mindful of individuals' privacy rights. The department is guided by the provisions describing its purpose and interpretation when carrying out responsibilities under chapter 42.56 RCW.

[Statutory Authority: RCW 42.56.040, [42.56.]070, and 46.01.110. WSR 10-10-040, § 308-10-005, filed 4/27/10, effective 5/28/10. Statutory Authority: RCW 42.17.260, 42.17.250, and 46.01.110. WSR 06-16-039, § 308-10-005, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW

42.17.250. WSR 92-09-107, § 308-10-005, filed 4/20/92, effective 5/21/92; Order MV 348, § 308-10-005, filed 12/24/75.]

AMENDATORY SECTION (Amending WSR 14-20-101, filed 9/30/14, effective 10/31/14)

WAC 308-10-010 Definitions. (1) The definitions set forth in RCW 42.56.010 (~~shall~~) apply to this chapter.

(2) (~~"Commercial purpose" means using or intending to use information for the purpose of facilitating a profit expecting business activity.~~)

(3) ~~The "department of licensing" is the agency created pursuant to chapter 46.01 RCW. The department of licensing shall hereinafter be referred to as the department.)~~ "Department" means the department of licensing. Where appropriate, (~~the term department~~) it also refers to the staff and employees of the department of licensing.

(~~4~~) (3) "Designee" (is) means a department employee authorized by the public records officer to receive and respond to a public records request.

(~~5~~) (4) "Director" means the director of the department of licensing as appointed by the governor.

(~~6~~) (5) "Individual" means a natural person.

(~~7~~) (6) "Legitimate business," for purposes of RCW 46.12.630, means a company with a valid and unexpired business license that is:

(a) A licensed Washington business; or

(b) Not required to be licensed in this state, but has a federal employer identification number, federal tax number, or uniform business identifier (UBI).

(~~8~~) (7) "Listing (list)" means an item-by-item series of names, figures, words, or numbers written or printed one after the other.

(~~9~~) ~~"Profession" when applied to department records, or the release of department record information, means any state regulated business, profession or occupation administered by the assistant director, business and professions division.)~~

[Statutory Authority: RCW 46.01.110 and 46.12.630. WSR 14-20-101, § 308-10-010, filed 9/30/14, effective 10/31/14. Statutory Authority: RCW 42.56.040, [42.56.]070, and 46.01.110. WSR 10-10-040, § 308-10-010, filed 4/27/10, effective 5/28/10. Statutory Authority: RCW 42.17.260, 42.17.250, and 46.01.110. WSR 06-16-039, § 308-10-010, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 46.01.110. WSR 99-17-031, § 308-10-010, filed 8/11/99, effective 9/11/99. Statutory Authority: RCW 42.17.250. WSR 96-05-036, § 308-10-010, filed 2/15/96, effective 3/17/96; WSR 92-09-107, § 308-10-010, filed 4/20/92, effective 5/21/92; Order MV 348, § 308-10-010, filed 12/24/75.]

AMENDATORY SECTION (Amending WSR 10-10-040, filed 4/27/10, effective 5/28/10)

WAC 308-10-015 (~~(Location of administrative office.)~~) **Function—Organization—Administrative officers—General inquiries to the office.**
 (~~The administrative office of the department and its director and staff is located in the Highways-Licenses Building, 1125 Washington Street Southeast, Olympia 98504. The administrative office of the public records officer is located at 8005-A River Drive Southeast, Olympia 98501.~~) (1) Function, organization, and administrative offices. The department of licensing administers laws relating to the licensing and regulation of professions, businesses, and other activities in addition to administering laws relating to the licensing and regulation of vehicles and vehicle operators, dealers, and manufacturers. More information about the department's roles is available at www.dol.wa.gov.

The main office of the department and its director is located in the Highways-Licenses Building, 1125 Washington Street Southeast, Olympia, WA 98504. The administrative office of the public records officer is located at 8005-A River Drive Southeast, Olympia, WA 98501.

(2) General inquiries and correspondence unrelated to a Public Records Act request to the office. Inquiries and correspondence concerning a matter unrelated to a Public Records Act request should be directed to the Olympia main office or by visiting www.dol.wa.gov.

[Statutory Authority: RCW 42.56.040, [42.56.]070, and 46.01.110. WSR 10-10-040, § 308-10-015, filed 4/27/10, effective 5/28/10. Statutory Authority: RCW 42.17.250. WSR 92-09-107, § 308-10-015, filed 4/20/92, effective 5/21/92; Order MV 348, § 308-10-015, filed 12/24/75.]

AMENDATORY SECTION (Amending WSR 10-10-040, filed 4/27/10, effective 5/28/10)

WAC 308-10-025 Public records available. All public records of the department are (~~deemed to be~~) available for public inspection and copying during normal business hours pursuant to these rules, except as otherwise provided by chapters 42.56 and 46.12 RCW, WAC 308-10-050 and 308-93-087. For the purposes of this chapter, the normal business hours (~~shall be~~) are from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

[Statutory Authority: RCW 42.56.040, [42.56.]070, and 46.01.110. WSR 10-10-040, § 308-10-025, filed 4/27/10, effective 5/28/10. Statutory Authority: RCW 42.17.260, 42.17.250, and 46.01.110. WSR 06-16-039, § 308-10-025, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 42.17.250. WSR 96-05-036, § 308-10-025, filed 2/15/96, effective 3/17/96; WSR 92-09-107, § 308-10-025, filed 4/20/92, effective 5/21/92; Order MV 348, § 308-10-025, filed 12/24/75.]

AMENDATORY SECTION (Amending WSR 10-10-040, filed 4/27/10, effective 5/28/10)

WAC 308-10-030 Public records officer. The ~~((department's))~~ director designates the public records officer ~~((shall be designated by the director and is))~~ as the point of contact for public records requests. The ~~((person so designated shall be))~~ records officer is located in the administrative office mentioned in WAC 308-10-015. The public records officer ~~((shall be))~~ is responsible for ~~((the following))~~:

(1) The implementation of the department's rules regarding release of public records ~~((, coordinating the staff of the department in this regard, maintaining, keeping current, and publishing an index of all agency records and))~~;

(2) The publishing and maintenance of the department's public records index of all agency records; and

(3) Ensuring the department's compliance with the public records disclosure act requirements.

[Statutory Authority: RCW 42.56.040, [42.56.]070, and 46.01.110. WSR 10-10-040, § 308-10-030, filed 4/27/10, effective 5/28/10. Statutory Authority: RCW 42.17.260, 42.17.250, and 46.01.110. WSR 06-16-039, § 308-10-030, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 42.17.250. WSR 96-05-036, § 308-10-030, filed 2/15/96, effective 3/17/96; WSR 92-09-107, § 308-10-030, filed 4/20/92, effective 5/21/92; Order MV 348, § 308-10-030, filed 12/24/75.]

AMENDATORY SECTION (Amending WSR 10-10-040, filed 4/27/10, effective 5/28/10)

WAC 308-10-040 Requests for public records. In accordance with ~~((requirements of))~~ chapter 42.56 RCW, ~~((that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:~~

~~(1) A request shall be made in writing upon the department's public records request form or by letter, fax, or email addressed to the public records officer or designee where the record is held. The request shall include the following information:~~

~~(a) The name and address of the person requesting the record.~~

~~(b) The calendar date on which the request is made.~~

~~(c) The nature of the request.~~

~~(d) A reference to the requested record as it is described in the current department record index.~~

Note: If the material is not identifiable by reference to the department's current index, an accurate description of the record is required.

~~(e) The signature and other contact information including telephone number and any email address. A signature is not required for requests submitted by email.~~

~~(f) If for a "motor vehicle record" as defined in 18 U.S.C. 2725, a statement of the allowable use under 18 U.S.C. 2721 that will be made of the requested record.~~

~~(2) In all cases in which a member of the public is making a request, it shall be the obligation of the staff member to whom the re-~~

~~quest is made to assist the member of the public in appropriately identifying the public record requested.) the public may inspect or copy nonexempt public records, or obtain copies of such records.~~

~~(1) Submit a request through one of the following methods:~~

~~(a) DOL's preferred method through the department's online portal located at <https://wadolpublicrecords.nextrequest.com/>; or~~

~~(b) Email addressed to the public records officer or designee sent to recordrequests@dol.wa.gov; or~~

~~(c) Send a written request, using the department's public records request form or a letter to P.O. Box 2957, Olympia, WA 98507-2957; or~~

~~(d) Verbally by phone or in person.~~

~~(2) DOL may request the following information before releasing certain records:~~

~~(a) The name and address of the person requesting the record.~~

~~(b) The calendar date on which the request is made.~~

~~(c) The nature of the request.~~

~~(d) A specific description of the requested record or type of record as described in the current department record index.~~

~~(e) The signature and other contact information including telephone number and any email address.~~

~~(f) If the request is for a record with legal protections, a statement of intended use may be required.~~

~~(3) Persons authorized by law to obtain lists of names of individuals from public records will be required to complete a statement agreeing not to release or use the information for commercial purposes.~~

~~(4) ((If the requestor wishes to have)) Requestor should indicate if they want copies of the records made instead of simply inspecting them, ((he or she should so indicate and make arrangements)) and arrange to pay for copies of the records under WAC 308-10-045.~~

~~(5) ((The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm, in writing, receipt of the information and the substance of the request.)) The department is committed to providing the fullest assistance possible.~~

[Statutory Authority: RCW 42.56.040, [42.56.]070, and 46.01.110. WSR 10-10-040, § 308-10-040, filed 4/27/10, effective 5/28/10. Statutory Authority: RCW 42.17.260, 42.17.250, and 46.01.110. WSR 06-16-039, § 308-10-040, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 42.17.250. WSR 96-05-036, § 308-10-040, filed 2/15/96, effective 3/17/96; WSR 92-09-107, § 308-10-040, filed 4/20/92, effective 5/21/92; Order MV 348, § 308-10-040, filed 12/24/75.]

AMENDATORY SECTION (Amending WSR 10-10-040, filed 4/27/10, effective 5/28/10)

WAC 308-10-041 Processing of public records requests—General.

~~(1) ((Providing "fullest assistance." The department is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors,~~

and provide the "most timely possible action" on public records requests.) The department will provide full access to public records in accordance with RCW 42.56.100, the public records officer or designee will process requests in ((the order allowing the most requests to be processed in the most efficient manner.

~~(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:~~

~~(a) Make the records available for inspection or copying;~~

~~(b) If copies are requested and payment for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;~~

~~(c) Provide a reasonable estimate of when records will be available; or~~

~~(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided in a letter, by telephone or email. The public records officer or designee may revise the estimate of when records will be available; or~~

~~(e) Deny)) an efficient order depending on the size and complexity of the request.~~

~~((3) Consequences of)) (2) Failure to respond. If the department does not respond in writing within five business days of receipt of the request for disclosure, the requestor ((should consider contacting)) can contact the public records officer or designee to determine the reason for the failure to respond.~~

~~((4) Protecting rights of others. In the event that the)) (3) Third-party notification. If requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may((, prior to providing the records, give notice to such others whose rights may be affected by the disclosure)) provide notice to persons named in the records, before providing the records to the requestor. Such notice should ((be given so as to make it possible)) provide time for those other persons to contact the requestor and ask ((him or her)) them to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request. Fulfillment of the request may be delayed while third parties consider or pursue their legal options.~~

~~((5)) (4) Inspection of physical records.~~

~~(a) ((Consistent with other demands,)) The department ((shall promptly)) will provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor ((shall)) must indicate which documents ((he or she wishes)) they want the agency to copy.~~

~~(b) The requestor must ((claim or review the assembled)) review assembled records or collect copied records within ((thirty)) 30 days of the department's notification to ((him or her)) them that the records are available ((for inspection or copying)). The department ((will)) may notify the requestor in writing of this requirement and ((inform the requestor that he or she should contact the department to)) ask them to make arrangements to ((claim)) collect or review the records.~~

~~(c) The department may close the request and refile the assembled records if the requestor or ((a)) their representative ((of the requestor)) fails to claim or review the records or make other arrangements within ((the thirty-day period or make other arrangements, the~~

department may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request)) 30 days of the department's notice.

~~((6))~~ (5) Providing copies of records. After inspection is complete, the public records officer or designee ~~((shall))~~ will make the requested copies or arrange for copying.

~~((7) Providing records in installments. When the request is for a large number of records,)~~ (6) Retrieving records. The public records officer or designee ~~((will))~~ may provide access for inspection and copying in installments ~~((, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments,))~~. The public records officer or designee may stop searching for the remaining records and close the request after 30 days if the requestor fails to inspect the entire set of records or one or more of the installments.

~~((8) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the department has completed a diligent search for the requested records and made any located nonexempt records available for inspection.~~

~~(9))~~ (7) Closing withdrawn or abandoned requests. ~~((When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee will close the request and indicate to the requestor that the department has closed the request.~~

~~(10) Later discovered documents. If, after the department has informed the requestor that it has provided all available records, the department becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.))~~ The public records officer or designee will close the request and notify the requestor if the request is withdrawn, the records are not inspected, or the deposit is not paid.

[Statutory Authority: RCW 42.56.040, [42.56.]070, and 46.01.110. WSR 10-10-040, § 308-10-041, filed 4/27/10, effective 5/28/10. Statutory Authority: RCW 42.17.260, 42.17.250, and 46.01.110. WSR 06-16-039, § 308-10-041, filed 7/26/06, effective 8/26/06.]

AMENDATORY SECTION (Amending WSR 10-10-040, filed 4/27/10, effective 5/28/10)

WAC 308-10-045 Costs of providing copies of public records.

~~((1) No fee shall be charged for the inspection of public records. The department shall charge a fee in the amount necessary to reimburse the department for its actual costs incident to providing copies of public records. The schedule of charges is:~~

ITEM	FEE
Copies produced on copying and duplicating equipment including scanning	15 cents per page
Computer generated listing, magnetic tapes or labels	Cost of services and media
Microfilm copies	75 cents per page
Postal charges	May be added to any copy of a public record if applicable
Compact discs	Cost

~~(2) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The department will not charge sales tax when it makes copies of public records.~~

~~(3) Payment may be made by check or money order to the department.~~

~~(4) When it is in the fiscal and administrative interest of the state, the public records officer or designee may waive charges of \$4.50 or less.)~~

(1) The department does not charge a fee for the inspection of public records.

(2) Pursuant to RCW 42.56.120(2), the department declares that, for the following reasons, it would be unduly burdensome to calculate the actual costs for providing copies of public records:

(a) Funds were not allocated to perform a study to calculate actual costs, and the agency lacks the necessary funds to perform a study;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs;

(c) A study would interfere with and disrupt other essential department's functions.

(3) The department may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120 and published in the fee schedule available on the department's website at www.dol.wa.gov.

(4) The department will charge the actual amount charged by an external vendor for records copied. This includes records in nonstandard sizes; or in formats identified in the department's fee schedule available on the department of licensing's website at www.dol.wa.gov.

(5) Before copying public records, the public records officer or designee may require the requestor to:

(a) Pay a deposit of up to 10 percent of the estimated costs to copy all the requested records;

(b) Pay the remainder of the copying costs before providing all the records; or

(c) Pay the costs of copying an installment before providing the installment.

(6) At the department's discretion, the department may provide:

(a) Customized data services if the request would require the time of specialized program staff to prepare data compilations; or

(b) Customized electronic access services when such compilations and customized access services are not used by department of licensing for other agency purposes.

(c) Customized data services incur an hourly fee based on the complexity of the service.

(7) At the discretion of the public records officer, the department may waive any charges for providing public records. This determination will be made on a case-by-case basis.

[Statutory Authority: RCW 42.56.040, [42.56.]070, and 46.01.110. WSR 10-10-040, § 308-10-045, filed 4/27/10, effective 5/28/10. Statutory Authority: RCW 42.17.260, 42.17.250, and 46.01.110. WSR 06-16-039, § 308-10-045, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 46.01.110 and 42.17.260. WSR 99-09-045, § 308-10-045, filed 4/19/99, effective 5/20/99. Statutory Authority: RCW 42.17.250. WSR 96-05-036, § 308-10-045, filed 2/15/96, effective 3/17/96; WSR 92-09-107, § 308-10-045, filed 4/20/92, effective 5/21/92; Order MV 348, § 308-10-045, filed 12/24/75.]

AMENDATORY SECTION (Amending WSR 10-10-040, filed 4/27/10, effective 5/28/10)

WAC 308-10-055 Review of denials of public records. (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may ~~((petition in writing (including email) to the public records officer for a review of that decision. The petition shall))~~ send a written request for the department to review the decision. The requestor must send the written request to the public records officer. The request must include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer ~~((shall))~~ will promptly provide ~~((the))~~ written petitions and any other relevant information to the ~~((manager of administration, finance and administration division))~~ administrative services assistant director or designee. That person will ~~((immediately))~~ consider the petition and either affirm or reverse the denial within ~~((ten))~~ 10 business days following the department's receipt of the petition, or within such other time as the department and the requestor mutually agree ~~((to))~~.

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, ~~((if the department denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter))~~ any persons may request the attorney general to review the matter when the department concludes that a public record is exempt from disclosure. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. ~~((Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550.))~~ Pursuant to RCW 42.56.550, a requestor may request a judicial review of the department's denial of public records request.

[Statutory Authority: RCW 42.56.040, [42.56.]070, and 46.01.110. WSR 10-10-040, § 308-10-055, filed 4/27/10, effective 5/28/10. Statutory Authority: RCW 42.17.260, 42.17.250, and 46.01.110. WSR 06-16-039, § 308-10-055, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 42.17.250. WSR 92-09-107, § 308-10-055, filed 4/20/92, effective 5/21/92; Order MV 348, § 308-10-055, filed 12/24/75.]

AMENDATORY SECTION (Amending WSR 92-09-107, filed 4/20/92, effective 5/21/92)

WAC 308-10-060 Protection of public records. (~~The department is primarily a licensing agency. The records consist mainly of operational files that are subject to high usage. In order to ensure that essential functions of the agency are continually carried out, and the public records are not damaged, altered, disorganized, or lost, access to the record storage areas is restricted. Public records will be inspected in the offices in which they are filed and maintained. Inspection shall be in the presence of an authorized department staff employee. Inspection shall be denied and the records will be withdrawn if the individual inspecting the records is doing so in a manner to damage, alter, or substantially disorganize them. Inspection shall be denied and records withdrawn if the individual inspecting the records attempts to remove them from the prescribed location or is excessively interfering or will unduly interfere with other essential functions of the department.~~) Pursuant to RCW 42.56.100 the following requirements will apply when inspecting public records held by the department:

(1) The department must have a designated department employee present while a requestor inspects department records.

(2) Requestors must not:

(a) Remove any public record from department premises.

(b) Mark or deface a public record in any manner during inspection.

(c) Dismantle public records maintained in a file or jacket, or in chronological or other filing order which would constitute excessive interference with the department's essential functions.

(d) Stay longer than their scheduled appointment to prevent excessive interference with other essential functions of the agency.

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

[Statutory Authority: RCW 42.17.250. WSR 92-09-107, § 308-10-060, filed 4/20/92, effective 5/21/92; Order MV 348, § 308-10-060, filed 12/24/75.]

AMENDATORY SECTION (Amending Order MV 348, filed 12/24/75)

WAC 308-10-065 Records index. (~~(1) Index. The department has available to all persons a current index which provides identifying information as to the following records issued, adopted, or promulgated since its inception:~~

~~(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;~~

~~(b) Those statements of policy and interpretations of policy, statute, and constitution which have been adopted by the agency;~~

~~(c) Administrative staff manuals and instructions to staff that affect a member of the public;~~

~~(d) Planning policies and goals, and interim and final planning decisions;~~

~~(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, and surveys, whether conducted by public employees or others; and~~

~~(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.~~

~~(2) Availability. The current index promulgated by the department shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection.) Pursuant to RCW 42.56.070, the department publishes and maintains on its web page at www.dol.wa.gov:~~

~~(1) A list of every law, other than those listed in chapter 42.56 RCW, that it believes exempts or prohibits disclosure of specific information or records.~~

~~(2) A current records index per RCW 42.56.070(5).~~

[Order MV 348, § 308-10-065, filed 12/24/75.]

AMENDATORY SECTION (Amending WSR 10-10-040, filed 4/27/10, effective 5/28/10)

WAC 308-10-067 Public records indexing system. ~~((1))~~ The department has implemented a system of indexing for the identification and location of ~~((the following records:~~

~~(a) All records issued before July 1, 1990, for which the department has maintained an index.~~

~~(b) Final orders from adjudicative proceedings as defined in RCW 34.05.010(1) entered after June 30, 1990, that contain an analysis or decision of substantial importance to the department in carrying out its duties.~~

~~(c) Declaratory orders entered after June 30, 1990, that contain an analysis or decision of substantial importance to the department in carrying out its duties.~~

~~(d) Interpretive statements entered after June 30, 1990.~~

~~(e) Policy statements entered after June 30, 1990.~~

~~(2) The department shall maintain a general index of all its records available to the public for inspection and copying, including those records mentioned above.~~

~~((3) The general index of public records will be maintained and updated by the department. The public records officer is responsible for updating the general index. The index of records is available during regular business hours for public inspection at the department's administrative office located at 8005-A River Drive Southeast, Olympia~~

98501 and is available online)) records identified in RCW 42.56.070.
The general index of public records will be maintained at
www.dol.wa.gov.

[Statutory Authority: RCW 42.56.040, [42.56.]070, and 46.01.110. WSR 10-10-040, § 308-10-067, filed 4/27/10, effective 5/28/10. Statutory Authority: RCW 42.17.260, 42.17.250, and 46.01.110. WSR 06-16-039, § 308-10-067, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 42.17.250. WSR 96-05-036, § 308-10-067, filed 2/15/96, effective 3/17/96. Statutory Authority: RCW 42.17.260(4). WSR 91-13-057, § 308-10-067, filed 6/17/91, effective 7/18/91.]

AMENDATORY SECTION (Amending WSR 14-01-051, filed 12/12/13, effective 1/12/14)

WAC 308-10-075 Disclosure of vehicle owner information. (1)

~~((What vehicle record))~~ Laws protecting vehicle owner information ~~((is protected))~~ from disclosure ~~((?))~~. Vehicle record information may be protected from disclosure ~~((is the same as))~~ under chapters 42.56 and 46.12 RCW, and 18 U.S.C. Sec. 2721.

~~(2) ((Who may receive vehicle owner names and addresses?))~~ Dis-
closing names and addresses of vehicle owners.

(a) Government agencies; or

~~(b) Business entities ((that require the information in their normal course of conducting business;))~~ who provide proof of business verification; or

~~(c) Vehicle manufacturers and vehicle component manufacturers that require vehicle ownership information for recall of their own product(s); or~~

~~(d) Individuals who provide proof of ((personal identification:~~

~~(i) For vehicles currently registered in their name; or~~

~~(ii) For vehicles for which they can provide a bill of sale or acceptable documents indicating they purchased the vehicle.~~

~~(e) Please see subsection (3) of this section for additional re-~~
~~strictions.~~

~~Business and government agencies requesting disclosure of indi-~~
~~vidual vehicle owner names and addresses must enter into a disclosure~~
~~agreement with the department.~~

~~(3) When both a mailing and residence address are recorded on the vehicle record, which address will be disclosed? When both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both ad-~~
~~resses will be disclosed in response to requests from courts, law en-~~
~~forcement agencies, or government agencies with enforcement, investi-~~
~~gative, or taxing authority and only for use in the normal course of~~
~~conducting business.~~

~~(4) What documentation does the department require to disclose vehicle owner name(s) and address(es)? The department requires:~~

~~(a) A signed vehicle/vessel information disclosure request form provided by the department and completed by the requestor indicating the specific purpose for which the information will be used; and~~

~~(b) A disclosure agreement with the department as required by RCW 46.12.635.~~

~~(c) Acceptable business verification; or~~

~~(d) A contract with the department.~~

~~(5) **What is acceptable business verification?** For purposes of this section, acceptable business verification includes:~~

~~(a) If the requester is a licensed Washington business, a copy of its current master business license;~~

~~(b) If the requester is a business that is not required to be licensed in this state, its federal employer identification number/ federal tax number (or Uniform Business Identifier) on official letterhead with a signature of the owner or an authorized representative;~~

~~(c) If an attorney, a copy of the current bar card; or~~

~~(d) If a private investigator, a copy of the current private investigator's license.~~

~~(6) **Does a business need to supply a new form and copy of the business license each time vehicle information is requested?** Yes, each time a request is made for vehicle information a new form and copy of the business license is needed, unless an unexpired contract exists between the business and the department.~~

~~(7) **Are businesses allowed individual owner information on vehicle records?** Yes, if a business requires individual owner information to conduct its normal business and qualifies under RCW 46.12.635 and 18 U.S.C. 2721 (commonly known as Driver Privacy Protection Act), it may receive individual vehicle owner information.~~

~~(8) **Who may release the vehicle owner name and address information?**~~

~~(a) The public disclosure unit of the driver and vehicle services division of the department of licensing; or~~

~~(b) Agents and subagents, but only when disclosing information for purposes described in subsection (2)(d) of this section.~~

~~(9) **When may the department disclose the name(s) and address(es) of vehicle owners?** The department may only disclose names and addresses of vehicle owners under the provisions of chapters 42.56 and 46.12 RCW and 18 U.S.C. 2721-2725, and:~~

~~(a) The request is in writing, signed by the person requesting disclosure, contains the full legal name and address of the requesting party and/or their business, and specifies the purpose for which the information will be used; and~~

~~(b) The requesting party enters into a disclosure agreement with the department in which the parties agree that they will use the information only for the purpose stated in the request for the information.~~

~~(10) **Is the department required to notify the vehicle owner when ownership information is disclosed?** When the department grants a request from an attorney or private investigator for information under this section, the department will provide notice to the vehicle owner that the request has been granted. Additionally, if a contract holder releases owner information to a private investigator or attorney, they must notify the vehicle owner that a request has been granted, and provide a copy to the department's public disclosure unit.~~

~~(11) **Who is responsible for assuring that the information is used appropriately?** Any person, business, agency or association that receives vehicle owner information under this section is responsible for assuring, under penalty of perjury under the laws of the state of Washington, that the information received is not used for a purpose contrary to the agreement between the person, business, agency or association and the department.) identity and:~~

~~(i) The owner of record is requesting the information for a vehicle(s) currently registered in their name; or~~

(ii) They can provide either a letter of testamentary, letter of administration, court order, or a signed and notarized department of licensing form and a death certificate of the deceased; or

(iii) They have documentation showing how they obtained the vehicle; or

(iv) They are following the chattel lien process as required by RCW 60.08.085.

(3) In order for the department to disclose names and addresses of individual vehicle owners, the requestor must provide:

(a) Acceptable verification or proof of identity as stated in subsection (4) or (5) of this section; and

(i) A contract with the department; or

(ii) A disclosure form or agreement with the department as required by RCW 46.12.635.

(b) Any other supporting documentation as requested by the department.

(4) Acceptable business verification.

(a) If the requestor is a business, one of the following:

(i) A copy of its current/valid business or professional license;
or

(ii) If the requestor is a business that is not required to be licensed, its federal employer identification number, federal tax number, or uniform business identifier number on its official business letterhead with a signature of the owner or an authorized representative.

(b) If the requestor is an attorney, a copy of:

(i) Their eligibility to practice law, including proof that their license is in a current/active status; and

(ii) An engagement letter, notice showing the attorney is representing someone, or evidence of an active case in court.

(c) If the requestor is a private investigator, a copy of:

(i) Their current/valid private investigator's license; and

(ii) An engagement letter, notice showing the private investigator is representing someone, or evidence of an active case in court.

(5) Proof of identity.

Acceptable forms of identification include, but are not limited to:

(a) A current/valid driver's license or instruction permit issued by any U.S. state or foreign government. If the requestor's driver license has expired, they must also show a valid temporary driver's license with the expired card; or

(b) A current/valid United States armed forces identification; or

(c) A current/valid merchant marine identification card issued by the United States Coast Guard; or

(d) A current/valid identification card issued by any foreign, federal, or state government; or

(e) A current/valid official U.S. passport or an unexpired foreign passport; or

(f) A current/valid enrollment card issued by the governing authority of a state or federally recognized Indian tribe.

Note: The department, at its own discretion, may waive the requirement in subsection (5) of this section and accept other documentation that clearly establishes the identity of the requestor.

[Statutory Authority: RCW 46.01.110 and 46.12.635. WSR 14-01-051, § 308-10-075, filed 12/12/13, effective 1/12/14.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-10-020	Operations and procedures.
WAC 308-10-042	Processing of public records requests— Electronic records.
WAC 308-10-050	Exemptions.
WAC 308-10-070	Communications with department.

OTS-4095.2

AMENDATORY SECTION (Amending WSR 10-11-030, filed 5/11/10, effective 6/11/10)

WAC 308-93-087 Disclosure of ((names and addresses of individual)) vessel owner((s)) information. ((-1) What vessel record information is protected from disclosure?

Vessel information protected from disclosure is the same as under chapters 42.56 and 46.12 RCW.

~~(2) Who may receive disclosure of individual vessel owner names and addresses?~~

- ~~(a) Government agencies;~~
- ~~(b) Any business entity that uses the name and address information in their normal course of business in accordance with these rules;~~
- ~~(c) Vessel manufacturers that require vessel ownership information for recall of their own products;~~
- ~~(d) A vessel owner for their own vessel; or~~
- ~~(e) Individuals who meet the criteria listed in subsection (6) of this section.~~

~~(3) What documentation does the department require to disclose vessel owner names and addresses?~~

The department requires:

- ~~(a) A disclosure request form provided by the department and completed by the applicant; and~~
- ~~(b) Acceptable business verification.~~

~~(4) What is acceptable business verification?~~

For purposes of this section acceptable business verification includes:

- ~~(a) If a licensed Washington business, a copy of its current unexpired master business license;~~
- ~~(b) If a business is not required to be licensed in this state, its federal employer identification number/federal tax number (or Uniform Business Identifier) on its official letterhead with a signature of the owner or an authorized representative;~~
- ~~(c) If an attorney, a copy of the current bar card; or~~
- ~~(d) If a private investigator, a copy of the current private investigator's license; or~~
- ~~(e) If an out-of-state business not licensed in Washington:~~

~~(i) If the business is required to be licensed, a copy of its current business license issued by the governmental authority with jurisdiction over the license; or~~

~~(ii) If the business is not required to be licensed, its federal employer identification number/federal tax number on its official letterhead with a signature of the owner or an authorized representative.~~

~~(5) **If a business has entered into an agreement with the department, is a separate request for each inquiry required?**~~

~~No. If a business has entered into a written agreement with the department, a separate request for each inquiry is not required.~~

~~(6) **When may an individual be provided vessel owner name and address information?**~~

~~(a) When the owner of record is requesting the information; or~~

~~(b) When the requester presents a bill of sale or other evidence of ownership and needs the ownership information to obtain a release of interest.~~

~~(7) **Who may release the vessel owner name and address information?**~~

~~(a) The department of licensing; or~~

~~(b) Agents and subagents, only when disclosing information for purposes described in subsection (6) (b) of this section.~~

~~(8) **When may the department disclose the names and addresses of vessel owners?**~~

~~Notwithstanding the provisions of chapter 42.56 RCW, the department may disclose the names and addresses of vessel owners when:~~

~~(a) The requesting party is a business that requests the information for use in their normal course of business;~~

~~(b) The request is in writing, signed by the person requesting disclosure, contains the full legal name and address of the requesting party or their business, and specifies the purpose for which the information will be used;~~

~~(c) The requesting party enters into a disclosure agreement with the department in which the parties:~~

~~(i) Agree they will use the information only for the purpose stated in the request for the information; and~~

~~(ii) Individuals meet the criteria listed in subsection (6) of this section.~~

~~(9) **Is the department required to notify the vessel owner when ownership information is disclosed?**~~

~~When the department grants a request from an attorney or private investigator, for information under this section, the department will provide notice to the vessel owner that the request has been granted. In addition, the notice will contain the name and address of the requesting party.~~

~~Additionally, if contract holders release owner information to a private investigator or attorney, they must notify the vessel owner that a request has been granted and include the name and address of the requesting party and send a copy to the department public disclosure unit.~~

~~(10) **Who is responsible for assuring that the information is used appropriately?**~~

~~Any person, business, agency or association that receives vessel owner information under this section is responsible for assuring under penalty of perjury under the laws of the state of Washington that the information received is not used for a purpose contrary to the agreement between the person, business, agency or association and the department.)~~

(1) Laws protecting vessel owner information from disclosure.

Vessel record information may be protected from disclosure under chapters 42.56 and 46.12 RCW, and 18 U.S.C. Sec. 2721. Indian tribal vessel data is protected from disclosure under WAC 308-93-770.

(2) Disclosing names and addresses of vessel owners.

(a) Government agencies; or

(b) Business entities who provide proof of business verification;

or

(c) Vessel manufacturers and vessel component manufacturers that require vessel ownership information for recall of their own product(s); or

(d) Individuals who provide proof of identity and:

(i) The owner of record is requesting the information for a vessel(s) currently registered in their name; or

(ii) They can provide either a letter of testamentary, letter of administration, court order, or a signed and notarized department of licensing form and a death certificate of the deceased; or

(iii) They have documentation showing how they obtained the vessel; or

(iv) They are following the chattel lien process as required by RCW 60.08.085.

(3) In order for the department to disclose names and addresses of individual vessel owners, the requestor must provide:

(a) Acceptable verification or proof of identity as stated in subsection (4) or (5) of this section; and

(i) A contract with the department; or

(ii) A disclosure form or agreement with the department as required by RCW 46.12.635.

(b) Any other supporting documentation as requested by the department.

(4) Acceptable business verification.

(a) If the requestor is a business, one of the following:

(i) A copy of its current/valid business or professional license;

or

(ii) If the requestor is a business that is not required to be licensed, its federal employer identification number, federal tax number, or uniform business identifier number on its official business letterhead with a signature of the owner or an authorized representative.

(b) If the requestor is an attorney, a copy of:

(i) Their eligibility to practice law, including proof that their license is in a current/active status; and

(ii) An engagement letter, notice showing the attorney is representing someone, or evidence of an active case in court.

(c) If the requestor is a private investigator, a copy of:

(i) Their current/valid private investigator's license; and

(ii) An engagement letter, notice showing the private investigator is representing someone, or evidence of an active case in court.

(5) Proof of identity.

Acceptable forms of identification include, but are not limited to:

(a) A current/valid driver's license or instruction permit issued by any U.S. state or foreign government. If the requestor's driver license has expired, they must also show a valid temporary driver's license with the expired card; or

(b) A current/valid United States armed forces identification card; or

(c) A current/valid merchant marine identification card issued by the United States Coast Guard; or

(d) A current/valid identification card issued by any foreign, federal, or state government; or

(e) A current/valid official U.S. passport or an unexpired foreign passport; or

(f) A current/valid enrollment card issued by the governing authority of a state or federally recognized Indian tribe.

Note: The department, at its own discretion, may waive the requirement in subsection (5) of this section and accept other documentation that clearly establishes the identity of the requestor.

[Statutory Authority: RCW 46.16.276 and 46.01.110. WSR 10-11-030, § 308-93-087, filed 5/11/10, effective 6/11/10. Statutory Authority: RCW 88.02.070, 88.02.100. WSR 01-16-105, § 308-93-087, filed 7/30/01, effective 8/30/01; WSR 99-01-134, § 308-93-087, filed 12/21/98, effective 1/21/99; WSR 92-24-035, § 308-93-087, filed 11/25/92, effective 12/26/92. Statutory Authority: RCW 88.02.070. WSR 88-24-003 (Order TL/RG 47), § 308-93-087, filed 11/29/88.]

WSR 23-03-115

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed January 18, 2023, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-086.

Title of Rule and Other Identifying Information: WAC 468-38-100 Pilot escort vehicle operator requirements. The purpose of this rule change is to allow for a shortened recertification. The current language specifies course lengths to an eight-hour class. The proposal allows for those who have taken the initial eight-hour course to attend a four-hour recertification course for their refresher training.

Hearing Location(s): On February 21, 2023, at 9:00 a.m., at Transportation Building, Nisqually Room, 310 Maple Park Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: February 21, 2023.

Submit Written Comments to: Scott Zeller, P.O. Box 47367, Olympia, WA 98504-7367, email ZellerS@wsdot.wa.gov, fax 360-704-6391, by February 17, 2023.

Assistance for Persons with Disabilities: Contact Danielle Oliver, phone 360-918-4196, email OliverD@wsdot.wa.gov, by February 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The original rule specifies an eight-hour course. The intent of the proposal is to add a four-hour recertification course for those that are renewing their certification.

Reasons Supporting Proposal: The current training provider requested that the Washington state department of transportation (WSDOT) and stakeholders consider the shortened recertification course. The pilot/escort oversight committee (PEOC) reviewed the proposal and agreed a shortened recertification course is appropriate when a certified pilot/escort vehicle operator is renewing their certification. PEOC is made up of WSDOT, Washington state patrol, department of labor and industries, Washington Trucking Associations, and the Northwest Pilot Car Association. PEOC supports the shortened duration for the recertification course.

Statutory Authority for Adoption: RCW 46.44.090, 46.44.093.

Statute Being Implemented: RCW 46.44.090.

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

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting: Justin Heryford, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-705-7987; and Implementation: Scott Zeller, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-705-7290.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The rule change allows for training courses to provide a shortened recertification course. There are no costs associated with this rule change.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposed rule changes do not have a cost or fiscal impact associated with them.

January 18, 2023

Sam Wilson

Director of Business Support Services

OTS-4254.1

AMENDATORY SECTION (Amending WSR 20-21-042, filed 10/13/20, effective 11/13/20)

WAC 468-38-100 Pilot/escort vehicle and operator requirements.

(1) A certified pilot/escort operator, acting as a warning necessary to provide safety to the traveling public, must accompany an extra-legal load when:

(a) The vehicle(s) or load exceeds (~~eleven~~) 11 feet in width: Two pilot/escort vehicles are required on two lane highways, one in front and one at the rear.

(b) The vehicle(s) or load exceeds (~~fourteen~~) 14 feet in width: One escort vehicle is required at the rear on multilane highways.

(c) The vehicle(s) or load exceeds (~~twenty~~) 20 feet in width: Two pilot/escort vehicles are required on multilane undivided highways, one in front and one at the rear.

(d) The trailer length, including load, of a tractor/trailer combination exceeds (~~one hundred five~~) 105 feet, or when the rear overhang of a load measured from the center of the rear axle exceeds one-third of the trailer length including load of a tractor/trailer or truck/trailer combination: One pilot/escort vehicle is required at the rear on two-lane highways.

(e) The trailer length, including load, of a tractor/trailer combination exceeds (~~one hundred twenty five~~) 125 feet: One pilot/escort vehicle is required at the rear on multilane highways.

(f) The front overhang of a load measured from the center of the front steer axle exceeds (~~twenty~~) 20 feet: One pilot/escort vehicle is required at the front on all two-lane highways.

(g) The rear overhang of a load on a single unit vehicle, measured from the center of the rear axle, exceeds (~~twenty~~) 20 feet: One pilot/escort vehicle is required at the rear on two-lane highways.

(h) The height of the vehicle(s) or load exceeds (~~fourteen~~) 14 feet six inches: One pilot/escort vehicle with height measuring device (pole) is required at the front of the movement on all highways.

(i) The vehicle(s) or load exceeds (~~twelve~~) 12 feet in width on a multilane highway and has a height that requires a front pilot/escort vehicle: One rear pilot/escort vehicle is required.

(j) The operator, using rearview mirrors, cannot see (~~two hundred~~) 200 feet to the rear of the vehicle or vehicle combination when measured from either side of the edge of the load or last vehicle in the combination, whichever is larger: One pilot/escort vehicle is required at the rear on all highways.

(k) In the opinion of the department, a pilot/escort vehicle(s) is necessary to protect the traveling public. Assignments of this na-

ture must be authorized through the department's administrator for commercial vehicle services.

(2) **Can a pilot/escort vehicle be temporarily reassigned a position relative to the load during a move?** When road conditions dictate that the use of the pilot/escort vehicle in another position would be more effective, the pilot/escort vehicle may be temporarily reassigned. For example: A pilot/escort vehicle is assigned to the rear of an overlength load on a two-lane highway. The load is about to enter a highway segment that has curves significant enough to cause the vehicle and/or load to encroach on the oncoming lane of traffic. The pilot/escort vehicle may be temporarily reassigned to the front to warn oncoming traffic.

(3) **Can a certified flag person ever substitute for a pilot/escort vehicle?** In subsection (1)(d) and (e) of this section, the special permit may authorize a riding flag person, in lieu of a pilot/escort vehicle, to provide adequate traffic control for the configuration. The flag person is not required to ride in the pilot/escort vehicle but may ride in the transport vehicle with transporter's authorization.

(4) **Must an operator of a pilot/escort vehicle be certified to operate in the state of Washington?** Yes. To help assure compliance with the rules of this chapter, consistent basic operating procedures are needed for pilot/escort vehicle operators to properly interact with the escorted vehicle and the surrounding traffic. Operators of pilot/escort vehicles, therefore, must be certified as having received department-approved base level training as a pilot/escort vehicle operator and must comply with the following:

(a) A pilot/escort vehicle operator with a Washington state driver's license must have a valid Washington state pilot/escort vehicle operator certificate/card which must be on the operator's person while performing escort vehicle operator duties.

(b) A pilot/escort vehicle operator with a driver's license from a jurisdiction other than the state of Washington may acquire a Washington state escort vehicle operator certificate/card, or operate with a certification from another jurisdiction approved by the department, subject to the periodic review of the issuing jurisdiction's certification program. A current list of approved programs will be maintained by the department's commercial vehicle services office.

(c) A pilot/escort vehicle operator certification does not exempt a pilot/escort operator from complying with all state laws and requirements of the state in which she/he is traveling.

(d) Every applicant for a state of Washington pilot/escort operator certificate shall attend an eight-hour initial training course or if renewing their certification, may attend a four-hour recertification course. Every applicant must attend a course offered and presented by a business, organization, government entity, or individual approved by the department. At the conclusion of the course, the applicant will be eligible to receive the certification card after successfully completing a written test with at least an ((eighty)) 80 percent passing score. State of Washington pilot/escort vehicle operator certification cards must be renewed every three years.

(5) **What are the pretrip procedures that must be followed by the operator of a pilot/escort vehicle?**

(a) Discuss with the operator of the extra-legal vehicle the aspects of the move including, but not limited to, the vehicle configuration, the route, and the responsibilities that will be assigned or shared.

(b) Prerun the route, if necessary, to verify acceptable clearances.

(c) Review the special permit conditions with the operator of the extra-legal vehicle. When the permit is a single trip extra-legal permit, displaying routing information, the pilot/escort operator(s) must have a copy of the permit, including all special conditions and attachments.

(d) Determine proper position of required pilot/escort vehicles and set procedures to be used among the operators.

(e) Check mandatory equipment, provided in subsections (9) and (10) of this section. Each operator is responsible for his or her own vehicle.

(f) Check two-way communication system to ensure clear communications between the pilot/escort vehicle(s) and the transport vehicle and predetermine the channel to be used.

(g) Acknowledge that nonemergency electronic communication is prohibited except communication between pilot/escort operator(s) and the transport vehicle during movement.

(h) Adjust mirrors, mount signs and turn on lights, provided in subsections (8)(e) and (9)(a) and (b) of this section.

(6) What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be in front of the extra-legal movement? The operator shall:

(a) Provide general warning to oncoming traffic of the presence of the permitted vehicle by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, road-surface hazards; overhead clearances; obstructions; traffic congestion; pedestrians; etc.;

(c) Provide guidance to the extra-legal vehicle through lane changes, egress from one designated route and access to the next designated route on the approved route itinerary, and around any obstacle;

(d) In the event of traffic buildup behind the extra-legal vehicle, locate a safe place adjacent to the highway where the extra-legal vehicle can make a temporary stop. Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), in sufficient time for the extra-legal vehicle to move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough in front of the extra-legal vehicle to allow time for the extra-legal vehicle to stop or take corrective action as necessary when notified by the front pilot/escort operator. Be far enough in front of the extra-legal vehicle to signal oncoming traffic to stop in a safe and timely manner before entering any narrow structure or otherwise restricted highway where an extra-legal vehicle has entered and must clear before oncoming traffic can enter;

(f) In accordance with training, do not be any farther ahead of the extra-legal vehicle than is reasonably prudent, considering speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed a distance between pilot/escort vehicle and extra-legal ve-

hicle that would interfere with maintaining clear two-way radio communication; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(7) What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be at the rear of the extra-legal movement? The operator shall:

(a) Provide general warning to traffic approaching from the rear of the extra-legal vehicle ahead by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any leading pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, objects coming loose from the extra-legal vehicle; flat tires on the extra-legal vehicle; rapidly approaching traffic or vehicles attempting to pass the extra-legal vehicle; etc.;

(c) Notify the operator of the extra-legal vehicle, and/or the operator of the lead pilot/escort vehicle, about traffic buildup or other delays to normal traffic flow resulting from the extra-legal move;

(d) In the event of traffic buildup behind the extra-legal vehicle, notify the operator of the extra-legal vehicle, and the operator(s) of any pilot/escort vehicle(s) in the lead, and assist the extra-legal vehicle in its move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough behind the extra-legal vehicle to provide visual warning to approaching traffic to slow or stop in a timely manner, depending upon the action to be taken by the extra-legal vehicle, or the condition of the highway segment (i.e., limited sight distance, mountainous terrain, narrow corridor, etc.);

(f) Do not follow more closely than is reasonably prudent, considering the speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed one-half mile distance between the pilot/escort vehicle and the extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; and

(g) Pilot/escort operators shall not perform tillerman duties while performing escorting duties. For this section, tillerman refers to an individual that operates the steering of the trailer or trailing unit of the transport vehicle; and

(h) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(8) What kind of vehicle can be used as a pilot/escort vehicle? In addition to being in safe and reliable operating condition, the vehicle shall:

(a) Be either a single unit passenger car, including passenger van, or a two-axle truck, including a nonplacarded service truck;

(b) Not exceed a maximum gross vehicle weight or gross weight rating of (~~sixteen thousand~~) 16,000 pounds;

(c) Have a body width of at least (~~sixty~~) 60 inches but no greater than (~~one hundred two~~) 102 inches;

(d) Not exceed the legal limits of size and weight, as defined in chapter 46.44 RCW;

(e) Be equipped with outside rear-view mirrors, located on each side of the vehicle; and

(f) Not tow a trailer while escorting.

(9) In addition to equipment required by traffic law, what additional equipment is required on the vehicle when operating as a pilot/escort, and when is it used?

(a) A minimum of one flashing or rotating amber (yellow) light or strobe, positioned above the roof line, visible from a minimum of (~~five hundred~~) 500 feet to approaching traffic from the front or rear of the vehicle and visible a full (~~three hundred sixty~~) 360 degrees around the pilot/escort vehicle. Light bars, with appropriately colored lights, meeting the visibility minimums are acceptable. Lights must only be activated while escorting an extra-legal vehicle, or when used as traffic warning devices while stopped at the side of the road taking height measurements during the prerunning of a planned route. The vehicle's headlights must also be activated while escorting an extra-legal vehicle.

(b) A sign reading "OVERSIZE LOAD," measuring at least five feet wide, (~~ten~~) 10 inches high with black lettering at least eight inches high in a one-inch brush stroke on yellow background. The sign shall be mounted over the roof of the vehicle and shall be displayed only while performing as the pilot/escort of an extra-legal load. When the vehicle is not performing as a pilot/escort, the sign must be removed, retracted or otherwise covered.

(c) A two-way radio communications system capable of providing reliable two-way voice communications, at all times, between the operators of the pilot/escort vehicle(s) and the extra-legal vehicle(s).

(d) Nonemergency electronic communications is prohibited except communication between the pilot/escort vehicle(s) and the transport vehicle during movement.

(10) What additional or specialized equipment must be carried in a pilot/escort vehicle?

(a) A standard (~~eighteen-inch~~) 18-inch STOP AND SLOW paddle sign.

(b) Three bi-directional emergency reflective triangles.

(c) A minimum of one five-pound B, C fire extinguisher, or equivalent.

(d) For daytime and nighttime activities, a high visibility safety garment designed according to Class 2/3 specifications in ANSI/ISEA 107-2004, *American National Standard for High Visibility Safety Apparel*, to be worn when performing pilot/escort duties outside of the vehicle. The specifications at a minimum will meet the standard in the *Manual on Uniform Traffic Control Devices* (MUTCD).

(e) A highly visible colored hard hat, also to be worn when performing pilot/escort duties outside of the vehicle, per WAC 296-155-305.

(f) A height-measuring device (pole), which is nonconductive and nondestructive to overhead clearances, when required by the terms of the special permit. The upper portion of a height pole shall be constructed of flexible material to prevent damage to wires, lights, and other overhead objects or structures. The pole may be carried outside of the vehicle when not in use. See also subsection (14) of this section.

(g) First-aid supplies as prescribed in WAC 296-800-15020.

(h) A flashlight in good working order with red nose cone. Additional batteries should also be on hand.

(11) **Can the pilot/escort vehicle carry passengers?** A pilot/escort vehicle may not contain passengers, human or animal, except that:

(a) A certified individual in training status or necessary flag person may be in the vehicle with the approval of the pilot/escort operator.

(b) A service animal may travel in the pilot/escort vehicle but must be located somewhere other than front seat of vehicle.

(12) **Can the pilot/escort vehicle carry any other items, equipment, or load?** Yes, as long as the items, equipment or load have been properly secured; provided that, no equipment or load may be carried in or on the pilot/escort vehicle that:

(a) Exceeds the height, length, or width of the pilot/escort vehicle, or overhangs the vehicle, or otherwise impairs its immediate recognition as a pilot/escort vehicle by the traveling public;

(b) Obstructs the view of the flashing or rotating amber lights, or "OVERSIZE LOAD" sign on the vehicle;

(c) Causes safety risks; or

(d) Otherwise impairs the performance by the operator or the pilot/escort vehicle of the duties required by these rules.

(13) **Can a pilot/escort vehicle escort more than one extra-legal load at the same time?** No, unless the department determines there are special circumstances that have resulted in an express authorization on the special permit.

(14) **When and how must a pilot/escort vehicle use a height-measuring device?** The height-measuring device (pole) must be used when escorting an extra-legal load in excess of (~~fourteen~~) 14 feet six inches high, unless an alternative authorization has been granted by the department and stated on the special permit. The height pole must extend between three and six inches above the maximum height of the extra-legal vehicle, or load, to compensate for the affect of wind and motion. The height measuring device (pole) shall be mounted on the front of the lead pilot/escort vehicle. When not in the act of escorting an extra-legal height move, or prerunning a route to determine height acceptance, the height pole shall be removed, tied down or otherwise reduced to legal height.

(15) **Do the rules change when a uniformed off-duty law enforcement officer, using official police car or motorcycle, performs the escorting function?** While the spirit of the rules remains the same, specific rules may be modified to fit the situation.

(16) **Are certified pilot/escort vehicle operators required to have commercial auto insurance?** Yes, for hire certified pilot/escort vehicle operators are required to have insurance to conduct the duties associated to this rule:

(a) One hundred thousand dollars for bodily injury to or death of one person in any one accident;

(b) Three hundred thousand dollars for bodily injury to or death of two or more persons in any one accident; and

(c) Fifty thousand dollars for damage to or destruction of property of others in any one accident.

Satisfactory evidence of the insurance shall be carried at all times by the operator of the pilot vehicle, which evidence shall be displayed upon request by a law enforcement officer.

[Statutory Authority: RCW 46.44.090 and 46.44.093. WSR 20-21-042, § 468-38-100, filed 10/13/20, effective 11/13/20; WSR 18-13-029, § 468-38-100, filed 6/11/18, effective 7/12/18; WSR 17-11-001, §

468-38-100, filed 5/3/17, effective 6/3/17; WSR 16-11-012, § 468-38-100, filed 5/5/16, effective 6/5/16. Statutory Authority: RCW 46.44.090. WSR 06-07-025, § 468-38-100, filed 3/7/06, effective 4/7/06; WSR 05-04-053, § 468-38-100, filed 1/28/05, effective 2/28/05; WSR 89-23-110 (Order 68), § 468-38-100, filed 11/22/89, effective 12/23/89; WSR 82-18-010 (Order 31, Resolution No. 156), § 468-38-100, filed 8/20/82. Formerly WAC 468-38-180. Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-38-100, filed 12/20/78. Formerly WAC 252-24-100.]