

WSR 07-11-130
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed May 22, 2007, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-09-013.

Title of Rule and Other Identifying Information: Chapter 388-845 WAC, Division of developmental disabilities (DDD) home and community based services waivers.

SUMMARY OF PROPOSED RULES:

The department of social and health services, aging and disability services administration, division of developmental disabilities (DDD), is proposing amended rules governing chapter 388-845 WAC, DDD home and community based services (HCBS) waivers.

DDD replaced its medicaid home and community based services community alternatives program (CAP) waiver with four new waiver programs effective April 1, 2004. The four new waivers - Basic, Basic Plus, CORE, and community protection - provide an array of services. Waiver services provide additional support when medicaid state plan services and other supports are not sufficient to meet a client's needs.

The general purpose of this chapter is to establish clear definitions, and limitations of waiver funded services offered in the four waivers, and to define who the qualified providers of those services are.

The major components of the chapter are:

- Detailed eligibility criteria for waiver enrollees;
- Procedures for enrollment and termination;
- Waiver service definitions;
- Available services and relevant funding limits for each of the four waivers; and
- Descriptions of qualified providers, service planning and appeal rights.

DDD has had ongoing discussions with the federal Center for Medicare and Medicaid Services (CMS) and has received approval from CMS to amend its waivers under Section 1915 of the Social Security Act. These amendments also respond to the proposed order and settlement agreement under *Boyle v. Arnold-Williams*. Finally, these amendments incorporate the provisions of the letter of agreement between the state of Washington (office of financial management) and the Service Employees International Union (SEIU).

The proposed new sections, amended sections and repealed sections are shown below (see small business economic impact statement).

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on July 25, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 26, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery

4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on July 25, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller by July 18, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DDD has had ongoing discussions with the federal Center for Medicare and Medicaid Services (CMS) and has received approval from CMS to amend its waivers under Section 1915 of the Social Security Act. These amendments also respond to the proposed order and settlement agreement under *Boyle v. Arnold-Williams* and incorporate the provisions of the letter of agreement between the state of Washington (office of financial management) and the Service Employees International Union (SEIU).

Reasons Supporting Proposal: These amendments are necessary to comply with the proposed order and settlement listed above and to allow the state of Washington to continue to claim federal matching funds under Title XIX of the Social Security Act.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW.

Rule is necessary because of federal court decision, United States District Court, Western District of Washington at Tacoma, Proposed Order and Settlement Agreement NO: C-01-5687 JKA.

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

Name of Agency Personnel Responsible for Drafting: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail brinksc@dshs.wa.gov, (360) 725-3416, fax (360) 407-0955; Implementation: Shannon Manion, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail maniosk@dshs.wa.gov, (360) 725-3445, fax (360) 407-0955; and Enforcement: Don Clintzman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail clintdl@dshs.wa.gov, (360) 725-3421, fax (360) 407-0955.

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

Small Business Economic Impact Statement

Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

These proposed rules impact individual providers of respite care services and personal care services. Preparation of a small business economic impact statement (SBEIS) is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute outlines information that must be included in an SBEIS.

The division of developmental disabilities has analyzed the proposed rule amendments and has determined that small

businesses will be impacted by these changes, with some costs considered "more than minor" and disproportionate to small businesses.

INVOLVEMENT OF INDUSTRY AND OTHER STAKEHOLDERS: DDD filed a preproposal statement of inquiry (WSR 06-09-013) on April 10, 2006, and notified interested persons that it intended to develop and adopt rules regarding the home and community-based services waivers.

DDD has solicited comments from Washington Protection & Advocacy System and Columbia Legal Services pursuant to the settlement agreement under *Boyle v. Arnold-Williams*. DDD has documented comments received and has made revisions based on this feedback. This has resulted in the current version of the rules that DDD is proposing for adoption.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: Since the proposed amendments "make significant amendments to a policy or regulatory program" (see RCW 34.05.328 (5)(c)(iii)), DDD has determined the proposed rules to be "significant" as defined by the legislature.

As required by RCW 34.05.328 (1)(c), DDD has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs. The organizations and agencies impacted by these rules include:

- Individual providers of respite care services.
- Individual providers of personal care services.

COST OF COMPLIANCE: To fairly consider the costs of compliance, DDD has comprehensively identified those proposed changes to its rules, examining their impact on clients and small businesses, weighing perceived costs against potential benefits.

DDD's analysis revealed that there are costs imposed by the proposed amendments. While there are no costs to clients, the following rules may impose costs to individual providers:

- WAC 388-845-0111 Are there limitations regarding who can provide services?
- WAC 388-845-1605 Who is eligible to receive respite care?
- WAC 388-845-1620 Are there limits to the respite care I can receive?
- WAC 388-845-3000 What is the process for determining the services I need?

These rules determine and limit the number of hours that can be paid to an individual provider and in some cases may result in the loss of income to the individual provider. These costs are a direct result of the letter of agreement between the state office of financial management (OFM) and the Service Employees International Union (SEIU) dated August 3, 2006.

BENEFITS:

- These rules will not impose additional costs for services, as client need will dictate the amount of services that can be authorized, and contracts will be adjusted accordingly.
- Services to clients will improve as these rules establish professional standards that providers of service must meet.

- Services to clients will improve as additional services are now available.
- DDD will be able to claim federal Title XIX matching funds for services provided to individuals enrolled in an HCBS waiver.

CONCLUSION: DDD has given careful consideration to the impact of proposed rules in chapter 388-845 WAC on small businesses. To comply with the Regulatory Fairness Act, chapter 19.85 RCW, DDD has analyzed impacts on small businesses which are considered more than minor and disproportionate.

These rules determine and limit the number of hours that can be paid to an individual provider and in some cases may result in the loss of income to the individual provider. These costs are a direct result of the letter of agreement between OFM and SEIU dated August 3, 2006.

The costs deal exclusively with the loss of revenue to individual providers. In those instances where an individual provider may lose some revenue due to the limitations imposed by this agreement, DDD is unable to mitigate those costs unless the letter of agreement with SEIU is modified.

Please contact Steve Brink at (360) 725-3416 if you have any questions.

**SBEIS/CBA WORKSHEET
May 2007**

Washington Administrative Code	Effect of Rule	Impact Small Business? If "yes," see attached SBEIS/CBA
388-845-0001 Definitions		
"DDD assessment" (new)	Defines DDD assessment.	No
"Family" (new)	Defines family.	No
"Individual support plan (ISP)" (new)	Defines ISP.	No
"Legal representative" (new)	Defines legal representative.	No
"Necessary supplemental accommodation representative" (new)	Defines necessary supplemental accommodation representative.	No
"Plan of care (POC)" (amended)	Specifies that the POC remains in effect until the DDD assessment is administered and the ISP is developed.	No
"Providers" (amended)	Clarifies that providers must meet all provider qualifications and are contracted with ADSA.	No
"Respite assessment" (amended)	Defines the respite assessment as an algorithm.	No
388-845-0015 (amended)	Eliminates reference to CAP waiver and changes tense to reflect current situation.	No
388-845-0025 (deleted)	Deletes section as conversion from CAP waiver is complete.	No

Washington Administrative Code	Effect of Rule	Impact Small Business? If "yes," see attached SBEIS/CBA
388-845-0030 (amended)	Corrects cross references and adds the ISP as an alternative to the POC.	No
388-845-0031 (new)	Clarifies that one cannot be enrolled in more than one HCBS waiver at the same time.	No
388-845-0035 (amended)	Clarifies that enrollment in a new or different HCBS waiver is not guaranteed.	No
388-845-0040 (amended)	Clarifies that DDD may limit capacity.	No
388-845-0041 (amended)	Adds the ISP as an alternative to the POC.	No
388-845-0045 (amended)	Clarifies that individuals may be enrolled from the statewide data base when there is capacity and funding for new waiver participants and revises "health and safety" to "health and welfare."	No
388-845-0050 (amended)	Adds reference to requests for enrollment in a different waiver.	No
399-845-0052 (new)	Defines the process for requests to be enrolled in a different waiver and DDD's notice requirement in accordance with the <i>Boyle</i> lawsuit.	No
388-845-0055 (amended)	Clarifies language concerning ongoing eligibility once one is enrolled in a waiver and changes the reference from the CARE assessment to the DDD assessment.	No
388-845-0060 (amended)	Clarifies when enrollment in a waiver can be terminated, adds a monthly monitoring plan as an alternative to receiving a waiver service as an eligibility condition, and adds the ISP as an alternative to the POC.	No
388-845-0070 (amended)	Specifies that DDD uses the DDD assessment as specified in chapter 388-828 WAC to determine if the client needs ICF/MR level of care.	No
388-845-0075 through 388-845-0096 (deleted)	Deletes these sections as the information is contained in chapter 388-828 WAC.	No

Washington Administrative Code	Effect of Rule	Impact Small Business? If "yes," see attached SBEIS/CBA
388-845-0100 (amended)	Defines the criteria for assignment to the most cost-effective DDD waiver and eliminates the criteria use for conversion from the expired CAP waiver.	No
388-845-0105 (amended)	Adds the ISP as an alternative to the POC.	No
388-845-0110 (amended)	Adds the ISP as an alternative to the POC.	No
388-845-0111 (new)	Defines the limitations regarding who can provide waiver services.	Yes - may result in minor loss of income for individual parent providers
388-845-0200 (amended)	Revises the source of the definition of waiver services available from the service plan to the POC or ISP.	No
388-845-0205 (amended)	Defines the yearly limits as those determined by the DDD assessment and clarifies that emergency services are available only for aggregate services and/or employment/day program services.	No
388-845-0210 (amended)	Defines the yearly limits as those determined by the DDD assessment and clarifies that emergency services are available only for aggregate services and/or employment/day program services.	No
388-845-0215 (amended)	Adds the ISP as an alternative to the POC and defines the yearly limits as those determined by the DDD assessment.	No
388-845-0220 (amended)	Adds the ISP as an alternative to the POC.	No
388-845-0510 (amended)	Clarifies that approval is required from the DDD regional administrator or designee.	No
388-845-0800 (amended)	Clarifies that emergency services are available only for aggregate services and/or employment/day program services.	No

Washington Administrative Code	Effect of Rule	Impact Small Business? If "yes," see attached SBEIS/CBA
388-845-0820 (amended)	Clarifies that approval is required from the DDD regional administrator or designee, adds the ISP as an alternative to the POC, and clarifies that emergency services are available only for aggregate services and/or employment/day program services.	No
388-845-0900 (amended)	Adds the ISP as an alternative to the POC.	No
388-845-0910 (amended)	Clarifies that approval is required from the DDD regional administrator or designee.	No
388-845-1300 (amended)	Revises the wording and clarifies the reference for personal care services.	No
388-845-1310 (amended)	Deletes reference to the obsolete children's comprehensive assessment and clarifies that the maximum number of hours of personal care is determined by the CARE assessment within the DDD service level assessment.	No
388-845-1505(5) (amended)	Clarifies the types of providers for children and corrects WAC cross reference.	No
388-845-1515 (amended)	Adds limitations to alternate living services within the CORE waiver and requires the initial authorization of residential habilitation services to have prior approval by the DDD regional administrator or designee.	No
388-845-1605 (amended)	Clarifies that the client is the one eligible for respite care and limits respite to parents who provided care prior to June 2007.	Yes - may result in minor loss of income for individual respite providers
388-845-1606 (deleted)	Deletes reference to exceptions to the requirements before July 2006.	No
388-845-1610 (amended)	Eliminates state operated living alternative (SOLA) and other certified supported living situations as settings where respite may be provided, and allows the respite provider to take the client into the community.	No

Washington Administrative Code	Effect of Rule	Impact Small Business? If "yes," see attached SBEIS/CBA
388-845-1615	Corrects cross-references.	No
388-845-1620 (amended)	Clarifies that the DDD assessment determines how much respite may be received for the Basic, Basic Plus and CORE waivers, clarifies that prior approval is required from the DDD regional administrator or designee, requires prior approval to pay for more than eight hours in a twenty-four hour period in any setting other than the client's home or place of residence, allows the respite provider to take the client into the community, and specifies that DDD cannot pay for fees associated with the respite care.	Yes - implementing the respite assessment algorithm contained in the DDD assessment for clients on the CORE waiver may have a minor impact on individual respite providers. In some cases the number of respite hours may decrease; in others, it may increase.
388-845-1660 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee.	No
388-845-1710 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee for all skilled nursing services, and changes the agency responsible for determining the need for service and the right to require a second opinion from the department to DDD.	No
388-845-1800 (amended)	Defines specialized medical equipment and supplies, clarifies that these services cannot be available through Medicaid or the state plan, adds a cross reference to WAC 388-543-1000, and clarifies that these services are available in all four DDD HCBS waivers.	No
388-845-1810 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee, and changes the agency responsible for determining the need for the right to require a second opinion from the department to DDD.	No

Washington Administrative Code	Effect of Rule	Impact Small Business? If "yes," see attached SBEIS/CBA
388-845-1910 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee for all specialized psychiatric services.	No
388-845-2000 (amended)	Adds the ISP as an alternative to the POC.	No
388-845-2005 (amended)	Adds recreational therapists as a qualified provider of staff/family consultation and training.	No
388-845-2010 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee.	No
388-845-2200 (amended)	Adds the ISP as an alternative to the POC, and clarifies that transportation services are available only if the cost and responsibility for transportation is not already included in the provider's contract and payment.	No - this rule implements existing limitations contained in the provider's contract.
388-845-2210 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee.	No
388-845-3000 (amended)	Specifies that service needs are determined through the DDD assessment, only identified health and welfare needs will be authorized for payment, the amount of respite care for the Basic, Basic Plus and CORE waivers is determined by the DDD assessment, and adds the ISP as an alternative to the POC.	Yes - implementing the respite assessment algorithm contained in the DDD assessment for clients on the CORE waiver may have a minor impact on individual respite providers. In some cases the number of respite hours may decrease; in others, it may increase.
388-845-3005 through 388-845-3050 (deleted)	Deletes these sections as they are contained in the DDD assessment and service planning process as defined in chapter 388-828 WAC.	No

Washington Administrative Code	Effect of Rule	Impact Small Business? If "yes," see attached SBEIS/CBA
388-845-3055 (amended)	Specifies that the ISP replaces the POC; clarifies that the POC remains in effect until the ISP is developed; specifies that the ISP must include identified health and welfare needs, and both paid and unpaid services approved to meet these identified health and welfare needs; and specifies that a signature or verbal consent by the client or legal representative is required on an initial, reassessment or review of the ISP.	No
388-845-3056 (new)	Specifies what actions DDD will take if an individual needs additional help in understanding the ISP.	No
388-845-3060 (amended)	Adds the ISP as an alternative to the POC, and specifies that a signature or verbal consent is required on an initial, reassessment or review of the ISP.	No
388-845-3061 (new)	Specifies that a change in the plan of care or ISP can be made immediately upon a verbal request prior to receiving a signature.	No
388-845-3062 (new)	Specifies who must sign or give verbal consent to the ISP and adds a reference to WAC 388-845-3056 if an individual needs assistance to understand the ISP.	No
388-845-3065 (amended)	Specifies that the plan of care remains in effect until it is replaced by the ISP and that the ISP is effective through the last day of the twelfth month following the effective date or until a new ISP is completed.	No

Washington Administrative Code	Effect of Rule	Impact Small Business? If "yes," see attached SBEIS/CBA
388-845-3070 (amended)	Changes plan of care to ISP; specifies that on an initial plan, DDD will be unable to provide waiver services if a signature or verbal consent is not obtained, will not assume consent, and will follow the steps described in WAC 388-845-3056; specifies that for a reassessment or review, if a client is able to understand the ISP, and if a signature or verbal consent is not obtained, DDD will continue existing services through the end of the advance notice period and at the end of the advance notice period, DDD will assume consent and implement the new ISP without a signature or verbal consent; specifies that for a reassessment or review, if a client is not able to understand the ISP, and if a signature or verbal consent is not obtained, DDD will continue existing services in accordance with WAC 388-845-3056; and includes an additional cross-reference for appeal rights.	No
388-845-3075 (amended)	Adds the ISP as an alternative to the POC.	No
388-845-3095 (amended)	Clarifies the client's responsibility in paying toward the cost of waiver services.	No
388-845-4000 (amended)	Clarifies additional appeal rights under the waiver.	No
388-845-4005 (amended)	Clarifies appeal rights to include the provisions contained in the <i>Boyle</i> lawsuit.	No

A copy of the statement may be obtained by contacting Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, phone (360) 725-3416, fax (360) 407-0995, e-mail brinksc@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olym-

pia, WA 98507-5310, phone (360) 725-3416, fax (390) 407-9055 [(360) 407-0995], e-mail brinksc@dshs.wa.gov.

May 15, 2007
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0001 Definitions. "ADSA" means the aging and disability services administration, an administration within the department of social and health services.

"Aggregate Services" means a combination of services subject to the dollar limitations in the Basic and Basic Plus waivers.

"CAP waiver" means the community alternatives program waiver.

"CARE" means the comprehensive assessment and reporting evaluation.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration of the department of social and health services.

"DDD Assessment" refers to the standardized assessment tool as defined in chapter 388-828 WAC, used by DDD to measure the support needs of persons with developmental disabilities.

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

"Employment/day program services" means community access, person-to-person, prevocational services or supported employment services subject to the dollar limitations in the Basic and Basic Plus waivers.

"Family" means relatives who live in the same home with the eligible client. Relatives include natural, adoptive or step parents; grandparents; brother; sister; stepbrother; step-sister; uncle; aunt; first cousin; niece; or nephew.

"HCBS waivers" means home and community based services waivers.

"ICF/MR" means an intermediate care facility for the mentally retarded.

"Individual Support Plan (ISP)" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Legal Representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Necessary Supplemental Accommodation Representative" means an individual who receives copies of DDD planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDD when the client does not have a legal guardian and the client is requesting or receiving DDD services.

"Plan of care (POC)" means the primary tool DDD uses to determine and document your needs and to identify ser-

VICES to meet those needs until the DDD assessment is administered and the individual support plan is developed.

"Providers" means an individual or agency who (~~is licensed, certified and/or~~) meets the provider qualifications and is contracted with ADSA to provide services to you.

"Respite assessment" means (~~a series of questions about you and your caregiver used to determine the amount of respite care available to you~~) an algorithm within the DDD assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the Basic, Basic Plus, or Core waiver.

"SSI" means Supplemental Security Income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means state supplementary payment, a benefit administered by the department intended to augment an individual's SSI.

"State funded services" means services that are funded entirely with state dollars.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0015 What HCBS waivers are provided by the division of developmental disabilities (DDD)? DDD (~~has replaced its community alternatives program (CAP) waiver with~~) provides services through four HCBS waivers:

- (1) Basic waiver;
- (2) Basic Plus waiver;
- (3) CORE waiver; and
- (4) Community protection waiver.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? You meet criteria for DDD HCBS waiver-funded services if you meet all of the following:

- (1) You have been determined eligible for DDD services per RCW 71A.10.020(3).
- (2) You have been determined to meet ICF/MR level of care per WAC 388-845-0070 (~~(through 388-845-0090)~~), 388-828-3060 and 388-828-3080.
- (3) You meet disability criteria established in the Social Security Act.
- (4) You meet financial eligibility requirements as defined in WAC 388-515-1510.
- (5) You choose to receive services in the community rather than in an ICF/MR facility.
- (6) You have a need for waiver services as identified in your plan of care or individual support plan.
- (7) You are not residing in hospital, jail, prison, nursing facility, ICF/MR, or other institution.

NEW SECTION

WAC 388-845-0031 Can I be enrolled in more than one HCBS waiver? You cannot be enrolled in more than one HCBS waiver at the same time.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0035 Am I guaranteed placement on a waiver if I meet waiver criteria? (1) If you are not currently enrolled in a waiver, meeting criteria for the waiver does not guarantee access to or receipt of waiver services.

(2) If you are currently on a waiver and you have been determined to have health and welfare needs that can be met only by services available on a different waiver, you are not guaranteed enrollment in that different waiver.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0040 Is there a limit to the number of people who can be enrolled in each HCBS waiver? Each waiver has a capacity limit on the number of people who can be served in a waiver year. In addition, DDD has the authority to limit (~~(enrollment into the waivers)~~) capacity based on availability of funding for new waiver participants.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0041 What is DDD's responsibility to provide my services under the waivers administered by DDD? If you are enrolled in an HCBS waiver administered by DDD, DDD must meet your assessed needs for health and welfare.

(1) DDD must address your assessed health and welfare needs in your plan of care or the individual support plan, as specified in WAC 388-845-3055.

(2) You have access to DDD paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and WAC 388-845-0115.

(3) DDD will provide waiver services you need and qualify for within your waiver.

(4) DDD will not deny or limit your waiver services based on a lack of funding.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled? When there is capacity on a waiver and available funding for new waiver participants, DDD may enroll people from the statewide database in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDD may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDD has determined to be in immediate risk of ICF/MR admission due to unmet health and (~~(safety))~~ welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060(9).

(3) For the Basic waiver only, DDD may consider persons who need the waiver services available in the Basic waiver to maintain them in their family's home.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0050 How do I request to be enrolled in a waiver? (1) You can contact DDD and request to be enrolled in a waiver or to enroll in a different waiver at any time.

~~((4))~~ (2) If you are assessed as meeting ICF/MR level of care as defined in WAC 388-845-0070 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDD in a statewide data base.

~~((2) When there is capacity available to enroll additional people in a waiver, WAC 388-845-0045 describes how DDD will determine who will be enrolled.)~~

NEW SECTION

WAC 388-845-0052 What is the process if I am already on a waiver and request enrollment onto a different waiver? (1) If you are already enrolled in a DDD HCBS waiver and you request to be enrolled in a different waiver DDD will do the following:

(a) Assess your needs to determine whether your health and welfare needs can be met with services available on your current waiver or whether those needs can only be met through services offered on a different waiver.

(b) If DDD determines your health and welfare needs can be met by services available on your current waiver your enrollment request will be denied.

(c) If DDD determines your health and welfare needs can only be met by services available on a different waiver your service need will be reflected in your ISP.

(d) If DDD determines there is capacity on the waiver that is determined to meet your needs, DDD will place you on that waiver.

(2) You will be notified in writing of DDD's decision under subsection (1)(a) of this section and if your health and welfare needs cannot be met on your current waiver, DDD will notify you in writing whether there is capacity on the waiver that will meet your health and welfare needs and whether you will be enrolled on that waiver. If current capacity on that waiver does not exist, your eligibility for enrollment onto that different waiver will be tracked on a statewide database.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0055 How do I remain eligible for the waiver? ~~((If you are already on a HCBS waiver.))~~ Once you are enrolled in a DDD HCBS waiver, you can remain eligible if you ((must)) continue to meet eligibility criteria in WAC 388-845-0030.

(1) DDD completes a reassessment at least every twelve months to determine if you continue to meet all of these eligibility requirements ~~((in WAC 388-845-0030.))~~; and

(2) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 388-513-1320 (3)(b)(-)) or your health and welfare needs require a monthly monitoring plan; and

(3) Your ~~((plan of care, CARE))~~ DDD assessment/reassessment ((and respite assessment/reassessment)) must be done in person and in your home. See WAC 388-828-1180.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0060 Can my waiver ((eligibility)) enrollment be terminated? DDD may terminate your waiver ~~((eligibility))~~ enrollment if DDD determines that:

(1) Your health and ~~((safety))~~ welfare needs cannot be met in your current waiver or for one of the following reasons:

~~((4))~~ (a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

~~((2))~~ (b) You ~~((no longer))~~ do not have an identified need for a waiver service(s) at the time of your annual plan of care or individual support plan;

~~((3))~~ (c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring;

~~((4))~~ (d) You are on the community protection waiver and choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

~~((5))~~ (e) You choose to disenroll from the waiver;

~~((6))~~ (f) You reside out of state;

~~((7))~~ (g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

~~((8))~~ (h) You refuse to participate with DDD in:

~~((a))~~ (i) Service planning;

~~((b))~~ (ii) Required quality assurance and program monitoring activities; or

~~((e))~~ (iii) Accepting services agreed to in your plan of care or individual support plan as necessary to meet your health and ~~((safety))~~ welfare needs.

~~((9))~~ (i) You are residing in a hospital, jail, prison, nursing facility, ICF/MR, or other institution and remain in residence at least one full calendar month, and are still in residence:

~~((a))~~ (i) At the end of the twelfth month following the effective date of your current plan of care or individual support plan, as described in WAC 388-845-3060; or

~~((b))~~ (ii) On March 31st, the end of the waiver fiscal year, whichever date occurs first.

~~((H))~~ (j) Your needs exceed the maximum funding level or scope of services under the Basic or Basic Plus waiver as specified in WAC 388-845-3080; or

~~((H))~~ (k) Your needs exceed what can be provided under the CORE or community protection waiver as specified in WAC 388-845-3085; or

(2) Services offered on a different waiver can meet your health and welfare needs and DDD enrolls you on a different waiver.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0070 What determines if I need ICF/MR level of care? DDD determines if you need ICF/MR level of care based on your need for waiver services. To reach this decision, DDD uses ~~((its department approved))~~ the DDD assessment ~~((and/or other information))~~ as specified in ~~((WAC 388-845-0085))~~ chapter 388-828 WAC.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0100 What determines which waiver I am assigned to? ~~((DDD will assign you to a waiver based on the following criteria:))~~

~~((1) If you were on the CAP waiver as of March 2004, your initial assignment to the Basic, Basic Plus, CORE, or community protection waiver was based on:~~

~~((a) Services you received from DDD in October 2002 through September 2003; and~~

~~((b) Services you were authorized to receive in October, November and December 2003.~~

~~((2) If you are new to a waiver since April 1, 2004, assignment is based on your assessment and service plan.~~

~~((3) Additional criteria apply to the assignment to the community protection waiver))~~ If there is capacity, DDD will assign you to the most cost effective waiver based on its evaluation of the DDD assessment and your health and welfare needs as described in chapter 388-828 WAC and the following criteria:

(1) For the Basic waiver:

(a) You must live with your family or in your own home;

(b) Your family/caregiver's ability to continue caring for you can be maintained with the addition of services provided in the Basic waiver; and

(c) You do not need out-of-home residential services.

(2) For the Basic Plus waiver, your health and welfare needs exceed the amount allowed in the Basic waiver or require a service that is not contained in the Basic waiver; and

(a) You are at high risk of out-of-home placement or loss of your current living situation; or

(b) You require out-of-home placement and your health and welfare needs can be met in an adult family home or adult residential care facility.

(3) For the Core waiver:

(a) You are at immediate risk of out-of-home placement; and/or

(b) You have an identified health and welfare need for residential services that cannot be met by the Basic Plus waiver.

(4) For the Community Protection waiver, refer to WAC 388-845-0105.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0105 What criteria determine assignment to the community protection waiver? DDD may assign you to the community protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

(1) You have been identified by DDD as a person who meets one or more of the following:

(a) You have been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW;

(b) You have been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;

(d) You have not been convicted and/or charged, but you have a history of stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or

(e) You have committed one or more violent crimes.

(2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and

(3) You comply with the specialized supports and restrictions in your:

(a) Plan of care ~~((POC))~~ or individual support plan;

(b) Individual instruction and support plan (IISP); and/or

(c) Treatment plan provided by DDD approved certified individuals and agencies.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0110 Are there limitations to the waiver services I can receive? There are limitations to waiver services. In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply:

(1) A service must be offered in your waiver and authorized in your plan of care or individual support plan.

(2) Mental health stabilization services may be added to your plan of care or individual support plan after the services are provided.

(3) Waiver services are limited to services required to prevent ICF/MR placement.

(4) The cost of your waiver services cannot exceed the average daily cost of care in an ICF/MR.

(5) Waiver services cannot replace or duplicate other available paid or unpaid supports or services.

(6) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

(7) The Basic and Basic Plus waivers have yearly limits on some services and combinations of services. The combination of services is referred to as aggregate services or employment/day program services.

(8) Your choice of qualified providers and services is limited to the most cost effective option that meets your assessed needs.

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

(10) Other out-of-state waiver services require an approved exception to rule before DDD can authorize payment.

NEW SECTION

WAC 388-845-0111 Are there limitations regarding who can provide services? The following limitations apply to providers for waiver services:

(1) Your spouse cannot be your paid provider for any waiver service.

(2) If you are under age eighteen, your natural, step, or adoptive parent cannot be your paid provider for any waiver service.

(3) If you are age eighteen or older, your natural, step, or adoptive parent cannot be your paid provider for any waiver service with the exception of:

(a) Personal care;

(b) Transportation to and from a waiver service;

(c) Residential habilitation services per WAC 388-845-1510 if your parent is certified as a residential agency per chapter 388-101 WAC; or

(d) Respite care if you and the parent who provides the respite care live in separate households.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0200 What waiver services are available to me? Each of the four HCBS waivers has a different scope of service and your ((service)) plan of care or individual support plan defines the waiver services available to you.

AMENDATORY SECTION (Amending WSR 07-05-014, filed 2/9/07, effective 3/12/07)

WAC 388-845-0205 Basic waiver services.

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$1454 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$6631 per year
	Sexual deviancy evaluation	Limits are determined by DDD
	Respite care	Limits are determined by ((respite)) the <u>DDD</u> assessment
	Personal care	Limits are determined by ((CARE)) the <u>CARE</u> tool used as part of the <u>DDD</u> assessment
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits are determined by a mental health professional or DDD
	Emergency assistance is only for <u>aggregate services and/or employment/day program services</u> contained in the Basic waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 07-05-014, filed 2/9/07, effective 3/12/07)

WAC 388-845-0210 Basic Plus waiver services.

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6192 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$9691 per year
	Adult foster care (adult family home) Adult residential care (boarding home)	Determined per department rate structure
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care	Limits determined by the CARE <u>tool</u> used as part of the <u>DDD</u> assessment
	Respite care	Limits are determined by <u>((respite)) the DDD</u> assessment

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	Sexual deviancy evaluation	Limits are determined by DDD
	Emergency assistance is only for <u>aggregate services and/or employment/day program services</u> contained in the Basic Plus waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0215 CORE waiver services.

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community guide Community transition Environmental accessibility adaptations Occupational therapy Respite care Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation Residential habilitation	Determined by the Plan of Care or <u>individual support plan</u> , not to exceed the average cost of an ICF/MR for any combination of services
	Community access Person-to-person Prevocational services Supported employment	
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD

CORE WAIVER	SERVICES	YEARLY LIMIT
	Personal care	((Limited)) <u>Limits determined by the CARE tool used as part of the DDD assessment</u>

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0220 Community protection waiver services.

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation Residential habilitation Person-to-person Prevocational services Supported employment	Determined by the Plan of Care or <u>individual support plan</u> , not to exceed the average cost of an ICF/MR for any combination of services
	MENTAL HEALTH STABILIZATION SERVICES: Behavioral management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0510 Are there limits to the behavior management and consultation I can receive? The following limits apply to your receipt of behavior management and consultation:

- (1) DDD and the treating professional will determine the need and amount of service you will receive, subject to the limitations in subsection (2) below.
- (2) The dollar limitations for aggregate services in your Basic and Basic Plus waiver limit the amount of service unless provided as a mental health stabilization service.
- (3) DDD reserves the right to require a second opinion from a department-selected provider.
- (4) Behavior management and consultation not provided as a mental health stabilization service requires prior approval by the DDD regional administrator or designee.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0800 What is emergency assistance? Emergency assistance is a temporary increase to the yearly aggregate services and/or employment/day program services dollar limit specified in the Basic and Basic Plus waiver when additional waiver services are required to prevent ICF/MR placement. These additional services are limited to the services provided in your waiver.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0820 Are there limits to my use of emergency assistance? All of the following limitations apply to your use of emergency assistance:

- (1) Prior ~~((authorization))~~ approval by the DDD regional administrator or designee is required based on a reassessment of your plan of care or individual support plan to determine the need for emergency services;
- (2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current plan of care ~~((POC))~~ or individual support plan;
- (3) Emergency assistance services are limited to the ~~((scope of services in your))~~ aggregate services and employment/day program services in the Basic and Basic Plus waivers;
- (4) Emergency assistance may be used for interim services until:
 - (a) The emergency situation has been resolved; or
 - (b) You are transferred to alternative supports that meet your assessed needs; or
 - (c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0900 What are environmental accessibility adaptations? (1) Environmental accessibility adapta-

tions are available in all of the HCBS waivers and provide the physical adaptations to the home required by the individual's plan of care or individual support plan needed to:

(a) Ensure the health, welfare and safety of the individual; or

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.

(2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0910 What limitations apply to environmental accessibility adaptations? The following service limitations apply to environmental accessibility adaptations:

(1) ~~((Prior approval by DDD is required))~~ Environmental accessibility adaptations require prior approval by the DDD regional administrator or designee.

(2) Environmental accessibility adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.

(3) Environmental accessibility adaptations cannot add to the total square footage of the home.

(4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1300 What are personal care services? Personal care services as defined in WAC 388-106-0010 are the provision of assistance with personal care tasks ~~((as defined in WAC 388-106-0010, personal care services))~~. These services are available in the Basic, Basic Plus, and CORE waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1310 Are there limits to the personal care services I can receive? (1) You must meet the programmatic eligibility for Medicaid personal care in chapters 388-106 and 388-71 WAC governing Medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE) ~~((or children's comprehensive assessment))~~.

(2) The maximum hours of personal care you may receive are determined by the ~~((approved department assessment for Medicaid personal care services))~~ CARE tool used as part of the DDD assessment.

(a) Provider rates are limited to the department established hourly rates for in-home Medicaid personal care.

(b) Homecare agencies must be licensed through the department of health and contracted with DDD.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1505 Who are qualified providers of residential habilitation services for the CORE waiver? Providers of residential habilitation services for participants in the CORE waiver must be one of the following:

(1) Individuals contracted with DDD to provide residential support as a "companion home" provider;

(2) Individuals contracted with DDD to provide training as an "alternative living provider";

(3) Agencies contracted with DDD and certified per chapter 388-101 WAC;

(4) State-operated living alternatives (SOLA);

(5) Licensed and contracted group care homes, ~~((group training homes;))~~ foster homes, child placing agencies~~((;))~~ or staffed residential homes ~~((or adult residential rehabilitation centers per WAC 246-325-0012))~~ per chapter 388-148 WAC.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1515 Are there limits to the residential habilitation services I can receive? (1) You may only receive one type of residential habilitation service at a time.

(2) None of the following can be paid for under the CORE or community protection waiver:

(a) Room and board;

(b) The cost of building maintenance, upkeep, improvement, modifications or adaptations required to assure the health and safety of residents, or to meet the requirements of the applicable life safety code;

(c) Activities or supervision already being paid for by another source;

(d) Services provided in your parent's home unless you are receiving alternative living services for a maximum of six months to transition you from your parent's home into your own home.

(3) Alternative living services in the CORE waiver cannot:

(a) Exceed forty hours per month;

(b) Provide personal care or protective supervision.

(4) The following persons cannot be paid providers for your service:

(a) Your spouse;

(b) Your natural, step, or adoptive parents if you are a child age seventeen or younger;

(c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-101 WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

(5) The initial authorization of residential habilitation services requires prior approval by the DDD regional administrator or designee.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1605 Who is eligible to receive respite care? ~~(The person providing your care is eligible to receive respite care.)~~ You are eligible to receive respite care if you are in the Basic, Basic Plus or CORE waiver and:

(1) ~~You live in a private home ((with an unpaid caregiver)) and no one living with you is paid to be your caregiver;~~ or

(2) You live with a ~~((paid))~~ caregiver who is your natural, step or adopted parent who:

(a) ~~((A natural, step or adoptive parent))~~ Was paid by DDD to provide care to you as an individual provider prior to June 2007; and

(b) You were receiving respite prior to June 2007; or

(3) You live with a caregiver who is paid by DDD to provide care to you and is:

(a) ~~((A))~~ A contracted companion home provider; or

(b) ~~((A))~~ A licensed children's foster home provider.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1610 Where can respite care be provided? (1) Respite care can be provided in the following location(s):

~~((1))~~ (a) Individual's home or place of residence;

~~((2))~~ (b) Relative's home;

~~((3))~~ (c) Licensed children's foster home;

~~((4))~~ (d) Licensed, contracted and DDD certified group home;

~~((5))~~ State operated living alternative (SOLA) and other DDD certified supported living settings;

~~((6))~~ (e) Licensed boarding home contracted as an adult residential center;

~~((7))~~ (f) Adult residential rehabilitation center;

~~((8))~~ (g) Licensed and contracted adult family home;

~~((9))~~ (h) Children's licensed group home, licensed staffed residential home, or licensed childcare center;

~~((10))~~ (i) Other community settings such as camp, senior center, or adult day care center.

(2) None of these settings prohibit the respite care provider from taking you into the community.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1615 Who are qualified providers of respite care? Providers of respite care can be any of the following individuals or agencies contracted with DDD for respite care:

(1) Individuals meeting the provider qualifications under chapter 388-825 WAC;

(2) Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;

(3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;

(4) Licensed and contracted adult family home;

(5) Licensed and contracted adult residential care facility;

(6) Licensed and contracted adult residential ~~((rehabilitation center))~~ treatment facility under ~~((WAC 246-325-012))~~ chapter 246-337 WAC;

(7) Licensed childcare center under chapter ~~((388-295))~~ 175-295 WAC;

(8) Licensed child daycare center under chapter ~~((388-295))~~ 175-295 WAC;

(9) Adult daycare centers contracted with DDD;

(10) Certified provider ~~((per))~~ under chapter 388-101 WAC when respite is provided within the DDD contract for certified residential services; or

(11) Other DDD contracted providers such as community center, senior center, parks and recreation, summer programs, adult day care.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1620 Are there limits to the respite care I can receive? The following limitations apply to the respite care you can receive:

(1) ~~((If you are in the Basic or Basic Plus waiver, a respite care))~~ The DDD assessment will determine how much respite you can receive per ((WAC 388-845-3005 through 388-845-3050)) chapter 388-828 WAC.

(2) ~~((If you are in the CORE waiver, the plan of care (POC), not the respite assessment, will determine the amount of respite care you can receive.~~

~~((3))~~ Prior approval by the DDD regional administrator or designee is required;

(a) To exceed fourteen days of respite care per month; or

(b) To pay for more than eight hours in a twenty-four hour period of time for respite care in any setting other than your home or place of residence. This limitation does not prohibit your respite care provider from taking you into the community, per WAC 388-845-1610(2).

~~((4))~~ (3) Respite cannot replace:

(a) Daycare while a parent or guardian is at work; and/or

(b) Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.

~~((5))~~ (4) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

~~((6))~~ (5) Your caregiver cannot provide paid respite services for you or other persons during your respite care hours.

~~((7))~~ (6) DDD cannot pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(7) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210. ~~((The dollar limit governing aggregate services does not apply to skilled nursing services provided as part of mental health stabilization services per WAC 388-845-1100(2).))~~

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1660 Are there limitations to the sexual deviation evaluations I can receive? (1) The evaluations must meet the standards contained in WAC 246-930-320.

(2) Sexual deviation evaluations require prior approval by the DDD regional administrator or designee.

(3) The costs of sexual deviation evaluations do not count toward the dollar limits for aggregate services in the Basic or Basic Plus waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1710 Are there limitations to the skilled nursing services I can receive? The following limitations apply to your receipt of skilled nursing services:

(1) Skilled nursing services require prior approval by the DDD regional administrator or designee.

(2) ~~((The department))~~ DDD and the treating professional determine the need for and amount of service.

(3) ~~((The department))~~ DDD reserves the right to require a second opinion by a department-selected provider.

(4) ~~((Skilled nursing services provided as a mental health stabilization service require prior approval by DDD or its designee.~~

~~(5))~~ The dollar limitation for aggregate services in your Basic Plus waiver limit the amount of skilled nursing services unless provided as a mental health stabilization service.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1800 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are ~~((services to help))~~ durable and nondurable medical equipment not available through medicaid or the state plan which enables individuals to:

(a) Increase their abilities to perform ~~((with))~~ their activities of daily living; or ~~((to better participate in their environment. These services are available in all four HCBS waivers))~~

(b) Perceive, control or communicate with the environment in which they live.

(2) Durable and nondurable medical equipment are defined in WAC 388-543-1000 and 388-543-2800 respectively.

(3) Also included are ~~((devices, controls, appliances, and))~~ items necessary for life support; and ancillary supplies and equipment necessary to the proper functioning of ~~((such~~

~~items; and durable and nondurable medical equipment not available through Medicaid under the Medicaid state plan))~~ the equipment and supplies described in subsection (1) above.

(4) Specialized medical equipment and supplies are available in all four HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies? The following limitations apply to your receipt of specialized medical equipment and supplies:

(1) ~~((Prior approval by the department is required))~~ Specialized medical equipment and supplies require prior approval by the DDD regional administrator or designee for each authorization.

(2) ~~((The department))~~ DDD reserves the right to require a second opinion by a department-selected provider.

(3) Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the Medicaid state plan.

(4) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.

(5) Medications, prescribed or nonprescribed, and vitamins are excluded.

(6) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1910 Are there limitations to the specialized psychiatric services I can receive? (1) Specialized psychiatric services are excluded if they are available through other Medicaid programs.

(2) The dollar limitations for aggregate service in your Basic and Basic Plus waiver limit the amount of specialized psychiatric services unless provided as a mental health stabilization service.

(3) Specialized psychiatric services ~~((provided as a mental health stabilization service require prior approval by DDD or its designee))~~ require prior approval by the DDD regional administrator or designee.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2000 What is staff/family consultation and training? (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all four HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's plan of care or individual support plan, including:

(a) Health and medication monitoring;

- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support; and
- (e) Augmentative communication systems.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training? To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDD:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) Registered counselor; (~~(¶)~~)
- (15) Certified dietician; or

(16) Recreation therapist certified by the National Council for Therapeutic Recreation.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2010 Are there limitations to the staff/family consultation and training I can receive? (1) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff/family consultation and training.

(2) Staff/family consultation and training require prior approval by the DDD regional administrator or designee.

(3) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver plan of care or individual support plan. This service is available in all four HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides (~~(the person)~~) you access to waiver services, specified by (~~(the)~~) your plan of care or individual support plan.

(2) Whenever possible, (~~(the person)~~) you must use family, neighbors, friends, or community agencies that can provide this service without charge.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2210 Are there limitations to the transportation services I can receive? The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a Medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace Medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by DDD and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your (~~(waiver)~~) provider's contract and payment.

(10) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

(11) Transportation services require prior approval by the DDD regional administrator or designee.

ASSESSMENT AND (~~(PLAN OF CARE)~~) INDIVIDUAL SUPPORT PLAN

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3000 What is the process for determining the services I need? Your service needs are determined through the (~~(ICF-MR level of care)~~) DDD assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the ISP.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) (~~(The ICF-MR level of care assessment identifies your need for waiver services)~~) You meet the eligibility requirements for ICF/MR level of care.

(b) The "comprehensive assessment reporting evaluation (CARE)" tool will determine your eligibility and amount of personal care services.

(c) If you are in the Basic (~~(¶)~~), Basic Plus or CORE waiver, (~~(a)~~) the DDD (~~(respite)~~) assessment will determine the amount of respite care available to you.

(2) From the assessment, DDD develops your waiver plan of care ~~((POC))~~ or individual support plan (ISP) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3055 What is a waiver ~~((plan of care (POC)))~~ individual support plan (ISP)? (1) The ~~((plan of care))~~ individual support plan (ISP) replaces the plan of care and is the primary tool DDD uses to determine and document your needs and to identify the services to meet those needs. Your plan of care remains in effect until a new ISP is developed.

(2) Your ~~((plan))~~ ISP must include:

(a) ~~((The services that you and DDD have agreed are necessary for you to receive in order to address your health and welfare needs as specified in WAC 388-845-3000))~~ Your identified health and welfare needs;

(b) Both paid and unpaid services ~~((you receive or need))~~ approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and

(c) How often you will receive each waiver service; how long you will need it; and who will provide it ~~((and~~

~~((d) Your signature on))~~.

(3) For an initial ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

~~((3))~~ (4) For a reassessment or review of your ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

(5) You may choose any qualified provider for the service, who meets all of the following:

(a) Is able to meet your needs within the scope of their contract, licensure and certification;

(b) Is reasonably available;

(c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and

(d) Agrees to provide the service at department rates.

NEW SECTION

WAC 388-845-3056 What if I need assistance to understand my plan of care or individual support plan? If you are unable to understand your plan of care or individual support plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your individual support plan, DDD will take the following steps:

(1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your plan of care or individual support plan.

(2) Continue your current waiver services.

(3) If the office of the attorney general or a court determines that you do not need a legal representative, DDD will continue to try to provide necessary supplemental accommo-

dations in order to help you understand your plan of care or individual support plan.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3060 When is my plan of care or individual support plan effective? ~~((You))~~ (1) For an initial plan of care or individual support plan, the plan is effective the date DDD signs and approves it after a signature or verbal consent is obtained.

(2) For a reassessment or review of a plan of care or individual support plan, the plan is effective the date DDD signs and approves it after a signature or verbal consent is obtained.

NEW SECTION

WAC 388-845-3061 Can a change in my plan of care or individual support plan be effective before I sign it? If you verbally request a change in service to occur immediately, DDD can sign the plan of care or individual support plan and approve it prior to receiving your signature.

(1) Your plan of care or individual support plan will be mailed to you for signature.

(2) You retain the same appeal rights as if you had signed the plan of care or individual support plan.

NEW SECTION

WAC 388-845-3062 Who is required to sign or give verbal consent to the plan of care or individual support plan? (1) If you do not have a legal representative, you must sign or give verbal consent to the plan of care or individual support plan.

(2) If you have a legal representative, your legal representative must sign or give verbal consent to the plan of care or individual support plan.

(3) If you need assistance to understand your plan of care or individual support plan, DDD will follow the steps outlined in WAC 388-845-3056 (1) and (3).

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3065 How long is my plan effective? (1) Your plan of care is effective ~~((through the last day of the twelfth month following the effective date))~~ until it is replaced by your individual support plan.

(2) Your individual support plan is effective through the last day of the twelfth month following the effective date or until another ISP is completed, whichever occurs sooner.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3070 What happens if I do not sign or verbally consent to my ~~((plan of care))~~ individual support plan (ISP)? If DDD is unable to obtain the necessary signature ~~((on the plan of care from you or your legal representative))~~ or verbal consent for an initial, reassessment or review

of your individual support plan (ISP), DDD will take one or more of the following actions:

(1) ~~((DDD will continue providing services as identified in your most current POC for up to thirty days from the date you were notified of the plan to implement your most current POC.~~

~~(2) After thirty days, unless you file an appeal, DDD will assume consent and implement the new POC without your signature or the signature of your legal representative)) If this individual support plan is an initial plan, DDD will be unable to provide waiver services. DDD will not assume consent for an initial plan and will follow the steps described in WAC 388-845-3056 (1) and (3).~~

~~(2) If this individual support plan is a reassessment or review and you are able to understand your ISP:~~

~~(a) DDD will continue providing services as identified in your most current plan of care or ISP until the end of the ten-day advance notice period as stated in WAC 388-825-105.~~

~~(b) At the end of the ten-day advance notice period, unless you file an appeal, DDD will assume consent and implement the new ISP without the required signature or verbal consent as defined in WAC 388-845-3062 above.~~

~~(3) If this individual support plan is a reassessment or review and you are not able to understand your ISP, DDD will continue your existing services and take the steps described in WAC 388-845-3056.~~

~~(4) You will be provided written notification and appeal rights to this action to implement the new ((POC)) ISP.~~

~~((4)) (5) Your appeal rights are in WAC 388-845-4000 and WAC 388-825-120 through 388-825-165.~~

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3075 What if my needs change? You may request a review of your plan of care or individual support plan at any time by calling your case manager. If there is a significant change in your condition or circumstances, DDD must reassess your plan of care or individual support plan with you and amend the plan to reflect any significant changes. This reassessment does not affect the end date of your annual plan of care or individual support plan.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3095 Will I have to pay toward the cost of waiver services? (1) ~~((Depending on your SSI status, Medicaid status, income and resources, you may be required to participate towards the cost of your care. DDD determines what amount, if any, you pay.~~

~~(2) If you live in a licensed facility, you participate from your earned and unearned income per rules in WAC 388-515-1510:~~

~~(a) If you have nonexempt income that exceeds the cost of your waiver services, you may keep the difference.~~

~~(b) If you are eligible for SSI, you pay only for room and board.~~

~~(c) If you are not eligible for SSI, you may be required to participate towards the cost of your waiver services in addition to your facility room and board rate)) You are required to~~

pay toward board and room costs if you live in a licensed facility or in a companion home as room and board is not considered to be a waiver service.

(2) You will not be required to pay towards the cost of your waiver services if you receive SSI.

(3) You may be required to pay towards the cost of your waiver services if you do not receive SSI. DDD determines what amount, if any, you pay in accordance with WAC 388-515-1510.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-4000 What are my appeal rights under the waiver? ~~((You have))~~ In addition to your appeal rights under WAC 388-825-120, you have the right to appeal the following decisions:

~~(1) ((Any denial, reductions, or termination of a service.~~

~~(2) A denial or termination of your choice of a qualified provider.~~

~~(3) Your termination from waiver eligibility.~~

~~(4)) Disenrollment from a waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver because DDD has determined that you do not have a need for all the services on the waiver in which you have been enrolled.~~

~~(2) A denial of your request to receive ICF/MR services instead of waiver services; or~~

~~(3) A denial of your request to be enrolled in a waiver, subject to the limitations described in WAC 388-845-4005.~~

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver? ~~((You do not have an appeal right to a denial to be enrolled in a waiver))~~ (1) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide database because you do not need ICF/MR level of care per WAC 388-845-0070, 388-828-8040 and 388-828-8060.

(2) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited to DDD's decision that the services contained in a different waiver are not necessary to meet your health and welfare needs and that the services available on your current waiver can meet your health and welfare needs.

(3) If DDD determines that the services offered in a different waiver are necessary to meet your health and welfare needs, but there is not capacity on the different waiver, you do not have the right to appeal any denial of enrollment on a different waiver when DDD determines there is not capacity to enroll you on a different waiver.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-845-0025	Does this change in waivers affect the waiver services I am currently receiving?
WAC 388-845-0075	How is a child age twelve or younger assessed for ICF/MR level of care?
WAC 388-845-0080	What score indicates ICF/MR level of care if I am age twelve or younger?
WAC 388-845-0085	If I am age twelve or younger, what if my score on the current needs assessment does not indicate ICF/MR level of care?
WAC 388-845-0090	How is a person age thirteen or older assessed for ICF/MR level of care?
WAC 388-845-0095	What score indicates ICF/MR level of care if I am age thirteen or older?
WAC 388-845-0096	If I am age thirteen or older, what if my score on the current needs assessment does not indicate the need for ICF/MR level of care?
WAC 388-845-1606	Can DDD approve an exception to the requirements in WAC 388-845-1605?
WAC 388-845-3005	What is the waiver respite assessment?
WAC 388-845-3010	Who must have a waiver respite assessment?
WAC 388-845-3025	How often is this waiver respite assessment completed?
WAC 388-845-3030	What items are assessed to determine my respite allocation?
WAC 388-845-3035	How is the waiver respite assessment scored?
WAC 388-845-3040	When will the new respite assessment go into effect?
WAC 388-845-3045	How will I know the results of my respite assessment?
WAC 388-845-3050	What is the effective date of my respite allocation?

WSR 07-13-002**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING**

[Filed June 7, 2007, 9:32 a.m.]

The department of licensing hereby withdraws proposed rule chapter 308-61 WAC, Unauthorized and abandoned vehicles, filed with your office on June 6, 2007, as WSR 07-12-087.

Dale R. Brown
Rules Coordinator
Vehicle Services

WSR 07-13-044**PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed June 14, 2007, 1:57 p.m.]

Continuance of WSR 07-09-084.

Preproposal statement of inquiry was filed as WSR 07-05-086.

Title of Rule and Other Identifying Information: New chapter 232-13 WAC, Public conduct in wildlife areas and access sites owned or controlled by the department of fish and wildlife; and repealing WAC 232-12-174 Domestic animals on department lands, 232-12-177 Vehicles using department lands, 232-12-184 Aircraft—Authorized use on department lands, 232-12-187 Access areas—Other department lands—Wildlife agent to control traffic thereon, and 232-12-251 Removal of minerals, wood, and artifacts from department lands.

Hearing Location(s): Seafarer's Memorial Park Building, 601 14th Street, Anacortes, WA 98221, (360) 293-0694, on August 3-4, 2007, at 8:00 a.m.

Date of Intended Adoption: October 12-13, 2007.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by July 17, 2007.

Assistance for Persons with Disabilities: Contact Susan Yeager by July 31, 2007, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New chapter 232-13 WAC, the purpose of this new chapter is to establish allowed and prohibited activities on department of fish and wildlife owned or controlled lands, waters, or access areas. These include activities relating to: Aircraft use, proper behavior and conduct, camping, commercial use or activities, dumping and sanitation, erecting structures, firearms and target practice, fireworks, livestock, parking, pets, resource removal, and vehicle use. It also establishes the authority to regulate public use, clarifies enforcement authority, and establishes violations of this chapter as misdemeanors.

Repeal WAC 232-12-174, 232-12-177, 232-12-184, 232-12-187 and 232-12-251: These WAC topics will be incorporated into new chapter 232-13 WAC.

Reasons Supporting Proposal: The department's paramount responsibilities are to preserve, protect, perpetuate, and manage the fish and wildlife species of the state and maximize opportunities for people to hunt, fish, and appreciate fish and wildlife. It has been observed in recent years that many activities currently occurring on department lands are inconsistent with fish and wildlife management goals, damage habitat, disturb wildlife, or prevent others from enjoying fish and wildlife recreational opportunities. This new chapter serves to curb these undesirable effects. Regulations directing public use activities are currently scattered among other regulations. There is a need to consolidate them under one heading for clarity, better enforcement, and to ultimately allow the department to fulfill its responsibilities.

Statutory Authority for Adoption: RCW 77.12.210, 77.12.880.

Statute Being Implemented: RCW 77.12.210, 77.12.-880.

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

Name of Proponent: Washington fish and wildlife commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rule[s] regulate the use of department owned or controlled lands and do not pose an additional cost to small business beyond what is already required.

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

June 14, 2007

Lori Preuss
Rules Coordinator

WSR 07-13-046

PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed June 14, 2007, 2:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-19-080.

Title of Rule and Other Identifying Information: WAC 220-20-010 General provisions—Lawful and unlawful acts—Salmon, other fish and shellfish, 220-20-021 Sale of commercially caught sturgeon, bottomfish and halibut, 220-33-001 General provisions—Commercial fishing regulated, 220-33-020 Sturgeon, 220-36-031 Grays Harbor—Season and gear—Sturgeon, and 220-40-031 Willapa Bay—Seasons and lawful gear—Sturgeon.

Hearing Location(s): Seafarer's Memorial Park Building, 601 14th Street, Anacortes, WA, on August 3-4, 2007, at 8:00 a.m.

Date of Intended Adoption: October 13, 2007.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2155, by August 1, 2007.

Assistance for Persons with Disabilities: Contact Susan Yeager by July 24, 2007, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose is to provide amendments to general provisions to improve and create clarity of conservation management rules on sturgeon; reorganize sturgeon rules for coastal bays and the Columbia River to provide streamlining and reduce regulatory text; and provide flexibility of commercial net usage in the lower Columbia River as provided by compact or agency rule. The anticipated effects of these rules are to provide improvements and clarity of purpose for sturgeon conservation needs, increase lower Columbia River commercial net fishers' operational efficiency, and reorganize rules to reduce verbiage.

Reasons Supporting Proposal: This change will improve readability of rules, increase the conservation actions for sturgeon, and create better operational efficiencies for net fishers in the lower Columbia River.

Statutory Authority for Adoption: RCW 77.12.047 and 77.12.045.

Statute Being Implemented: RCW 77.12.047 and 77.12.045.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Morris W. Barker, 1111 Washington Street, Olympia, WA, (360) 902-2826; Implementation: Lew Atkins, 1111 Washington Street, Olympia, WA, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, WA, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: No record-keeping or reporting requirements are proposed. Compliance items will require fishers to not butcher sturgeon before selling to a wholesale dealer or, if under a direct retail endorsement, to fill out a fish ticket before processing sturgeon. It will require immediate release, unharmed to the water, of over-limit, oversized, or undersized sturgeon. It will require fishers who opt to use more than one net aboard the vessel, as allowed by rule, to properly stow the extra net(s). Adds requirement that sturgeon or any fish not legal to be retained, if entangled in a net, not be wound onto a hydraulic drum or taken through a power block. Requires a minimum size for sturgeon with head and tail removed in a fish processing plant.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None required or anticipated.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: There is no cost of compliance.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No - legal harvest will not be reduced and may be increased in future years through reduced-handling mortalities.

5. Cost of Compliance for the 10% of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

There is no cost of compliance.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: There is no cost of compliance.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The rule-making process and proposals have been discussed with industry advisory groups; and further opportunities to participate in the rule-making process are provided under the auspices of the fish and wildlife commission's public rule-making process.

8. A List of Industries That Will Be Required to Comply with the Rule: Commercial net fishers who catch sturgeon or other fish or shellfish not legal to retain. Fish processors who deal with commercially caught sturgeon. Lower Columbia River gillnet fishers.

A copy of the statement may be obtained by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

June 14, 2007

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07)

WAC 220-20-010 General provisions—Lawful and unlawful acts—Salmon, other fish and shellfish. (1) It shall be unlawful to take, fish for, possess or transport for any purpose fish, shellfish or parts thereof, in or from any of the waters or land over which the state of Washington has jurisdiction, or from the waters of the Pacific Ocean, except at the times, places and in the manners and for the species, quantities, sizes or sexes provided for in the regulations of the department.

(2) It shall be unlawful for any person to have in possession or under control or custody any food fish or shellfish within the land or water boundaries of the state of Washington, except in those areas which are open to commercial fishing or wherein the possession, control or custody of salmon or other food fish or shellfish for commercial purposes is made lawful under a statute of the state of Washington or the

rules and regulations of the commission or director, unless otherwise provided.

(3) ~~((It shall be lawful to))~~ A person may fish for, possess, process and otherwise deal in food fish and fish offal or scrap for any purpose, provided~~((;))~~ that it shall be unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:

Pacific halibut	<i>(Hippoglossus stenolepis)</i>
Pacific herring (except as prescribed in WAC 220-49-020)	<i>(Clupea harengus pallasi)</i>
Salmon	
Chinook	<i>(Oncorhynchus tshawytscha)</i>
Coho	<i>(Oncorhynchus kisutch)</i>
Chum	<i>(Oncorhynchus keta)</i>
Pink	<i>(Oncorhynchus gorbuscha)</i>
Sockeye	<i>(Oncorhynchus nerka)</i>
Masu	<i>(Oncorhynchus masu)</i>
Pilchard	<i>(Sardinops sagax)</i>

Except as provided for in WAC 220-88C-040

(4) It shall be unlawful for any person to fish for fish or shellfish while in possession in the field of fish or shellfish that are in violation of the harvest regulations for the area being fished. This regulation does not apply to vessels in transit.

(5) It shall be unlawful for the owner or operator of any commercial food fish or shellfish gear to leave such gear unattended in waters of the state or offshore waters unless said gear is marked.

(a) Shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy to which shall be affixed, in a visible and legible manner, the department approved and registered buoy brand issued to the license, provided that:

(i) Buoys affixed to unattended gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.

(ii) When two or more shellfish pots are attached to a common ground line, the number of pots so attached must be clearly labeled on the required buoy.

(b) It is unlawful to operate any gill net, attended or unattended, unless there is affixed, within five feet of each end of the net, a buoy, float, or some other form of marker, visible on the ~~((corkline))~~ cork line of the net, on which shall be marked in a visible, legible and permanent manner the name and gill-net license number of the fisher.

(c) It shall be unlawful at any time to leave a gill net unattended in the commercial salmon fishery.

(6) It shall be unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, provided~~((;))~~ that this provision shall not apply to reef nets or brush weirs or to gear being tested under supervision of the department. In addition, ~~((provided further that))~~ it shall be unlawful to take, fish for or possess food fish with any type of commercial fishing gear in the waters of Carr Inlet north of north latitude 47°20', from August 15 through November 30, except as provided in chapter 220-47 WAC.

(7) It shall be unlawful for the owner or operator of any fishing gear to refuse to submit such gear to inspection in any manner specified by authorized representatives of the department.

(8) It shall be unlawful for any person taking or possessing fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington, or the Pacific Ocean, for any purpose, to fail to submit such fish or shellfish for inspection by authorized representatives of the department.

(9) It shall be unlawful for any person licensed by the department to fail to make or return any report required by the department relative to the taking, selling, possessing, transporting, processing, freezing and storing of fish or shellfish, whether taken within the jurisdiction of the state of Washington or beyond, or on Indian reservations or usual and accustomed Indian fishing grounds.

(10) It shall be unlawful to take, fish for ~~((or to))~~, possess ~~((or to))~~, injure, kill, or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere in any manner with the proper operation of such fish protective devices.

(11) It shall be unlawful to club, gaff, ~~((shoot with firearm, crossbow, bow and arrow or compressed air gun,))~~ snag, snare, dip net, harass, spear, stone, or otherwise molest, injure, kill ~~((or))~~, destroy, or shoot with a firearm, crossbow, bow and arrow, or compressed air gun, any fish or shellfish or parts thereof, or for any person to attempt to commit such acts, or to have any fish, shellfish or parts thereof so taken in possession, except as provided for in this subsection:

(a) ~~((It shall be lawful to))~~ A person may use a dip net or club in the landing of fish taken by personal-use angling, unless otherwise provided; and ~~((it shall be lawful to))~~ a person may use a gaff in the landing of tuna, halibut and dogfish, and a harpoon in the landing of halibut, in all catch record card areas.

(b) ~~((It shall be lawful to))~~ (i) A person may use a dip net, gaff, or club in the landing of food fish or shellfish taken for commercial purposes, except that it is unlawful to use a fish pew, pitchfork, or any other instrument that will penetrate the body of the ~~((food))~~ fish or shellfish ~~((while sorting commercial catches during the act of discarding those fish))~~ that are not going to be retained or are unlawful to possess.

(ii) It is unlawful under any circumstance to use a device that penetrates the body of a sturgeon whether legal to retain or not.

(c) ~~((It shall be lawful to))~~ A person may use a spear in underwater spear fishing, as provided for in WAC 220-56-160.

(d) ~~((It shall be lawful to))~~ A person may use a bow and arrow or spear to take carp, as provided for in WAC 220-56-280.

(e) ~~((It shall be lawful to))~~ A person may snag herring, smelt, anchovies, pilchard, sand lance, and squid when using forage fish jigger gear or squid jigs.

(f) ~~((It shall be lawful to))~~ A person may shoot halibut when landing them with a dip net or gaff.

(12) It shall be unlawful to take or possess, for any purpose, any fish or shellfish smaller or larger than the lawful minimum or maximum size limits prescribed by department

rule. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish ~~((and)).~~

~~((13))~~ (13) It shall be unlawful to allow ~~((undersized))~~ salmon or sturgeon or fish unlawful to retain that are entangled in commercial nets to pass through a power block or onto a power reel or drum.

~~((14))~~ (14) It shall be unlawful to possess, aboard any vessel engaged in commercial fishing or having commercially caught fish aboard, any food fish or shellfish in such condition that its species, length, weight or sex cannot be determined if a species, species group or category, length, weight, or sex limit is prescribed for said species ~~((and)).~~ In addition, it is unlawful to possess food fish or shellfish mutilated in any manner such that the natural length or weight cannot be determined if a length or weight limit is prescribed for said species.

~~((14))~~ (15) It shall be unlawful to possess for any purpose any fish or shellfish in excess of catch or possession limits prescribed by department rule. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish.

(16) A person may possess, transport through the waters of the state, or land, dressed sablefish ~~((("dressed" is))~~ as defined by WAC 220-16-330~~((3))~~.

~~((15))~~ (17) A person may possess, transport through the waters of the Pacific Ocean, or land, dressed salmon caught during a lawful salmon troll fishery, provided that frozen Chinook salmon, dressed, heads off, shall be 21-1/2 inches minimum, and frozen coho salmon dressed, heads off, shall be 12 inches minimum, measured from the midpoint of the clavicle arch to the fork of the tail.

~~((16))~~ (18) A person may possess, transport through the waters of the Pacific Ocean, or land, dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements.

~~((17))~~ (19) It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department.

~~((18))~~ (20) It shall be unlawful for any permit holder to fail to comply with all provisions of any special permit or letter of approval issued to him under the authority of the director, or to perform any act not specifically authorized in said document or in the regulations of the commission or director.

~~((19))~~ (21) It shall be unlawful to use, place or cause to be placed in the waters or on the beaches or tidelands of the state any substance or chemical used for control of predators or pests affecting fish or shellfish or other aquatic marine organisms, without first having obtained a special permit to do so from the director.

~~((20))~~ (22) It shall be unlawful to test commercial fishing gear, except as follows:

(a) Bellingham Bay - inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances, in waters 10 fathoms and deeper.

(b) Boundary Bay - north of a line from Birch Point to Point Roberts, and south of the international boundary, in waters 10 fathoms and deeper during times not under ~~((HPSFC))~~ control of the Fraser River Panel of the Pacific Salmon Commission.

(c) San Juan Channel - within a 1-mile radius of Point Caution during times not under ~~((HPSFC))~~ control of the Fraser River Panel of the Pacific Salmon Commission.

(d) Port Angeles - inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.

(e) Port Gardner - within a 2-mile radius of the entrance to Everett breakwater, in waters 10 fathoms and deeper.

(f) Central Puget Sound - between lines from Meadow Point to Point Monroe, and Skiff Point to West Point, in waters 50 fathoms and deeper.

(g) East Pass - between lines from Point Robinson true east to the mainland, and from Dash Point to Point Piner, in waters 50 fathoms and deeper.

(h) Port Townsend - westerly of a line from the Coast Guard station in Port Townsend to Walan Point to Kala Point, in waters 10 fathoms and deeper.

(i) All tows or sets are limited to 20 minutes, exclusive of setting and retrieving time.

(j) All testing is to be accomplished between 8:00 a.m. and 4:00 p.m.

(k) ~~((Codends))~~ Cod ends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks shall be used with jig or troll gear.

(l) Any and all incidentally caught fish and shellfish must be returned to the waters immediately, and no fish or shellfish are to be retained aboard the vessel at any time during a gear test operation.

(m) It shall be unlawful for any person conducting such gear testing operations to fail to notify the fish and wildlife enforcement office in Olympia prior to testing.

~~((21))~~ (23) It is unlawful for any person or corporation either licensed by the department or bringing fish or shellfish into the state to fail to comply with the directions of authorized department personnel related to the collection of sampling data or material from fish or shellfish. It is also unlawful for any such person or corporation to fail to relinquish to the department, upon request, any part of a salmon or other fish containing coded-wire tags, including but not limited to, the snouts of those salmon that are marked by having clipped adipose fins.

~~((22))~~ (24) It is unlawful for any person to possess live bottom fish taken under a commercial fishery license.

~~((23))~~ (25) It is unlawful for any person to use chemical irritants to harvest fish, shellfish or unclassified marine invertebrates except as authorized by permit issued by the department.

AMENDATORY SECTION (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07)

WAC 220-20-021 Sale of commercially caught sturgeon, bottomfish and halibut. (1) It is unlawful for any person while engaged in commercial fishing for sturgeon, bottomfish or halibut to:

(a) Keep sturgeon smaller or greater than the size limits provided for in WAC 220-20-020, keep more than one sturgeon for personal use, or keep more than the equivalent of one daily limit of sport caught bottomfish for personal use. Any lingcod to be retained for personal use taken east of the mouth of the Sekiu River must be greater than 26 inches in length and may not exceed 40 inches in length. All commercially taken sturgeon, bottomfish, and halibut retained for personal use must be recorded on fish receiving tickets.

(b) Sell any sturgeon, bottomfish, or halibut taken under such license to anyone other than a licensed wholesale dealer within or outside the state of Washington, except that a person who is licensed as a wholesale dealer under the provisions of RCW 77.65.280 may sell to individuals or corporations other than licensed wholesale dealers.

~~((Sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of any sturgeon taken under such license prior to the time that the sturgeon is sold under subsection (1)(b) of this section.))~~ Remove from the body cavity of the sturgeon any eggs or roe prior to the time the sturgeon is sold to a wholesale dealer licensed under RCW 77.65.280.

(2) It is unlawful for any wholesale dealer licensed under RCW ~~((75.28.300))~~ 77.65.280 to purchase or attempt to purchase sturgeon eggs from sturgeon taken by any person licensed to take sturgeon for commercial purposes under chapter 77.65 RCW if the sturgeon eggs have been removed from the body cavity of the sturgeon prior to the sale of the sturgeon.

(3) It is unlawful to purchase, sell, barter or attempt to purchase, sell, or barter any sturgeon eggs taken from sturgeon caught in the Columbia River below Bonneville Dam.

(4) It is unlawful to remove either the head or tail from a sturgeon prior to the time the sturgeon is sold to a wholesale dealer licensed under RCW 77.65.280 and delivered to a fish processing plant.

(5) It is unlawful for a processing plant to possess a sturgeon carcass with head and tail removed that is less than 28 inches in length.

AMENDATORY SECTION (Amending Order 88-86, filed 9/2/88)

WAC 220-33-001 General provision—Commercial fishing regulated. (1) It is unlawful to fish for food fish in the lower Columbia River for commercial purposes or to possess food fish taken from those waters for commercial purposes, except as provided in this chapter.

(2) In the Columbia River downstream of Bonneville Dam and in the select areas (described in WAC 220-22-010), it shall be lawful to have onboard a commercial fishing vessel more than one licensed net in excess of the lawful size or length prescribed for a single net as long as the net or nets are of legal size for the fishery, or the net or nets has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length.

(a) When specifically authorized by the director/compact, nets not lawful for use at that time and area may be onboard the boat if properly stored.

(b) A properly stored net is defined as a net on a drum that is fully covered by tarp (canvass or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

AMENDATORY SECTION (Amending Order 00-146, filed 8/17/00, effective 9/17/00)

WAC 220-33-020 Sturgeon. It is unlawful to fish for sturgeon in the lower Columbia River for commercial purposes or to possess sturgeon taken from those waters for commercial purposes, except as provided in this section:

Gear

~~(1) ((Gill net gear may be used to fish for sturgeon if it does not exceed 1,500 feet in length along the cork line, it is not constructed of monofilament webbing, its mesh size does not exceed 9 3/4 inches, and it does not have a lead line weighing more than two pounds per fathom of net as measured on the cork line.~~

~~(2) From December 1 through March 31 it is lawful for sturgeon fishers to have salmon or smelt gill nets aboard while fishing for sturgeon-)) It is unlawful to use a gill net to fish for sturgeon if the net exceeds 1,500 feet in length along the cork line.~~

~~(2) It is unlawful to use a gill net to fish for sturgeon with mesh size larger than 9 3/4 inches.~~

~~(3) It is unlawful to use a gill net to fish for sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, provided that it is lawful to have a gill net with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through the Tongue Point Select Area, and it is also lawful to have additional weights and anchors attached directly to the lead line in the Deep River, Blind Slough, Knappa Slough and South Channel Select Areas.~~

~~(4) From December 1 through March 31 it is lawful for sturgeon fishers to have smelt or salmon gill nets aboard while fishing for sturgeon.~~

Fishing periods

~~((3)) (5) The lower Columbia River is closed to commercial sturgeon fishing, except as provided by emergency rule of the director. Sturgeon taken incidentally during an open commercial salmon fishing period may be retained for commercial purposes as described by department rule.~~

General

~~((4) Sturgeon smaller or greater than the size limits provided for in WAC 220-20-020 may not be retained for commercial purposes and shall be returned immediately to the water. All sturgeon in transit must not have the head or tail removed.~~

~~((5)) (6) A person engaged in commercial fishing may retain one sturgeon of legal commercial length for personal use.~~

~~((6) Sturgeon eggs may not be removed from the body cavity of the sturgeon prior to the time the sturgeon is sold to a wholesale dealer licensed under RCW 75.28.300.~~

~~(7) The head or tail may not be removed from a sturgeon prior to the time the sturgeon is sold to a wholesale dealer licensed under RCW 75.28.300 and delivered to a fish processing plant.~~

~~(8) A sturgeon carcass with head and tail removed and retained at a fish processing plant must be at least 28 inches in length.~~

~~(9) It is unlawful to gaff sturgeon-))~~

AMENDATORY SECTION (Amending Order 90-77, filed 8/24/90, effective 9/24/90)

WAC 220-36-031 Grays Harbor—Season and gear—Sturgeon. It is unlawful to fish for or possess sturgeon taken for commercial purposes from Marine Fish-Shellfish Management and Catch Reporting Area 60B except at those times, with the gear, and subject to the provisions of this section:

(1) It is unlawful to take sturgeon by angling from any vessel that is engaged in commercial sturgeon fishing, has been engaged in commercial sturgeon fishing that same day, or has commercially caught sturgeon aboard.

~~(2) ((It is unlawful to retain sturgeon not of lawful size, as provided for in WAC 220-20-020(1), and all sturgeon in transit must not have head or tail removed.~~

~~((3)) It is lawful to retain for commercial purposes sturgeon taken incidental to any lawful commercial salmon fishery in any Grays Harbor Salmon Management and Catch Reporting Area except it is unlawful to retain white sturgeon taken prior to August 1st.~~

AMENDATORY SECTION (Amending Order 91-13, filed 4/2/91, effective 5/3/91)

WAC 220-40-031 Willapa Bay—Seasons and lawful gear—Sturgeon. It is unlawful to fish for or possess sturgeon taken for commercial purposes from Marine Fish-Shellfish Management and Catch Reporting Area 60C except at those times, with the gear, and subject to the provisions of this section:

(1) It is unlawful to take sturgeon by angling from any vessel that is engaged in commercial sturgeon fishing, has been engaged in commercial sturgeon fishing that same day, or has commercially caught sturgeon aboard.

~~(2) ((It is unlawful to retain sturgeon not of lawful size, as provided for in WAC 220-20-020(1), and all sturgeon in transit must not have head or tail removed.~~

~~((3)) It is lawful to retain for commercial purposes sturgeon taken incidental to any lawful commercial salmon fishery in any Willapa Bay Salmon Management and Catch Reporting Area except it is unlawful to retain white sturgeon taken prior to August 1st.~~

WSR 07-13-047
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 14, 2007, 2:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-075 and 07-09-054.

Title of Rule and Other Identifying Information: WAC 220-52-040 Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts, 220-52-041 Coastal Dungeness crab logbook requirements, and 220-52-046 Crab fishery—Seasons and areas.

Hearing Location(s): Seafarer's Memorial Park Building, 601 14th Street, Anacortes, WA, on August 3-4, 2007, at 8:00 a.m.

Date of Intended Adoption: October 12-13, 2007.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2155, by August 1, 2007.

Assistance for Persons with Disabilities: Contact Susan Yeager by July 16, 2007, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of the proposal is to increase the amount of crab pots allowed to be barged by undesignated vessels; require logbooks for the coastal crab fishers; and provide for reciprocal agreements with other coastal states to appropriately manage licensed crab fishers to operate in each state's jurisdiction and offshore waters.

Reasons Supporting Proposal: Liberalizing the amount of pots to be barged on undesignated vessels provides for a fairer season start provision for smaller vessels. Requiring logbooks for coastal crab fishers will help managers determine the distribution of effort and success as well as resource status in the coastal fishery. Implementing regulations to limit fishers in offshore waters to those with appropriate state licensing requirements provides for more successful management and planning amongst all the coastal states.

Statutory Authority for Adoption: RCW 77.12.047 and Public Law 109-479, § 302, 120 Stat. 3575, 3624 (codified at 16 U.S.C. § 1856 note).

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Morris W. Barker, 1111 Washington Street S.E., Olympia, (360) 902-2826; Implementation: Phil Anderson, 1111 Washington Street S.E., Olympia, (360) 902-2720; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: All coastal commercial crab fishers will be required to keep, maintain, and submit logbooks on their harvest activities. In addition, all crab fishers operating in waters offshore Washington's coast will be required to be appropriately licensed by the state.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None required.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: Logbook requirements will require a modest cost increase for record-keeping labor and costs of postage, but the document forms are furnished by the state.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No.

5. Costs of Compliance for the 10% of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

The number of businesses affected is less than 10% of the business class in this category; however, estimates of time (labor) and postage are estimated at approximately \$5/month/fisher.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: The agency has developed the proposal in conjunction with the industry to minimize impacts on the industry.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The agency will bring these proposals to the public under the auspices of the fish and wildlife commission during the commission's public hearing process.

8. A List of Industries That Will Be Required to Comply with the Rule: The coastal commercial Dungeness crab fishers.

A copy of the statement may be obtained by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals do not affect hydraulic rules.

June 14, 2007

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 05-246, filed 10/14/05, effective 11/14/05)

WAC 220-52-040 Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (1) Net fishing boats shall not have crab aboard. It is unlawful

for any vessel geared or equipped with commercial net fishing gear to have aboard any quantity of crab while it is fishing with the net gear or when it has other food fish or shellfish aboard for commercial purposes.

(2) **Area must be open to commercial crabbing.** Unless otherwise provided, it is unlawful to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crabs for commercial purposes in any area or at any time when the location is not opened for taking crabs for commercial purposes by permanent rule or emergency rule of the department: Provided, That following the close of a commercial crab season, permission may be granted by the director or his or her designee on a case-by-case basis for crab fishers to recover shellfish pots that were irretrievable due to extreme weather conditions at the end of the lawful opening. Crab fishers must notify and apply to department enforcement for such permission within twenty-four hours prior to the close of season.

(3) **Crabs must be male and 6-1/4 inches.** It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crabs; or

(b) Any male Dungeness crabs measuring less than 6-1/4 inches, caliper measurement, across the back immediately in front of the tips.

(4) **Each person and each Puget Sound license limited to 100 pots.** It is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district using, operating, or controlling any more than an aggregate total of 100 shellfish pots or ring nets. This limit shall apply to each license. However, this shall not preclude a person holding two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130.

(5) **Additional area gear limits.** The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

(a) 10 pots in Marine Fish-Shellfish Management and Catch Reporting Area 25E.

(b) 10 pots in all waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Travis Spit on Miller Peninsula.

(c) 20 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line projected from the new Dungeness Light to the mouth of Cooper Creek and east of a line projected from the new Dungeness Light to the outermost end of the abandoned dock at the Three Crabs Restaurant on the southern shore of Dungeness Bay.

(d) 10 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the 177 Rayonier Dock.

(6) **Groundline gear is unlawful.** No crab pot or ring net may be attached or connected to other crab pot or ring net by a common groundline or any other means that connects crab pots together.

(7) **Crab buoys and pots tagging requirements.**

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without attached buoy and pot tags that meets the requirements of this subsection.

(b) Coastal crab pot tags: Each shellfish pot used in the coastal Dungeness crab fishery must bear a tag that identifies either the name of the vessel being used to operate the pot or the Dungeness crab fishery license number of the owner of the pot, and the telephone number of a contact person.

(c) Puget Sound crab pot tags: In Puget Sound, all crab pots must have a durable, nonbiodegradable tag securely attached to the pot and permanently and legibly marked with the license owner's name or license number, and telephone number. If the tag information is illegible, or if the tag is lost for any reason, the pot is not in compliance with law.

(d) Crab buoy tags: The department will issue crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee of seventy cents per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license. Only department-issued crab buoy tags may be used, and each crab pot is required to have a buoy tag.

(e) Puget Sound replacement crab buoy tags: Additional tags to replace lost tags will only be issued to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration under penalty of perjury in the presence of an authorized department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(f) Coastal replacement crab buoy tags: Coastal crab license holders with a 300 pot limit will be able to replace up to fifteen lost tags by January 15th, up to a total of thirty lost tags by February 15th, and up to a total of forty-five lost tags after March 15th of each season. Coastal crab license holders with a 500 pot limit will be able to replace up to twenty-five lost tags by January 15th, up to a total of fifty lost tags by February 15th, and up to a total of seventy-five lost tags after March 15th of each season. In the case of extraordinary loss of crab pot gear, the department may, on a case-by-case basis, issue replacement tags in excess of the amount set out in this subsection. Replacement buoy tags for the coastal crab fishery will only be issued after a signed affidavit is received by the department.

(8) **No person can possess or use gear with other person's crab pot tag or crab buoy tag.** No person may possess, use, control, or operate any crab pot not bearing a tag identifying the pot as that person's, or any buoy not bearing tags issued by the department to that person, except that an alternate operator designated on a primary license may possess and operate crab buoys and crab pots bearing the tags of the license holder.

(9) **Cannot tamper with pot tags.** No person shall remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the person's own buoys and pots.

(10) **Thirty-day period when it is unlawful to buy or land crab from ocean without crab vessel inspection.** It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, Washington coastal or adjacent waters of the Pacific Ocean during the first thirty days following the opening of a coastal crab season from any vessel which has not been issued a Washington crab vessel inspection certificate. The certificate will be issued to vessels made available for inspection in a Washington coastal port and properly licensed for commercial crab fishing if no Dungeness crabs are aboard. Inspections will be performed by authorized department personnel not earlier than twelve hours prior to the opening of the coastal crab season and during the following thirty-day period.

(11) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (catch area 60B) with more than 200 shellfish pots in the aggregate. It shall be unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots.

(12) **Coastal crab pot limit.**

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless a shellfish pot limit has been assigned to the Dungeness crab-coastal fishery license held by the person, or to the equivalent Oregon or California Dungeness crab fishery license held by the person.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person, and it is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license.

(c) It is unlawful for a person to take or fish for Dungeness crab or to deploy shellfish pots unless the person is in possession of valid documentation issued by the department that specifies the shellfish pot limit assigned to the license.

(13) **Determination of coastal crab pot limits.**

(a) The number of shellfish pots assigned to a Washington Dungeness crab-coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license will be based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, that show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria shall be used to determine and assign a shellfish pot limit to a Dungeness crab-coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15,

1997, from December 1, 1997, through September 15, 1998, and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license shall determine the crab pot limit for that license. A crab pot limit of 300 shall be assigned to a license with landings that total from zero to 35,999 pounds and a crab pot limit of 500 shall be assigned to a license with landings that total 36,000 pounds or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a shellfish pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon Department of Fish and Wildlife and/or the California Department of Fish and Game. Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a shellfish pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A shellfish pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license shall be assigned more than one shellfish pot limit.

(14) **Appeals of coastal crab pot limits.** An appeal of a shellfish pot limit by a coastal commercial license holder shall be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department shall remain in effect until such time as the appeal process is concluded.

(15) **Coastal - Barging of crab pots by undesignated vessels.** It is lawful for a vessel not designated on a Dungeness crab-coastal fishery license to be used to deploy shellfish pot gear provided that:

(a) Such a vessel may not carry aboard more than ~~((450))~~ 250 shellfish pots at any one time.

(b) Such a vessel may deploy shellfish pot gear only during the 64-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date.

(c) The lawful owner of the shellfish pot gear must be aboard the vessel when the gear is being deployed.

(16) **Coastal crab buoys - Registration and use of buoy brands and colors.**

(a) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder shall be allowed to register with the department only one, unique buoy brand and one buoy color scheme per license. Persons holding more than one license state shall register buoy color(s) for each license that are distinctly different. The buoy color(s) shall be shown in a color photograph.

(b) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

NEW SECTION

WAC 220-52-041 Coastal Dungeness crab logbook requirements. (1) It is unlawful for any vessel operator engaged in fishing for Dungeness crab in the coastal commercial fishery to fail to complete a department-issued logbook for all fishing activity occurring in Grays Harbor, Willapa Bay, the Columbia River, or the Pacific Ocean waters adjacent to the state of Washington.

(2) It is unlawful for any vessel operator engaged in fishing to fail to comply with the following method and time frame related to harvest logbook submittal and record keeping:

(a) The department must receive a copy of the completed logbook sheets within ten days following any calendar month in which fishing occurred. Completed Dungeness crab harvest logs must be sent to the following address: Washington Department of Fish and Wildlife, Attention: Coastal Dungeness Crab Manager, 48 Devonshire Rd., Montesano, WA 98563.

(b) Vessel operators engaged in fishing for Dungeness crab in the coastal commercial fishery must complete a logbook entry for each day fished prior to offloading. Vessel operators responsible for submitting logs to the department must maintain a copy of all submitted logs for no less than three years after the fishing activity ended.

(c) Vessel operators can obtain logbooks by contacting the department's coastal Dungeness crab manager at 360-249-4628.

(3) Violation of this section is a misdemeanor, punishable under RCW 77.15.280.

AMENDATORY SECTION (Amending Order 06-58, filed 3/31/06, effective 5/1/06)

WAC 220-52-046 Crab fishery—Seasons and areas. "Commercial crab fishing" means any taking, fishing, use, or operation of gear to fish for crabs for commercial purposes, and shall include the possession of crab on the water for commercial purposes, and the landing or initial delivery of crab for commercial purposes.

The lawful open times and areas for commercial crab fishing are as follows:

(1) All Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas are open for commercial crab fishing beginning 8:00 a.m. October 1st through the following April 15th and, after 8:00 a.m. October 1st, from one-half hour before sunrise to one-half hour after sunset, except as provided by other subsections below.

(2) For purposes of crab harvest allocation, fishing season, and catch reporting, the Marine Fish-Shellfish Management and Catch Reporting Areas (Catch Areas) are modified as follows:

(a) Catch Area 26A-E shall include those waters of Puget Sound south of a line from Sandy Point (on Whidbey Island) to Camano Head and from Camano Head to the north tip of Gedney Island, and from the southern tip of Gedney Island east to the mainland, and north and east of a line that extends from Possession Point to the shipwreck located .8 nautical miles north of Picnic Point.

(b) Catch Area 26A-W shall include those waters of Puget Sound south and east of a line from Foulweather Bluff to Double Bluff, and northerly of a line from Apple Cove Point to Point Edwards, and south and west of a line that extends from Possession Point to the shipwreck located .8 nautical miles north of Picnic Point.

(3) The following areas are closed to commercial crab fishing except for treaty Indian commercial crab fishing where the treaty Indian crab fisher is following tribal openings that are in accordance with provisions of court orders in *United States v. Washington*:

(a) Areas 25C, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Lummi Bay east of a line projected from the entrance buoy at Sandy Point to Gooseberry Point.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A in Bellingham Bay west of a line projected from the exposed boulder at Point Francis to the pilings at Stevie's Point.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24B inside a line projected from Priest Point to the five-meter tower between Gedney Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point to the intersection with a line projected true west from Kayak Point, thence east to shore.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line from the new Dungeness Light to the abandoned dock at the Three Crabs Restaurant.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island, thence to Kala Point, and thence following the shoreline to the point of origin.

(4) The following areas are closed to commercial crab fishing during the periods indicated:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point are closed October 1 through October 31 and March 1 through April 15.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24C inshore of the 400 foot depth contour within an area bounded by parallel lines projected northeasterly from Sandy Point and the entrance to the marina at Langley are closed October 1 through October 15.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State

Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W) are closed from October 1 through October 15.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cap Sante Marina to the northern end of the eastern most oil dock are closed October 1 through October 31, and March 1 through April 15 of each year.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass are closed October 1 through October 31 and March 1 through April 15.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-E east of a line that extends true north from the green No. 1 buoy at Possession Point and west of a line from the green No. 1 buoy at Possession Point northward along the 200-foot depth contour to the Glendale Dock are closed October 1 through October 15.

(5) The following areas are closed to commercial crab fishing until further notice:

(a) Those waters of Area 25E south of a line from Contractors Point to Tukey Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A within a line projected from Rocky Point northeast to the red number 2 buoy north of Ustalady Point, thence to Brown Point on the northeast corner of Ustalady Bay.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24D south of a line from the point at the southern end of Honeymoon Bay (48°03.047'N, 122°32.306'W) to the point just north of Beverly Beach.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo to the green #3 buoy at the mouth of the Snohomish River and west of a line projected from the #3 buoy southward to the oil boom pier on the shoreline.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21B in Samish Bay south of a line from Point Williams to Fish Point in waters shallower than 60 feet in depth.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Westcott and Garrison Bays east of a line projected due south from Point White to San Juan Island.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Birch Bay east of a line projected from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance to the Birch Bay Marina.

(h) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A inside of Chuckanut Bay east of a line projected north from Governor's Point to the east side of Chuckanut Island thence to Chuckanut Rock thence to the most southerly tip of Clark's Point.

(i) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Blind Bay south of a line

projected due west from Point Hudson to its intersection with Shaw Island.

(j) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Fisherman Bay south of a line projected east-west through the red number 4 entrance buoy.

(k) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Mud Bay south of a line projected through Crab and Fortress Islands intersecting Lopez Island at either end.

(l) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Padilla Bay within a line projected easterly from the northern end of the eastern most oil dock at March Point to the red number 2 buoy, thence southeasterly to the red number 8 buoy, thence west to shore and following the shoreline to the point of origin.

(m) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A in Cornet Bay south of a line projected true east and west from the northernmost tip of Ben Ure Island.

(n) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 20B which includes all waters of Prevost Harbor between Stuart Island and Satellite Island southwest of a line from Charles Point on Stuart Island to the northwest tip of Satellite Island and southwest of a line projected 120 degrees true from the southeast end of Satellite Island to Stuart Island.

(o) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in East Sound north of a line from the southern point of Judd Bay on the west to Giffin Rocks on the east.

(6) Coastal, Pacific Ocean, Grays Harbor, Willapa Bay and Columbia River waters are open to commercial crab fishing December 1 through September 15 except that it is lawful to set baited crab gear beginning at 8:00 a.m. November 28. However, the department may delay opening of the coastal crab fishery due to softshell crab conditions, in which case the following provisions will apply:

(a) After consultation with the Oregon Department of Fish and Wildlife, the director may, by emergency rule, establish a softshell crab demarcation line.

(b) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area for which the season opening has been delayed due to softshell crab for the first thirty days following the opening of such an area if the vessel was employed in the coastal crab fishery during the previous forty-five days.

(c) Fishers may not set crab gear in any area where the season opening has been delayed, except that gear may be set as allowed by emergency rule and shall allow setting sixty-four hours in advance of the delayed season opening time.

(d) It is unlawful to fish for or possess Dungeness crabs or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California (~~except during the lawful open seasons, areas and times specified by the individual states, except that it is unlawful for the holder of a Washington state Dungeness crab coastal fishery license to fish for or possess Dungeness crab taken in waters north of 41°59'47"N. Lat. and south of 46°15'00"N. Lat. unless the holder also holds the licenses or permits needed to commercially fish for~~

Dungeness crab within the state waters of Oregon)) without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N, Lat.), extending 200 nautical miles westward.

WSR 07-13-065

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed June 18, 2007, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-081.

Title of Rule and Other Identifying Information: Chapter 16-160 WAC, Registration of materials for organic food production.

Hearing Location(s): Natural Resources Building, 2nd Floor, Room 259, 1111 Washington Street S.E., Olympia, WA 98504-2560, on July 26, 2007, at 1 - 3 p.m.

Date of Intended Adoption: August 6, 2007.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARuleComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., July 26, 2007.

Assistance for Persons with Disabilities: Contact Julie Carlson by July 19, 2007, TTY (360) 902-1996 or (360) 902-1880.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state department of agriculture (WSDA) organic food program is proposing changes to chapter 16-160 WAC, Registration of brand name materials for organic food production. The program is proposing to establish some new fees and increase material registration fees. The new fees and fee increases are needed to recover the cost of providing these services and to provide adequate funding for the WSDA organic food program. The program is also proposing to change the logo that registered materials may use upon approval of their product. This change is needed to ensure that we maintain compliance with accreditation requirements. The proposal would increase renewal fees, new application fees and late fees. It will also establish new fees for reviewing materials in compliance with foreign organic standards and an expedite fee for new applicants that request and [an] expedited review of their application. Foreign standard review fees are set at \$100.00 per product; expedited fees will be billed at a rate of \$40.00 per hour.

The brand name registration program has grown significantly since 2003 when 323 products were registered with the program, to 2007 with a current number of 582 products. The program has grown 33% from 2006 to 2007, from 437 products to 582 products. RCW 15.86.070(1) requires that the rule include a fee schedule that will provide for the recovery

of the full cost of the program. This increase in fees will allow for additional staff required to maintain the program.

Statutory Authority for Adoption: Chapters 15.86 and 34.05 RCW.

Statute Being Implemented: Chapter 15.86 RCW.

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

Name of Proponent: WSDA organic food program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Miles McEvoy, Olympia, (360) 902-1924.

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

Small Business Economic Impact Statement

Introduction: The WSDA organic food program (OFP) is proposing changes to chapter 16-160 WAC, Registration of brand name materials for organic food production. The brand name material registration program is a voluntary program that approves materials used in organic production and handling. The program is funded from registration fees and those fees have not been adequate to cover the full cost of the program. The proposed changes increase registration fees and change the logo used for approved materials.

The WSDA OFP worked with the WSDA organic advisory board (OAB) over the last year to develop the current proposal. In May 2007, a preproposal was sent to one hundred eighty-eight material registrants to solicit comments on the proposal. Based on the thirty-three comments received on the preproposal, the final proposal was modified to mitigate the increase in registration fees.

Key Elements of the Proposal:

- The material registration program is a voluntary program that is funded by registration fees.
- The current fee schedule is not providing adequate revenue to cover the program's costs.
- The fee increase has been decreased based on comments received on the preproposal to help mitigate the impact of the fee increase.
- Changes to the material registration logo are needed to maintain accreditation.

Brand Name Material Registration Budget: Current staff expenses for the program include a materials registration coordinator, quality assurance staff and administration support staff. In addition there are costs for office space, equipment, printing, copying and supplies. Annual expenses for the program are \$85,000. Revenue received from material registration fees was \$62,740 in 2006. Organic certification fees are providing funding for the costs that are exceeding the material registration revenue.

Additional resources are needed for the program for the following purposes:

- Provide adequate revenue for existing program expenses.
- Provide adequate staff to provide thorough evaluations of materials for compliance with organic standards.
- Provide adequate staff to provide timely responses to material registration applications.

- Provide adequate resources to provide quality assurance to maintain accreditation with national and international organic standards.
- Provide adequate revenue to hire a material evaluation specialist to handle the continued growth in this program.

We estimate that the new fee schedule will bring in \$113,650 in revenue, which will be sufficient revenue to cover the costs of the program.

BACKGROUND INFORMATION: The WSDA OFP is proposing changes to chapter 16-160 WAC, Registration of brand name materials for organic food production. The program is proposing to increase registration fees and establish new fees for new services. The program is also proposing to change the material registration logo that is utilized to identify registered materials. The changes to the registration fees are needed to provide adequate funding for the WSDA brand name registration program and to provide new services for the organic food industry. The logo changes are needed to maintain compliance with accreditation requirements.

Organic agriculture is the fastest growing sector of United States agriculture, growing at a rate of 20% annually (USDA-ERS, 2003). Growth in Washington state's organic sector has mirrored growth in the rest of the country. The value of WSDA certified organic products has increased from \$142 million to \$438 million between 2000 and 2005.

Material inputs are a large part of an organic system, and organic producers and handlers must only use materials that comply with the National Organic Standards (7 C.F.R. Part 205). The OFP publishes the brand name material list to assist organic producers and handlers to maintain compliance with the National Organic Standards in regards to materials. The brand name material list consists of brand name materials that have been reviewed and comply with the National Organic Standards and is distributed to all WSDA certified operations and is available on the OFP web site. This list is updated quarterly.

With the growth in the organic industry comes a parallel growth in the brand name registration program. The brand name registration program has grown significantly since 2003, when 323 products were registered with the program, to 2007 with a current number of 582 products. The program has grown 33% from 2006 to 2007, from 437 products to 582 products. Revenue from material registration fees are not covering the cost of the program. WSDA OFP staff are not able to respond in a timely manner to applications due to inadequate staff resources devoted to material evaluation and registration.

The WSDA OFP has worked with the WSDA OAB in the development of the proposed fee increases. A preproposal for a fee increase was presented at the OAB meeting on October 28, 2006, and a final proposal presented and accepted on January 7, 2007.

By statute, the WSDA OFP is required to recover the full cost of the program from organic certification fees. The program does not receive any general fund support and is required by statute to develop a fee schedule to pay for the cost of organic certification. In 2006, the revenue for the brand name registration program was \$62,740. This revenue provides funding for a half-time coordinator and some

administrative support. The revenue has not been sufficient to cover the full cost of the program. An additional staff position is needed to evaluate materials, respond to material applicants' requests, manage the increased workload, and maintain a high quality material registration program.

The current proposal is designed to recover the full cost of providing services in specific areas of the program where the current fee structure is not providing adequate revenue for staffing. The fee increase proposal will bring the estimated revenue for 2008 to \$113,650, sufficient to fund the additional position. The additional revenue will also be used to ensure the integrity of the brand name registration program by providing better customer service and increasing compliance and enforcement activities.

Proposed Changes to WSDA Organic Certification Fee Schedule:

1. Renewal application fees: The proposed amendments to chapter 16-160 WAC include an increase in the annual renewal fees submitted by applicants. With the significant growth in the program, there have also been increases in work associated with maintaining the files and the brand name material list. Examples of this work include label changes, reviewing revised formulations, compliance issues, and surveillance projects to ensure the integrity of the label. In addition, the brand name material list is currently updated on a quarterly basis. Increased staff will allow for more frequent updates, thereby decreasing the lag time between product registration and when the product appears on the updated list.

Fees for the following products will increase from \$200 to \$300: Pesticides, spray adjuvants, processing aids, and post harvest materials. Fees for fertilizers, soil amendments, organic waste derived materials, compost, animal manure and crop production aids will increase from \$100 to \$200 and fees for livestock production aids will increase from \$100 to \$300.

2. New application fees: The proposed amendments include an increase to the fees required for a new application. There are a number of unique costs associated with evaluating new applications for compliance with National Organic Standards. New database files and office files must be created. The time involved in the initial review of a material is more extensive for new applicants than for renewal applicants. The cost of providing registration services to new applicants exceeds the current fees. The proposed increase to the new applicant fee more accurately reflects the cost of providing the service.

The proposal will increase new application fees for pesticides, spray adjuvants, processing aids, and post harvest materials from \$300 to \$500 and will increase new application fees for fertilizers, soil amendments, organic waste derived materials, compost, animal manure and crop production aids from \$200 to \$400. New application fees for livestock production aids will increase from \$200 to \$500 due to the complexity and time involved with these particular reviews.

3. Late fees: Applications are due by October 31 of each year. Once the applications are received, the data entry that occurs to produce the brand name material list must be completed in time to be included in the December certification

renewal mail out. There are less than two months to process the applications, complete the data entry, print the list and include it with certification renewal applications. Late applications are an inefficient use of the program's resources and can cause delays in the publication of the document.

The proposed amendments increase late fees to cover the additional costs associated with the late renewal of an application. The later the application, the higher the late fee will be. We hope that the higher late fees will increase the timeliness of receiving applications and improve the efficiency of the program. Proposed late fee increases are as follows:

Application received	Late fee
Postmarked after October 31, but before:	
December 1	\$100
January 1	\$200
February 1	\$300

4. Expedited inspections and evaluations: The program frequently receives requests to conduct expedited evaluations to facilitate material registration and market access. Expedited evaluations result in increased costs from inefficient use of staff time. We are proposing to establish a \$40 per hour fee for expedited inspections and evaluations. Expedited evaluations will be conducted only when adequate staff is available to conduct the evaluation and when the expedited review will not negatively affect the work of the program as a whole. Upon receipt of a request for an expedited evaluation, the program will assess the ability to conduct the work. If the request is accepted, the evaluation will be completed within two weeks of the request. Travel costs associated with expedited evaluations will be paid by the applicant.

5. Foreign organic standards: As international markets open for organic products from Washington and other states, there is a growing need for a materials list that is specific to the material requirements for a specific country. For instance, Washington exports a significant amount of organic apples to the European Union (EU). EU organic standards

Cost of Compliance:

Fee	Cost of Compliance		Rationale
Late renewal application fee (WAC 16-160-070)	Application received	Late fee	Increase is necessary to cover the cost of processing late application. Fee can be avoided by filing a timely application for renewal.
	Postmarked after October 31, but before:		
	December 1	\$100	
	January 1	\$200	
	February 1	\$300	
New applicant fee for pesticides, spray adjuvants, processing aids, and post harvest materials (WAC 16-160-070(1))	Increased fee from \$300 to \$500	Increase is necessary to cover the cost of processing and evaluating first-time applications.	
New applicant fee for fertilizers, soil amendments, organic waste derived materials, compost, animal manure and crop production aids (WAC 16-160-070(1))	Increased fee from \$200 to \$400	Increase is necessary to cover the cost of processing and evaluating first-time applications.	
New applicant fee for livestock production aids (WAC 16-160-070(1))	Increased fee from \$200 to \$500	Increase is necessary to cover the cost of processing and evaluating first-time applications in this input category.	

for materials are different from USDA standards, and organic apple producers in Washington must only use materials approved under EU organic standards. Producers and handlers exporting products under foreign standards need a brand name material list specific to the applicable standard. An additional \$100 fee will be charged for evaluating materials to each foreign organic standard. This fee will provide for the adequate staff necessary for this additional evaluation.

Businesses Affected by the Rule Amendment: Chapter 16-160 WAC affects all individuals and businesses that have products registered with the WSDA brand name material registration program.

Compliance Requirements: The proposed changes do not affect compliance requirements.

Professional Services: The reporting, record-keeping and compliance requirements in chapter 16-160 WAC do not require the use of professional services by any business regulated by the chapter. No professional service expenses would be incurred by the small businesses affected by chapter 16-160 WAC.

Industries Impacted by the Rule Amendment: Chapter 16-160 WAC applies to all businesses that provide materials to the organic food industry for production or handling within the following SIC codes:

SIC Code	Industry Description
1479	Chemical & Fertilizer Mineral Mining - Not elsewhere classified
2819	Industrial Inorganic Chemicals - Not elsewhere classified
2873	Nitrogenous Fertilizer
2874	Phosphate Fertilizer
2875	Fertilizers – Mixing only
5191	Farm Suppliers
2879	Pesticide & Ag Chemicals - Not elsewhere classified

Renewal applicant fee for pesticides, spray adjuvants, processing aids, and post harvest materials (WAC 16-160-070(2))	Increased fee from \$200 to \$300	Increase is necessary to cover evaluation of the material, maintenance of the Brand Name List, publications of updates and compliance issues.
Renewal applicant fee for fertilizers, soil amendments, organic waste derived materials, compost, animal manure and crop production aids (WAC 16-160-070(2))	Increased fee from \$100 to \$200	Increase is necessary to cover evaluation of the material, maintenance of the Brand Name List, publications of updates and compliance issues.
Renewal applicant fee for livestock production aids (WAC 16-160-070(2))	Increased fee from \$100 to \$300	Increase is necessary to cover evaluation of the material, maintenance of the Brand Name List, and publications of updates.
Foreign Standard Review	New fee of \$100 per product	Fee is necessary to cover the cost of evaluating materials for compliance with foreign organic standards.
Expedited Inspection fees (WAC 16-157-250(3))	New fee of \$40/hour plus transportation costs	Fee is necessary to cover the cost of providing expedited inspections. Fee can be avoided by filing timely applications.

Impact on Small Businesses: It is clear that the proposed fee amendments will increase the cost of doing business for registered applicants. However, RCW 15.86.070 mandates that the department fully recover, from fees charged, the full cost of operating the program. Therefore, the department has concluded that the proposed new fees are necessary. In addition, the material registration program is a voluntary program that the department provides as a service to the organic input industry. Organic material suppliers may avoid the registration fees by providing a full disclosure of their ingredients to organic producers and handlers. Organic input suppliers are not required to obtain registration under the WSDA material registration program. The WSDA material registration program is a voluntary program that provides a service to organic input supply companies so that they can identify their products as compliant with organic standards.

RCW 19.85.030 requires that the department determine if its proposed rule will impose more than minor costs on businesses in an industry. The OFP does not collect data specific to the number of employees, labor or sales information on the registrants in the material registration program. Instead, we counted the number of products that one company registers to assess what the economic impact on each registrant would be. As illustrated in the table below, almost half of our registrants would experience an increase of \$100 in their 2008 renewal fees. Over two thirds of our registrants would experience increases of \$300 or less.

Number of Products Registered	Number of Businesses	Percentage of Total	Total Increase in Renewal Fees per Company
1	92	48.9%	\$100
2	35	18.6%	\$200
3	16	8.5%	\$300
4	12	6.3%	\$400
5	11	5.8%	\$500

Number of Products Registered	Number of Businesses	Percentage of Total	Total Increase in Renewal Fees per Company
6	5	2.6%	\$600
7	4	2.1%	\$700
8	2	1%	\$800
9	2	1%	\$900
10	1	0.5%	\$1000
More than 10	8	4.2%	Over \$1000

Actions Taken to Reduce Costs: The WSDA OFP has taken several actions to reduce the cost of this rule change to current and future registrants. A revision of the renewal application packets has led to decreased paperwork and increased efficiencies for each renewal registrant. Previously, companies with multiple products would submit up to thirty separate applications for each individual product. However, rather than send in a renewal application for each individual product, this process has been revised so that one company could renew multiple products with one application.

In addition, the program is working to obtain a new database that will facilitate more frequent updating of the brand name material list. The [This] will result in less lag time between approval and appearing on the updated list on the web site, current lag time can be up to four months. The database will allow the program to update the list more frequently, thereby give new listing maximum exposure on our web site as an "approved material." Within a few years the new database will also allow material registrants to apply online and avoid the cost and delay of mailing in their applications.

Presolicitation and Research Efforts: The WSDA OFP has worked with the WSDA OAB in the development of the proposed fee increases. A preproposal for a fee increase

was presented at the OAB meeting on October 28, 2006, and a final proposal presented and accepted on January 7, 2007.

Mitigation Based on Preproposal Comments: In response to these comments, the program decreased the fee increase to mitigate the impact of the fee increase. In addition the logo was modified based on the comments received. The final proposal, including the reduced fee increase, was approved at the June 6, 2007, WSDA OAB meeting. The updated logo will appear as follows:

The final proposal has taken the comments on the fees into account by decreasing the amount of the original fee increase proposal. WSDA has determined that the reduced fee increase will provide adequate revenue to recover the cost of the program.

A copy of the statement may be obtained by contacting Miles McEvoy, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1924, fax (360) 902-2087, e-mail mmcevoy@agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i). RCW 34.05.328 regulates "significant legislative rules" and RCW 34.05.328 (5)(a)(i) lists the specific state agencies that are considered "significant legislative rule agencies." WSDA is not listed; therefore, we do not consider ourselves to be a "significant legislative rule agency." In addition, section 309 (for the department of agriculture) of chapter 372, Laws of 2006, provide that: (2) Fees and assessments approved by the department in the 2005-2007 biennium are authorized to exceed the fiscal growth factor under RCW 43.135.055.

June 15, 2006 [2007]

Bob Gore

Deputy Director

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-030 Do I need to register my brand name material with the organic food program? (~~Every material which is manufactured within this state and/or distributed within this state for use~~) Materials used in organic food production, processing or handling may (be registered) submit an application for registration with the department. Registration is not required, but is necessary for a product to appear on the brand name materials list or to label or advertise itself as approved for use in organic food production, processing or handling.

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

WAC 16-160-035 Brand name materials list. The department maintains a list of registered materials that are approved for use in organic food production, processing or handling. The list is provided to all producers, processors and handlers of organic food (~~who apply for certification with the department~~). Operations certified by any agency other than the department should refer to their certification agency prior to the use of any registered material as other certifica-

tion agencies may not recognize the department brand name materials list. A registered material that appears on the brand name materials list has been reviewed by the department to verify that all of its ingredients comply with organic standards under WAC 16-160-060.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-040 How do I apply for registration?

Applications for brand name material registration must be made on a form designated by the department. Applications, must be accompanied by the appropriate fee, and must be postmarked by October 31 of each year. (~~Applications made after the set deadline may be processed as the department can review the application.~~) Applications received after October 31 may appear on the annual brand name materials list if received in time to complete the registration prior to the publication of the list. The application form shall include:

- (1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicants;
- (2) The name of the material;
- (3) A copy of the labeling accompanying the material and a statement of all claims to be made for it, including the directions and precautions for use;
- (4) The complete formula of the material including the active and inert ingredients;
- (5) A description of the manufacturing process including all materials used for the extraction and synthesis of the material, if appropriate;
- (6) The intended uses of the product;
- (7) The source or supplier of all ingredients; and
- (8) Any additional information deemed necessary.

Changes to the information above must be submitted to the department for review.

The director may require a full description of the tests made and the results thereof upon which the claims are based. The director may require production records that demonstrate adequate input materials to reconcile the registrant's production of the final product. Trade secrets are confidential and exempt from public disclosure under the Uniform Trade Secrets Act, chapter 19.108 RCW (~~(-RCW 42.17.260(1))~~) and RCW 42.56.070(1). Applicants should mark the information in the application they consider to be confidential under the Trade Secrets Act or other law. The department will treat this information in accordance with chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

WAC 16-160-060 What criteria are used to determine if a brand name material is approved? (1) United States Department of Agriculture (USDA) National Organic Program.

The director reviews the information provided under WAC 16-160-040. A brand name material that meets the requirements under the ~~((2004))~~ National Organic Program final rule, section 205.105 and sections 205.600 through 205.606 will be registered.

(2) Foreign or additional organic standards.

The director may review materials approved under the USDA National Organic Program for compliance with foreign or additional organic standards. The director reviews the information provided under WAC 16-160-040. A brand name material that complies with a specific foreign or additional organic standard may be registered as approved under that specific organic standard.

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

WAC 16-160-070 Application fees. ~~((Whenever the department receives an application for registration of materials under this chapter, the department may conduct an inspection. This inspection may entail a survey of required records, examination of facilities, testing representative samples for prohibited materials, and any other information deemed necessary to the requirements of this chapter.))~~ (1) New product registration.

The application fee for initial registration of a pesticide, spray adjuvant, processing aid, livestock production aid or post-harvest material is ~~((three))~~ five hundred dollars per material. The application fee for initial registration of a fertilizer, soil amendment, organic waste derived material, compost, animal manure~~((;))~~ or crop production aid~~((; or livestock production aid))~~ is ~~((two))~~ four hundred dollars per material.

(2) Renewal registration.

The application fee for renewing a registration for a pesticide, spray adjuvant, processing aid, livestock production aid or post-harvest material is ~~((two))~~ three hundred dollars per material. The application fee for renewing a registration for a fertilizer, soil amendment, organic waste derived material, compost, animal manure~~((;))~~ or crop production aid~~((; or livestock production aid))~~ is ~~((one))~~ two hundred dollars per material.

~~((Renewal registrations postmarked after October 31 pay a late fee of thirty dollars.))~~ (3) Late fees:

Renewal applications postmarked after October 31 must include a late fee in addition to the renewal fee.

<u>If your application is post-marked after October 31 but before:</u>	<u>Then the late fee is:</u>
<u>December 1</u>	<u>\$100.00</u>
<u>January 1</u>	<u>\$200.00</u>
<u>February 1</u>	<u>\$300.00</u>

(4) Inspections.

Inspections, if required, will be billed at forty dollars per hour plus travel costs and mileage which shall be charged at the rate established by the state office of financial management.

(5) Samples.

Samples, if required for registration, or requested by the applicant, will be charged to the applicant at a rate established by the laboratory services division of the department of agriculture. If an additional visit must be arranged, it shall be at forty dollars per hour plus travel costs and mileage

which shall be charged at the rate established by the state office of financial management.

(6) Expedited evaluation fees.

Requests for expedited reviews may be submitted and, if approved, are billed at a rate of \$40.00 per hour.

(7) Foreign or additional standards.

Upon request, the department may assess compliance with foreign or additional organic standards beyond the National Organic Program. Requests for additional assessments of materials approved under the USDA National Organic Program are billed at a rate of \$100.00 per product for each standard.

NEW SECTION

WAC 16-160-080 Inspections. Whenever the department receives an application for registration of materials under this chapter, the department may conduct an inspection. This inspection may entail a survey of required records, examination of facilities, testing representative samples for prohibited materials and any other information deemed necessary to the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-090 ~~((Refusing or canceling))~~ Denial or revocation of a registration. Initial registration.

(1) If it does not appear to the director that the brand name material is such as to warrant the proposed claims for it or if the brand name material and its labeling do not comply with the provisions of this chapter, the director shall notify the registrant of the manner in which the brand name material and its labeling fails to comply with the provisions of this chapter so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make corrections, the director shall deny registration of the material in accordance with chapter 34.05 RCW.

Renewal registration.

(2) When the director determines that a material or its labeling does not comply with the provisions of this chapter, or that false or inaccurate information was provided by the registrant, the director shall cancel the registration of a material in accordance with chapter 34.05 RCW.

Revoking registration.

(3) When the director determines that a material or its labeling does not comply with the provisions of this chapter, or if false or inaccurate information was provided by the registrant, the director shall cancel the registration of such material in accordance with chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-100 Labeling of registered brand name materials and use of organic logo. A person whose material is registered under this chapter may use the words "approved material under Washington state department of agriculture organic food program" and may use the logo specified in WAC 16-160-110 in the labeling of the material. Approved

materials may not make claims indicating products are "certified organic" or similar term. Approved generic materials that are not registered under this chapter must not use the statement nor the logo in the labeling of the material. Registration by no means implies the Washington department of agriculture endorses the use of the product.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-110 Organic material registration logo.

~~((STRICKEN GRAPHIC~~



~~STRICKEN GRAPHIC))~~



**WSR 07-13-075
PROPOSED RULES
DEPARTMENT OF HEALTH**
[Filed June 18, 2007, 2:22 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Facility licensing fees for WAC 246-320-990 Acute care hospitals, 246-322-990 Private psychiatric and alcoholism hospitals, and 246-324-990 Private alcohol and chemical dependency hospitals.

These sections establish licensure fees for acute care hospitals, private psychiatric and alcoholism hospitals and private alcohol and chemical dependency hospitals. The fees paid by these facilities support hospital licensure and survey activities within the department.

RCW 43.70.250 authorizes the department to charge fees sufficient to cover the full cost of program operations.

Hearing Location(s): Department of Health, Point Plaza East, Room 152, 310 Israel Road S.E., Tumwater, WA 98501, on August 7, 2007, at 10:00 a.m.

Date of Intended Adoption: August 14, 2007.

Submit Written Comments to: Alisa Harris, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by August 6, 2007.

Assistance for Persons with Disabilities: Contact Alisa Harris by August 3, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules increase fees for acute care hospitals, private psychiatric and alcoholism hospitals and private alcohol and chemical dependency hospitals in excess of the fiscal growth factor. This exemption was given to cover negotiated salary/benefit increases and other operating cost increases as approved by the legislature in section 222, chapter 522, Laws of 2007, (SHB 1128).

Reasons Supporting Proposal: The department is proposing to increase fees by 24%. These additional resources are necessary to assure public health and safety in hospitals statewide.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250, 43.135.145, 70.41.100, 71.12.470.

Statute Being Implemented: RCW 43.70.110, 43.70.250.

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

Name of Proponent: Department of health, office of facilities and services licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Byron Plan, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2900.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal is exempt under RCW 19.85.025(3) and does not require a small business economic impact statement. However, the department prepared fee analyses which provide documentation of the need for a fee increase. To obtain a copy of a fee analysis, contact Alisa Harris at the address above.

A cost-benefit analysis is not required under RCW 34.05.328. The department did not complete a cost-benefit analysis. This rule proposal is exempt from this requirement under RCW 35.05.328 [34.05.328] (5)(b)(iv) and (vi).

June 18, 2007

M. C. Selecky

Secretary

AMENDATORY SECTION (Amending WSR 05-18-073, filed 9/7/05, effective 10/8/05)

WAC 246-320-990 Fees. This section establishes the licensure fee for hospitals licensed under chapter 70.41 RCW.

(1) Applicants and licensees shall:

(a) Submit an annual license fee of (~~ninety-six~~) one hundred twenty dollars and (~~ninety~~) zero cents for each bed space within the licensed bed capacity of the hospital to the department;

(b) Include all bed spaces in rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;

(c) Include neonatal intensive care bassinet spaces;

(d) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of this chapter are met without movable equipment; and

(ii) The hospital currently possesses the required movable equipment and certifies this fact to the department;

(e) Exclude all normal infant bassinets;

(f) Limit licensed bed spaces as required under chapter 70.38 RCW;

(g) Submit an application for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the hospital licensed bed capacity;

(h) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(2) Refunds. The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received the application but has not performed an on-site survey or provided technical assistance, the department will refund two-thirds of the fees paid, less a fifty dollar processing fee.

(b) The department has received the application and has conducted an on-site survey or provided technical assistance, the department will refund one-third of the fees paid, less a fifty dollar processing fee.

(c) The department will not refund fees if:

(i) The department has performed more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, and the department has not issued the license because the applicant has failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

AMENDATORY SECTION (Amending WSR 05-18-073, filed 9/7/05, effective 10/8/05)

WAC 246-322-990 Private psychiatric hospital fees.

This section establishes the licensure fees for private psychiatric hospitals licensed under chapter 71.12 RCW.

(1) Applicants and licensees shall:

(a) Submit an annual fee of (~~sixty~~) seventy-four dollars and zero cents for each bed space within the licensed bed capacity of the hospital to the department;

(b) Include all bed spaces and rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;

(c) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of this chapter are met without movable equipment; and

(ii) The private psychiatric hospital currently possesses the required movable equipment and certifies this fact to the department;

(d) Limit licensed bed spaces as required under chapter 70.38 RCW;

(e) Submit applications for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the private psychiatric hospital's licensed bed capacity;

(f) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(2) Refunds. The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received the application but has not conducted an on-site survey or provided technical assistance, the department will refund two-thirds of the fees paid, less a fifty dollar processing fee.

(b) The department has received the application and has conducted an on-site survey or provided technical assistance, the department will refund one-third of the fees paid, less a fifty dollar processing fee.

(c) The department will not refund fees if:

(i) The department has performed more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, and the department has not issued the license because the applicant has failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

AMENDATORY SECTION (Amending WSR 05-18-073, filed 9/7/05, effective 10/8/05)

WAC 246-324-990 Fees. This section establishes the licensure fee for private alcohol and chemical dependency hospitals licensed under chapter 71.12 RCW.

(1) Applicants and licensees shall submit:

(a) An initial fee of (~~sixty~~) seventy-four dollars and zero cents for each bed space within the proposed licensed bed capacity; and

(b) An annual renewal fee of (~~sixty~~) seventy-four dollars and zero cents for each licensed bed space.

(2) Refunds. The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received an application but has not conducted an on-site survey or provided technical assistance, the department will refund two-thirds of the fees paid, less a fifty dollar processing fee.

(b) The department has received an application and has conducted an on-site survey or provided technical assistance, the department will refund one-third of the fees paid, less a fifty dollar processing fee.

(c) The department will not refund fees if:

(i) The department has conducted more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, and the department has not issued the license because applicant has failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

WSR 07-13-083

WITHDRAWAL OF PROPOSED RULES GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed June 19, 2007, 8:45 a.m.]

WAC 230-15-065, 230-15-275, 230-15-285, 230-15-320, 230-15-400, 230-15-430 and 230-15-475, proposed by the gambling commission in WSR 06-24-052 appearing in issue 06-24 of the State Register, which was distributed on December 20, 2006, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 07-13-084

WITHDRAWAL OF PROPOSED RULES OFFICE OF INSURANCE COMMISSIONER

(By the Code Reviser's Office)

[Filed June 19, 2007, 8:45 a.m.]

WAC 284-43-260, proposed by the office of the insurance commissioner in WSR 06-24-120 appearing in issue 06-24 of the State Register, which was distributed on December 20, 2006, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 07-13-085

WITHDRAWAL OF PROPOSED RULES OFFICE OF INSURANCE COMMISSIONER

(By the Code Reviser's Office)

[Filed June 19, 2007, 8:45 a.m.]

WAC 284-23-580, proposed by the office of the insurance commissioner in WSR 06-24-121 appearing in issue 06-24 of the State Register, which was distributed on December 20, 2006, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 07-13-086

PROPOSED RULES DEPARTMENT OF TRANSPORTATION

[Filed June 19, 2007, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-09-086.

Title of Rule and Other Identifying Information: Measurement exclusive devices, adopts a federal rule change providing a weight allowance, up to four hundred pounds, for the application of "idle reduction technology" also known as auxiliary power units.

Hearing Location(s): Transportation Building, Commission Board Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98502, on July 27, 2007, at 1:30.

Date of Intended Adoption: July 27, 2007.

Submit Written Comments to: Jim Wright, P.O. Box 47367, Olympia, WA 98504-7367, e-mail wrightji@wsdot.wa.gov, fax (360) 704-6345, by June [July] 22, 2007.

Assistance for Persons with Disabilities: Contact Jessica Alexander by June [July] 26, 2007, TTY (360) 705-7760 or fax (360) 705-6808.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a proposal to revise WAC 468-38-073 to adopt a federal rule revision into Washington administrative rule. The purpose of a weight exemption for auxiliary power units is to provide an incentive to reduce the fuel consumption and reduce emissions of a commercial vehicle when parked.

Reasons Supporting Proposal: Using the auxiliary power unit while parking allows the operator to use the cooling and heating equipment in the vehicle without using the large main engine to power these accessories. With the weight exemption, the incentive to add the auxiliary power unit would increase because the added weight of the unit will not diminish the freight carrying capacity of the vehicle.

Statutory Authority for Adoption: RCW 46.44.090.

Statute Being Implemented: Chapter 46.44 RCW.

Rule is necessary because of federal law, FHWA Docket No. FHWA-2006-24134.

Name of Agency Personnel Responsible for Drafting: Jim L. Wright, 7345 Linderson Way S.W., Tumwater, (360)

704-6345; Implementation: Jim Stuart, 7345 Linderson Way S.W., Tumwater, (360) 705-7987; and Enforcement: Darrin Grondel, 210 11th Street, General Administration Building, Olympia, (360) 753-0350.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The revised rule adopts federal regulations without material change as referenced in RCW 34.05.310 (4)(c).

A cost-benefit analysis is not required under RCW 34.05.328. There are no additional costs or revenues associated with the implementation of this rule. The rule will assist administrative, enforcement and stakeholder decisions/interpretations to be more consistent.

June 22 [19], 2007

John F. Conrad

Assistant Secretary

Engineering and Regional Operations

AMENDATORY SECTION (Amending WSR 05-12-002, filed 5/18/05, effective 6/18/05)

WAC 468-38-073 Measurement exclusive devices. (1) What are the criteria for being a measurement exclusive device? Generally, measurement exclusive devices are vehicle appurtenances designed and used for reasons of safety, aerodynamics, or efficient vehicle operation. A measurement exclusive device must not carry property, create a space that property could occupy outside of legal or permitted dimensions, or exceed the specific dimensional limitations stated in this section.

(2) What devices at the front of a single unit vehicle, or power unit in a vehicle combination, are excluded from length determinations? The following devices have been identified as measurement exclusive when determining length from the front of a single unit vehicle or power unit in a vehicle combination:

(a) Resilient bumpers that do not extend more than six inches from the vehicle;

(b) A fixed step up to three inches deep at the front of an existing automobile transporter until April 29, 2005. It will be the responsibility of the operator of the unit to prove that the step existed prior to April 29, 2002. Such proof can be in the form of a work order for equipment modification, a receipt for purchase and installation of the piece, or any similar type of documentation. After April 29, 2005, the step shall no longer be excluded from a vehicle's length.

(3) What devices at the front of a semi-trailer or trailer are excluded from length determinations? The following devices have been identified as measurement exclusive when determining length from the front of a semi-trailer or trailer:

(a) A device at the front of a trailer chassis to secure containers and prevent movement in transit;

(b) A front coupler device on a semi-trailer or trailer used in road and rail intermodal operations;

(c) Aerodynamic devices, air deflector;

(d) Air compressor;

(e) Certificateholder (manifest box);

(f) Door vent hardware;

(g) Electrical connector;

(h) Gladhand (air hose connectors joining tractor to trailer);

(i) Handhold;

(j) Hazardous materials placards and holders;

(k) Heater;

(l) Ladder;

(m) Nonload carrying tie-down devices on automobile transporters;

(n) Pickup plate lip (plate at front of trailer to guide fifth wheel under trailer);

(o) Pump offline on tank trailer;

(p) Refrigeration unit;

(q) Removable bulkhead;

(r) Removable stake;

(s) Stabilizing jack (antinosedive device);

(t) Stake pocket;

(u) Step;

(v) Tarp basket;

(w) Tire carrier; and

(x) Uppercoupler.

(4) What devices at the rear of a single unit vehicle, semi-trailer or trailer are excluded from length determinations? The following devices have been identified as measurement exclusive when determining length from the rear of a semi-trailer or trailer:

(a) Aerodynamic devices that extend up to a maximum of five feet beyond the rear of the vehicle, provided such devices have neither the strength, rigidity nor mass to damage a vehicle, or injure a passenger in a vehicle, that strikes a vehicle so equipped from the rear, and provided also that they do not obscure tail lamps, turn signals, marker lamps, identification lamps, or any other required safety devices, such as hazardous materials placards or conspicuity markings (i.e., reflective tape);

(b) Handhold;

(c) Hazardous materials placards and holder;

(d) Ladder;

(e) Loading and unloading device not to exceed two feet;

(f) Pintle hook;

(g) Removable stake;

(h) Splash and spray suppression device;

(i) Stake pocket; and

(j) Step.

(5) What devices at the side of a vehicle are excluded from width determinations? The following devices have been identified as measurement exclusive, not to exceed three inches from the side of the vehicle, when determining width of a vehicle:

(a) Corner cap;

(b) Handhold for cab entry/egress;

(c) Hazardous materials placards and holder;

(d) Lift pad for trailer on flatcar (piggyback) operation;

(e) Load induced tire bulge;

(f) Rain gutter;

(g) Rear and side door hinge and protective hardware;

(h) Rearview mirror;

(i) Side marker lamp;

(j) Splash and spray suppressant device, or component thereof;

(k) Structural reinforcement for side doors or intermodal operation (limited to one inch from the side within the three-inch maximum extension);

(l) Tarping system for open-top cargo area;

(m) Turn signal lamp;

(n) Movable device to enclose the cargo area of a flatbed semi-trailer or trailer, usually called "tarping system," where no component part of the system extends more than three inches from the sides or back of the vehicle when the vehicle is in operation. This exclusion applies to all component parts of a tarping system, including the transverse structure at the front of the vehicle to which the sliding walls and roof of the tarp mechanism are attached, provided the structure is not also intended or designed to comply with 49 CFR 393.106, which requires a headerboard strong enough to prevent cargo from penetrating or crushing the cab; the transverse structure may be up to one hundred eight inches wide if properly centered so that neither side extends more than three inches beyond the structural edge of the vehicle. Also excluded from measurement are side rails running the length of the vehicle and rear doors, provided the only function of the latter, like that of the transverse structure at the front of the vehicle, is to seal the cargo area and anchor the sliding walls and roof. On the other hand, a headerboard designed to comply with 49 CFR 393.106 is load bearing and thus limited to one hundred two inches in width. The "wings" designed to close the gap between such a headerboard and the movable walls and roof of a tarping system are width exclusive, provided they are add-on pieces designed to bear only the load of the tarping system itself and are not integral parts of the load-bearing headerboard structure;

(o) Tie-down assembly on platform trailer;

(p) Wall variation from true flat; and

(q) Weevil pins and sockets on a platform or low-bed trailer (pins and sockets located on both sides of a trailer used to guide winch cables when loading skid mounted equipment).

(6) Are there weight measurement exclusive devices? ~~(No. All devices, regardless of purpose, must be included in the combined vehicle weight and subject to the weight restrictions provided in chapter 46.44 RCW and as further defined in chapter 468-38 WAC.)~~ Yes. Any vehicle equipped with an auxiliary power or idle reduction technology unit (APU), designed to promote reduced fuel usage and emissions from engine idling, may have up to four hundred pounds in total gross, axle, tandem or bridge formula weight exempt (excluded) from the weight measurement. To be eligible for the weight exemption, the vehicle operator must be able to prove:

(a) By written certification the weight of the APU; and

(b) By demonstration or certification, that the idle reduction technology is fully functional at all times.

The weight exemption cannot exceed four hundred pounds or the certified weight of the unit, whichever is less.

(7) Can exclusion allowances be combined to create a larger allowance (i.e., adding a five-foot aerodynamic device to a two-foot loading/unloading device for a total exclusion of seven feet)? No. Each exclusion allowance is specific to a device and may not be combined with the exclusion allowance for another device.

(8) Can a device receive exclusion if it is not referenced in law or administrative rule? If the device meets the criteria in subsection (1) of this section, a request for measurement exclusion may be made to the administrator for commercial vehicle services. If approved for an exclusion allowance, the administrator will provide the requestor a written authorization.

WSR 07-13-087

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed June 19, 2007, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-020.

Title of Rule and Other Identifying Information: Amending WAC 388-501-0100 Subrogation.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503, (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on July 25, 2007, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 26, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on July 25, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by July 18, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending this rule to codify the department's reimbursement policy for medical services paid on behalf of an injured client by the department when the injured client receives settlement or judgment from a liable third party's insurer, or the injured client's own insurance.

Reasons Supporting Proposal: The department is entitled to recover from the portion of a settlement or judgment that represents medical damages. This proposed rule establishes a fair and equitable process for determining the amount of medical damages of any settlement or judgment to be obtained by a medical assistance client.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.185.

Statute Being Implemented: RCW 74.09.185.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA

98504-5504, (360) 725-1306; Implementation and Enforcement: Gerald L. Pike, Legal Advisor, P.O. Box 45561, Olympia, WA 98504-5561, (360) 725-1225.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on businesses affected by them. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Gerald L. Pike, COB Tort Recovery Legal Advisor, P.O. Box 45561, Health and Recovery Service Administration, Olympia, WA 98504-5561, phone (360) 725-1225, fax (360) 586-9727, e-mail pikejl@dshs.wa.gov.

June 19, 2007

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-01-088, filed 12/14/99, effective 1/14/00)

WAC 388-501-0100 Subrogation. (1) For the purpose of this section, "**liable third party**" means:

(a) ~~((The tortfeasor))~~ A person who commits or is guilty of a private or civil wrong doing or the insurer of ((the tortfeasor)) that person, or both; and

(b) Any ~~((person who is liable to provide coverage))~~ individual, entity or program that is or may be liable to pay for all or part of the expenditures for ((the illness or injuries for which the)) medical assistance ((administration (MAA) is providing assistance or residential care)) furnished under the State plan. That liability must be based on any contract or insurance purchased by the client or any other person on behalf of the client.

(2) As a condition of medical care eligibility, a client must assign to the state any right the client may have to receive payment from any ~~((either))~~ liable third party for medical expenses and/or assistance or residential care. ((An eligible client who receives health care items or services from the state under medical care programs under chapter 74.09 RCW and who has a right to payment from any other third party for those items or services, subrogates that right of payment to

~~the state. This applies except as provided in subsection (3) of this section.))~~

(3) To the extent authorized by a contract executed under RCW 74.09.522, a managed health care plan has the rights and remedies of the department as provided in RCW 43.20B.060 and 70.09.180.

(4) ~~((MAA))~~ The department is not responsible to pay for medical care for a client whose personal injuries are caused by the negligence or wrongdoing of another. However, ~~((MAA))~~ the department may provide the medical care required as a result of an injury or illness to the client if both of the following apply:

(a) The client is otherwise eligible for medical care; and

(b) No other liable third party has been identified at the time the claim is filed.

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

(6) When a client obtains a settlement or judgement from a liable third party that includes compensation for medical or residential care, the department must be reimbursed for the payments made for the benefit of the client as a result of the injury or illness suffered by the client.

(a) In the absence of evidence to the contrary as discussed below in subsection (6)(c), the department will presume that the entire settlement or judgement, up to the amount of the medical damages suffered by the client, is intended to compensate the client for past medical expenses and will enforce its claim accordingly. The department is entitled to be reimbursed up to the full amount of medical assistance paid on behalf of the client for the medical damages related to the injury or illness suffered by the client less the department's proportionate share of attorney's fees and costs incurred in obtaining the settlement or judgement, as required by law.

(b) The department determines its net recovery by deducting its proportionate share of attorney's fees and costs from the gross medical damages amount according to the following formula, in the absence of a court-approved allocation of the medical damages or an agreement with the department establishing the allocation of medical damages:

(i) Gross settlement/judgement amount	\$ _____
(ii) Total amount of medical assistance paid	\$ _____
(iii) Department's percentage of attorney's fees and costs ((ii) divided by (i))	_____ %
(iv) Attorney's fees \$ _____ + Legal costs \$ _____ =	Total \$ _____
(v) Medicaid's pro rata share of fees and costs ((iv) multiplied by (iii))	\$ _____
(vi) Medicaid's reimbursement ((ii) minus (v))	\$ _____

(c) If the client disagrees with the allocation as set forth in subsections (a) and (b) of this section:

(i) Prior to accepting or disbursing the settlement or judgement funds, the client or the client's legal representative must provide the department with documentation that a different allocation of medical damages was negotiated, proven at trial, or is being considered with the third party and/or their

insurer or the client's insurance carrier in obtaining the settlement or judgement; and

(ii) If the client and the department are not able to come to an agreement as to the proper payment to be made to the department to satisfy the department's claim for reimbursement of the medical assistance paid on behalf of the client, the matter should be set before a court for an allocation hearing prior to the distribution of the settlement or judgement.

(d) If the injured client does not have legal representation in the personal injury action and does not incur attorney's fees or costs in obtaining the settlement or judgement, the department ensures that the client will receive not less than one third of the total settlement or judgement amount, or the balance of the settlement or judgement after the full amount of medical assistance is paid, whichever is greater, as satisfaction of all other damages suffered by the client:

(e) When the settlement or judgement obtained by the client exceeds the amount of the assistance paid, the department is entitled to recover up to the full amount of the medical assistance paid less the department's proportionate share of any attorney's fees and costs incurred in obtaining the settlement or judgement:

(f) When the amount of a settlement or judgement is less than or equal to the amount of the department's medical assistance payments:

(i) The department and the client and/or the client's legal representative must determine the appropriate allocation for medical damages; or

(ii) If the department and the client and/or the client's legal representative are unable to agree upon an allocation for medical damages, then a court must decide the amount the client must reimburse the department for medical assistance payments made on his or her behalf.

(g) Under no circumstances will the total amount that the department receives be less than one-third of the gross amount of the settlement or judgement, unless the department agrees in writing to a lesser amount.

(7) Recovery ((pursuant)) according to the subrogation rights, assignment, or enforcement of the lien granted to the department is not reduced, prorated, or applied to only a portion of a judgment, award, or settlement. The secretary of the department or the secretary's designee must consent in writing to any discharge or compromise of any settlement or judgment of a lien created under RCW 42.20B.060. The department considers the compromise or discharge of a medical care lien only as authorized by federal regulation at 42 CFR 433.139.

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

WSR 07-13-092

PROPOSED RULES

BOARD OF

PILOTAGE COMMISSIONERS

[Filed June 19, 2007, 2:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-08-071.

Title of Rule and Other Identifying Information: WAC 363-116-082 Limitations on new pilots.

Hearing Location(s): 2901 Third Avenue, 4th Floor, Rainier Conference Room, Seattle, WA 98121, on August 9, 2007, at 9:30 a.m.

Date of Intended Adoption: August 9, 2007.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by August 2, 2007.

Assistance for Persons with Disabilities: Contact Judy Bell by August 6, 2007, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule modifies the requirements and the procedure for lifting pilot license limitations for a Grays Harbor pilot, during his/her second license year. License upgrade trips on small tankers are added and the number of trips on other vessels is adjusted. It is intended to separate the two types of vessel categories so that as each requirement is fulfilled the appropriate limitation is lifted independently of the other.

Since there is currently only one pilot in the Grays Harbor pilotage district who holds an unlimited license, these modifications are intended to alleviate certain hardships and safety concerns this situation may present.

Reasons Supporting Proposal: Due to changes in vessel traffic calling in Grays Harbor, it is necessary to adjust the pilot license upgrade requirements and procedures to allow a second-year pilot to complete the process in a more timely manner.

Statutory Authority for Adoption: RCW 88.16.035 and 88.16.105.

Statute Being Implemented: Chapter 88.16 RCW.

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: This rule was filed under emergency provisions on April 19, 2007, and it is the intent of the board to retain the rule permanently.

The board may adopt a rule that varies from the proposed rule upon consideration of presentations and written comments from the public and any other interested parties.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The application of the proposed modifications is clear in the description of the proposal and its anticipated effects as well as the attached proposed language.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule adoption. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

June 19, 2007

Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 05-18-021, filed 8/29/05, effective 10/1/05)

WAC 363-116-082 Limitations on new pilots. (1) The following limitations and pilot license upgrade requirements shall apply to a newly licensed pilot during his/her first five years of active service. For purposes of this section, the term "tank vessel" shall, in addition to tank ships, include any articulated or integrated tug and tank barge combinations, and any tonnage restrictions thereon shall be calculated by including the gross tonnage of the tug and tank barge combined. For purposes of this section, the term "petroleum products" shall include crude oil, refined products, liquefied natural gas, and propane gas. GT (ITC) as used in this section refers to gross tonnages measured in accordance with the requirements of the 1969 International Convention on Tonnage Measurement of Ships.

(2) Puget Sound pilotage district - license limitation periods. Except for trips being made for pilot license upgrades, licenses issued in the Puget Sound pilotage district shall have the following limitations:

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	30,000 GT (ITC) or 660 feet except for passenger vessels which may only have a maximum size of 5000 GT (ITC)
2	30,000 GT (ITC)	38,000 GT (ITC)
3	38,000 GT (ITC)	48,000 GT (ITC)
4	45,000 GT (ITC)	60,000 GT (ITC)
5	55,000 GT (ITC)	75,000 GT (ITC)

(3) Puget Sound pilotage district - pilot license upgrade requirements. Progressive lifting of tonnage limitations requires a newly licensed pilot to satisfactorily pilot vessels on the trips specified in this section. The trainee evaluation committee shall recommend to the board a series of eight trips to be made by each pilot in the last one hundred twenty days of each year of the license limitation periods specified in subsection (2) of this section, except that pilots whose license anniversary date is less than one hundred twenty days after the effective date of this section shall only be required to make three such trips prior to the first license anniversary subsequent to the effective date of this section. As to these trips, the trainee evaluation committee shall specify the size and type of the vessel; origin and destination, whether the transit is to include a docking, waterway transit or other particular maneuvering requirement, whether any tank vessel trips are to be made while in ballast or loaded and whether the trip shall be taken with training pilots, trainee evaluation committee member pilots or pilots with a specified experience level. To the extent practical, the trips shall be on vessels of at least a size that falls between the upper limit in the

expiring license limitation and the upper limit in the upcoming license limitation period. All of these trips shall be complete trips between one port and another port, or between the pilot station and a port. The supervising pilots shall complete and submit to the board an evaluation form provided by the board for each trip a new pilot performs.

(4) Grays Harbor pilotage district - license limitation periods. Pilots licensed in the Grays Harbor pilotage district shall not pilot vessels in violation of the restrictions set forth in the table below during the indicated license year.

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	25,000 GT (ITC) except that piloting on vessels of any size is prohibited through the Chehalis River Bridge unless vessel is in ballast and does not exceed 25,000 GT (ITC)
2	10,000 GT (ITC)	30,000 GT (ITC)
3	45,000 GT (ITC)	45,000 GT (ITC)
4	60,000 GT (ITC)	60,000 GT (ITC)
5	75,000 GT (ITC)	75,000 GT (ITC)

Notwithstanding subsection (7) of this section, upon determination that a bona fide safety concern may result from no pilot without license restrictions being available within a reasonable time to pilot a vessel requiring pilotage services, the chairperson or acting chairperson of the board, on a single trip basis, may authorize a newly licensed pilot holding a restricted license to provide pilotage services to the vessel, irrespective of the tonnage, service or location of the assigned berth of the vessel.

(5) Grays Harbor pilotage district - pilot license upgrade requirements.

(a) Prior to the expiration of the first license year, a new pilot must make five license upgrade trips. Three of these trips shall be through the Chehalis River bridge on loaded or partially loaded vessels. The other trips shall be on vessels in excess of 25,000 GT (ITC) and involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(b) Prior to the expiration of the second license year, a new pilot must make ~~((three))~~ two license upgrade trips on tank vessels in excess of 10,000 GT (ITC) and one trip on a vessel(s) in excess of 30,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway. Upon satisfactory completion of the two upgrade trips upon tank vessels and completion of the second license year, the pilot will be authorized to pilot tank vessels in accordance with the limitations specified in subsection (4) of this section. Upon satisfactory completion of the one

upgrade trip upon a vessel in excess of 30,000 GT (ITC) and completion of the second license year, the pilot will be authorized to pilot vessels in accordance with the limitations specified in subsection (4) of this section.

(c) Prior to the expiration of the third license year, a new pilot must make three license upgrade trips on vessels in excess of 45,000 GT (ITC) or on the nearest larger size vessels available. Two of these trips shall involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(d) Prior to the expiration of the fourth license year, a new pilot must make two license upgrade trips on vessels in excess of 60,000 GT (ITC) or on the nearest larger size vessels available.

(e) Prior to the expiration of the fifth license year, a new pilot must make two license upgrade trips on vessels in excess of 75,000 GT (ITC) or on the nearest larger size vessels available.

(f) Notwithstanding (c), (d), and/or (e) of this subsection not being accomplished due to unavailability of vessels, in the sixth license year a pilot will be issued a license without limitations.

(6) The initial license shall contain the limitations contained above and list the date of commencement and expiration of such periods. If a newly licensed pilot is unable to pilot for forty-five days or more in any one of the five years, he/she shall notify the board and request a revised schedule of limitations.

(7) Except as provided in subsection (4) of this section, no pilot shall be dispatched to, or accept an assignment on, any vessel which exceeds the limitations of his/her license. On vessels in which there is more than one pilot assigned, the license limitations shall apply only to the pilot in charge.

(8) All limitations on a pilot's license shall be lifted at the beginning of the sixth year of piloting provided he/she has submitted to the board a statement attesting to the fact that he/she has completed all the required license upgrade trips and the vessel simulator courses.

WSR 07-13-098

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed June 20, 2007, 9:58 a.m.]

Supplemental Notice to WSR 06-21-105.

Preproposal statement of inquiry was filed as WSR 06-13-013.

Title of Rule and Other Identifying Information: Establishes new sections WAC 246-817-450 Definitions and 246-817-460 Sexual misconduct rules for dentists. Initial rules were filed under WSR 06-21-105. The supplemental rules are being filed, in accordance with RCW 34.05.340 Variance between proposed and final rule, to reflect the significant changes that were made, based on stakeholder input, to the initial proposal at the formal hearing stage. Refiling these rules will provide additional opportunity for public and stake-

holder review and input into the amended version of the rules.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on July 26, 2007, at 6:00 p.m.

Date of Intended Adoption: July 26, 2007.

Submit Written Comments to: Lisa R. Anderson, Program Manager, Dental Quality Assurance Commission, P.O. Box 47867, Olympia, WA 98504-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by July 13, 2007.

Assistance for Persons with Disabilities: Contact Lisa R. Anderson by July 16, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will provide guidance and establish clear definitions on the topic of sexual misconduct for dentists. In its efforts to ensure public safety, the commission is proposing rules to help dentists recognize and avoid situations that could be considered as sexual misconduct in nature, and to help educate consumers about what they should reasonably expect from their dental health care providers.

Reasons Supporting Proposal: The governor issued Executive Order 06-03, Investigation of Health Professional Sexual Misconduct, which requires a comprehensive definition of sexual misconduct. Currently, dentistry does not have specific definitions or rules related to sexual misconduct. The proposed rules will establish clear and consistent definitions for sexual misconduct for dentists and will establish expectations for appropriate conduct by dentists. The governor has requested that sexual misconduct rules be adopted by all health care professions.

Statutory Authority for Adoption: RCW 18.32.0365, 18.130.050 (1) and (12).

Statute Being Implemented: RCW 18.130.180.

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

Name of Proponent: Department of health, Washington state dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lisa Anderson, Department of Health, P.O. Box 47867, Olympia, WA 98504-7867, (360) 236-4863.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department of health has reviewed the proposal and determined that no small business economic impact statement is required because the proposed rules do not impose more than minor costs to any businesses within the industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lisa R. Anderson, Program Manager, Dental Quality Assurance Commission, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4863, fax (360) 664-9077, e-mail lisa.anderson@doh.wa.gov. The department of health reviewed the proposal and determined that no small business economic impact statement is required

because the proposed rules do not impose more than minor costs to any businesses within the industry.

June 18, 2007

Lisa R. Anderson

Program Manager

Dental Quality Assurance Commission

SEXUAL MISCONDUCT RULES FOR DENTISTS

NEW SECTION

WAC 246-817-450 Definitions. (1) "Dentist" means an individual applying for a credential or credentialed specifically as defined in chapter 18.32 RCW.

(2) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient.

(3) "Key party" means a person legally authorized to make health care decisions for the patient.

(4) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients, including palliative care, as consistent with community standards of practice for the dental profession. The activity must be within the scope of practice of the dentist.

(5) "Patient" means an individual who receives health care services from a dentist. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the dentist and the person. The fact that a person is not receiving treatment or professional services is not the sole determining factor.

NEW SECTION

WAC 246-817-460 Sexual misconduct. (1) A dentist shall not engage, or attempt to engage, in sexual misconduct with a current patient, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the dentist's scope of practice;
- (c) Rubbing against a patient or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling or caressing of a romantic or sexual nature;
- (f) Examination of or touching genitals without using gloves;
- (g) Not allowing a patient privacy to dress or undress except as may be necessary in emergencies or custodial situations;
- (h) Not providing the patient a gown or draping except as may be necessary in emergencies;

(i) Dressing or undressing in the presence of the patient or key party;

(j) Removing patient's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

(k) Encouraging masturbation or other sex act in the presence of the dentist;

(l) Masturbation or other sex act by the dentist in the presence of the patient or key party;

(m) Soliciting a date with a patient or key party;

(n) Discussing the sexual history, preferences or fantasies of the dentist;

(o) Any behavior, gestures, or expressions that can reasonably be interpreted as seductive or sexual;

(p) Sexually demeaning behavior including any verbal or physical contact which can reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient or key party;

(q) Photographing or filming the body or any body part or pose of a patient or key party, other than for legitimate health care purposes; or for the educational or marketing purposes with the consent of the patient; and

(r) Showing a patient or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) A dentist shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the dentist's sexual needs.

(3) A dentist shall not engage in the activities listed in subsection (1) of this section with a former patient or key party if the dentist:

(a) Uses or exploits the trust, knowledge, influence or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the dentist's personal or sexual needs.

(4) When evaluating whether a dentist is prohibited from engaging, or attempting to engage, in sexual misconduct, the commission will consider factors, including but not limited to:

(a) Documentation of a formal termination;

(b) Transfer of care to another health care provider;

(c) Duration of the dentist-patient relationship;

(d) Amount of time that has passed since the last dental health care services to the patient;

(e) Communication between the dentist and the patient between the last dental health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's personal or private information was shared with the dentist;

(g) Nature of the patient's health condition during and since the professional relationship; and

(h) The patient's emotional dependence and vulnerability.

(5) Patient or key party initiation or consent does not excuse or negate the dentist's responsibility.

(6) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

(c) Providing dental services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the dentist where there is no evidence of, or potential for, exploiting the patient.

WSR 07-13-099

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 20, 2007, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-140.

Title of Rule and Other Identifying Information: New WAC 388-513-1367 Hardship waivers for long-term care (LTC) services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on July 25, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 26, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on July 25, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by July 18, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is creating a new WAC explaining the process of hardship waivers for long-term care (LTC) services, including notice, time frames, and the process of appeal for adverse action.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, Section 1917 (c)(2)(D) of the Social Security Act (42 U.S.C. 1396p (c)(2)(D)).

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, Section 1917 (c)(2)(D) of the Social Security Act (42 U.S.C. 1396p (c)(2)(D)).

Rule is necessary because of federal law, Section 6011(d) of the federal Deficit Reduction Act of 2005.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed these rules and determined that no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

June 20, 2007

Stephanie E. Schiller

Rules Coordinator

NEW SECTION

WAC 388-513-1367 Hardship waivers for long-term care (LTC) services. Clients who are denied or terminated from LTC services due to a transfer of asset penalty (described in WAC 388-513-1363, 388-513-1364 and 388-513-1365), or having excess home equity (described in WAC 388-513-1350) may apply for an undue hardship waiver. Notice of the right to apply for an undue hardship waiver will be given whenever there is a denial or termination based on an asset transfer or excess home equity. This section:

- Defines undue hardship;
- Specifies the approval criteria for an undue hardship request;
- Establishes the process the department follows for determining undue hardship; and
- Establishes the appeal process for a client whose request for an undue hardship is denied.

(1) When does undue hardship exist?

(a) Undue hardship may exist:

(i) When a client who transferred the assets or income, or on whose behalf the assets or income were transferred, either personally or through a spouse, guardian or attorney-in-fact, has exhausted all reasonable means including legal remedies to recover the assets or income or the value of the transferred assets or income that have caused a penalty period; and

(ii) The client provides sufficient documentation to support their efforts to recover the assets or income; or

(iii) The client is unable to access home equity in excess of five hundred thousand dollars due to a lien or legal impediment; and

(iv) When, without LTC benefits, the client is unable to obtain:

(A) Medical care to the extent that his or her health or life is endangered; or

(B) Food, clothing, shelter or other basic necessities of life.

(b) Undue hardship can be approved for an interim period while the client is pursuing recovery of the assets or income.

(2) Undue hardship does not exist:

(a) When the transfer of asset penalty period or excess home equity provision inconveniences a client or restricts

their lifestyle but does not seriously deprive him or her as defined in subsection (1)(a)(iii) of this section;

(b) When the resource is transferred to a person who is handling the financial affairs of the client; or

(c) When the resource is transferred to another person by the individual that handles the financial affairs of the client.

(d) Undue hardship may exist under (b) and (c) if DSHS has found evidence of financial exploitation.

(3) How is an undue hardship waiver requested?

(a) An undue hardship waiver may be requested by:

(i) The client;

(ii) The client's spouse;

(iii) The client's authorized representative;

(iv) The client's power of attorney; or

(v) With the consent of the client or their guardian, a medical facility in which an institutionalized client resides.

(b) Request must:

(i) Be in writing;

(ii) State the reason for requesting the hardship waiver;

(iii) Be signed by the requestor and include the requestor's name, address and telephone number. If the request is being made on behalf of a client, then the client's name, address and telephone number must be included;

(iv) Be made within thirty days of the date of denial or termination of LTC services; and

(v) Returned to the originating address on the denial/termination letter.

(4) What if additional information is needed to determine a hardship waiver?

(a) A written notice to the client is sent requesting additional information within fifteen days of the request for an undue hardship waiver. Additional time to provide the information can be requested by the client.

(5) What happens if my hardship waiver is approved?

(a) The department sends a notice within fifteen days of receiving all information needed to determine a hardship waiver. The approval notice specifies a time period the undue hardship waiver is approved.

(b) Any changes in a client's situation that led to the approval of a hardship must be reported to the department by the tenth of the month following the change per WAC 388-418-0007.

(6) What happens if my hardship waiver is denied?

(a) The department sends a denial notice within fifteen days of receiving the requested information. The letter will state the reason it was not approved.

(b) The denial notice will have instructions on how to request an administrative hearing. The department must receive an administrative hearing request within ninety days of the date of the adverse action or denial.

(7) What statute or rules govern administrative hearings?

(a) An administrative hearing held under this section is governed by chapters 34.05 RCW and chapter 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

(8) Can the department revoke an approved undue hardship waiver?

(a) The department may revoke approval of an undue hardship waiver if any of the following occur:

(i) A client, or his or her authorized representative, fails to provide timely information and/or resource verifications as it applies to the hardship waiver when requested by the department per WAC 388-490-0005 and 388-418-0007;

(ii) The lien or legal impediment that restricted access to home equity in excess of five hundred thousand dollars is removed; or

(iii) Circumstances for which the undue hardship was approved have changed.

WSR 07-13-101

PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed June 20, 2007, 11:23 a.m.]

Supplemental Notice to WSR 07-09-084.

Preproposal statement of inquiry was filed as WSR 07-05-086.

Title of Rule and Other Identifying Information: New chapter 232-13 WAC, Public conduct in wildlife areas and access sites owned or controlled by the department of fish and wildlife.

Repealing WAC 232-12-174 Domestic animals on department lands, 232-12-177 Vehicles using department lands, 232-12-184 Aircraft—Authorized use on department lands, 232-12-187 Access areas—Other department lands—Wildlife agent to control traffic thereon, and 232-12-251 Removal of minerals, wood, and artifacts from department lands.

Hearing Location(s): Seafarer's Memorial Park Building, 601 14th Street, Anacortes, WA 98221, (360) 293-0694, on August 3-4, 2007, at 8:00 a.m.

Date of Intended Adoption: October 12, 2007.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by July 17, 2007.

Assistance for Persons with Disabilities: Contact Susan Yeager by July 31, 2007, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New chapter 232-13 WAC, the purpose of this new chapter is to establish allowed and prohibited activities on department of fish and wildlife owned or controlled lands, waters, or access areas. These include activities relating to: Aircraft use, proper behavior and conduct, camping, commercial use or activities, dumping and sanitation, erecting structures, firearms and target practice, fireworks, livestock, parking, pets, resource removal, and vehicle use. It also establishes the authority to regulate public use, clarifies enforcement authority, and establishes violations of this chapter as misdemeanors.

Repeal WAC 232-12-174, 232-12-177, 232-12-184, 232-12-187 and 232-12-251, these WAC topics will be incorporated into new chapter 232-13 WAC.

Reasons Supporting Proposal: The department's paramount responsibilities are to preserve, protect, perpetuate,

and manage the fish and wildlife species of the state and maximize opportunities for people to hunt, fish, and appreciate fish and wildlife. It has been observed in recent years that many activities currently occurring on department lands are inconsistent with fish and wildlife management goals, damage habitat, disturb wildlife, or prevent others from enjoying fish and wildlife recreational opportunities. This new chapter serves to curb these undesirable effects. Regulations directing public use activities are currently scattered among other regulations. There is a need to consolidate them under one heading for clarity, better enforcement, and to ultimately allow the department to fulfill its responsibilities.

Statutory Authority for Adoption: RCW 77.12.210, 77.12.880.

Statute Being Implemented: RCW 77.12.210, 77.12.-880.

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

Name of Proponent: Washington fish and wildlife commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rule[s] regulate the use of department owned or controlled lands and do not pose an additional cost to small business beyond what is already required.

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

June 20, 2007
Morris Barker
for Lori Preuss
Rules Coordinator

Chapter 232-13 WAC

PUBLIC CONDUCT IN WILDLIFE AREAS AND ACCESS SITES OWNED OR CONTROLLED BY THE DEPARTMENT OF FISH AND WILDLIFE

NEW SECTION

WAC 232-13-010 Introduction. The Washington department of fish and wildlife (department) is governed by a dual mandate. Its paramount responsibility is to preserve, protect, perpetuate, and manage the fish and wildlife species of the state (RCW 77.04.012). At the same time, the department strives to maximize opportunities for people to hunt, fish, and appreciate fish and wildlife (RCW 77.04.012 and 77.04.020).

NEW SECTION

WAC 232-13-020 Purpose. Primary purposes for the public use of department-owned or controlled public lands, waters, or access areas include lawful hunting and fishing, wildlife observation, and other wildlife-oriented recreational

activities. Additional activities are secondary and may be restricted or prohibited.

NEW SECTION

WAC 232-13-030 Definitions. Definitions used in rules of the fish and wildlife commission are defined in RCW 77.08.010. In addition, unless otherwise provided:

(1) "Aircraft" means any machines designed to travel through the air, whether heavier or lighter than air, including but not limited to airplanes, dirigibles, balloons, and helicopters. The term "aircraft" shall not include paragliders or remote-controlled aircraft.

(2) "Campfire" means any open flame from a wood source.

(3) "Camping" means erecting a tent or shelter or arranging bedding, or both, or parking a recreational vehicle or other vehicle for the purpose of remaining overnight.

(4) "Campgrounds" are department-designated areas where camping is allowed.

(5) "Closed or restricted access" means any department-owned or controlled public lands, waters, or access areas (including roads and trails) that are gated and locked, closed by earthen mound, or designated as closed or posted as such with signs.

(6) "Commercial use or activity" is any use or activity on department-controlled or managed lands, waters, or access areas:

(a) Where an entry or other type of fee is charged; or

(b) Where the primary purpose is the sale or barter of a good or service; and

(c) In either case, the term applies regardless of whether the use or activity is intended to produce a profit.

(7) "Director" means the department's director or his or her designee.

(8) "Department land" means any area (including water, access areas, roads, and trails) under the ownership, management, lease, or control of the department, excluding private lands.

(9) "Fire" means any open flame from any source or device, including but not limited to campfires, stoves, candles, torches, barbeques, and charcoal.

(10) "Firearm," as defined in RCW 9.41.010, means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. For purposes of this chapter, "firearm" does not include BB guns, pellet guns, paintball guns, or other guns that use compressed air as a propellant, or immobilization guns used in animal restraint by department personnel.

(11) "Fireworks," as defined in RCW 70.77.126, means any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and which meets the definition of articles pyrotechnic or consumer fireworks or display fireworks.

(12) "Garbage," as defined in WAC 246-203-120, means all solid and semisolid kitchen refuse subject to decay or putrefaction, and all market waste of animal and vegetable matter that was intended to be used as food.

(13) "Incendiary" means causing or designed to cause fires, such as certain substances or bombs.

(14) "Livestock," as defined in RCW 16.57.010, includes, but is not limited to, horses, mules, cattle, sheep, swine, and goats.

(15) "Motorized vehicle," as defined in RCW 46.09.020, means a vehicle that derives motive power from an internal combustion engine. For purposes of this chapter, it does not mean motorized wheel chairs used by persons with disabilities.

(16) "Parking," as defined in RCW 46.04.381, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

(17) "Pet" means a dog, cat, or any animal that has been domesticated, except livestock.

(18) "Possession" means exercising direct physical control or dominion, with or without ownership, over weapons, traps, nets, or other property, or archeological, cultural, or natural resources.

(19) "Road," pursuant to RCW 46.04.500 and 46.04.197, means that portion of an every way publicly maintained for the purposes of vehicular travel. For purposes of this chapter, "road" means a road wholly or partly within or adjacent to and serving department-owned or controlled public lands, waters, or access areas under the jurisdiction of the department.

(20) "Snowmobile," as defined in RCW 46.10.010, shall mean any self-propelled vehicle capable of traveling over snow or ice, which utilizes as its means of propulsion an endless belt tread, or cleats, or any combination of these or other similar means of contact with the surface upon which it is operated, and which is steered wholly or in part by skis or sled type runners, and which is not otherwise registered as, or subject to, the motor vehicle excise tax in the state of Washington.

(21) "Trash and rubbish," as defined in WAC 246-203-120, means all waste material not of putrescible nature, which for the purpose of this regulation shall include ashes.

(22) "Tracer bullet or shell" means a bullet, projectile, or shell that traces its own course in the air with a trail of smoke, chemical incandescence, or fire, so as to facilitate adjustment of the aim.

(23) "Vessel" means any craft that is used or is capable of being used as a means of transportation on or under water or ice, including but not limited to powerboats, cruisers, houseboats, sailboats, airboats, hovercraft, rowboats, canoes, kayaks, or other personal watercraft. This also includes buoyant devices permitting or capable of free flotation.

NEW SECTION

WAC 232-13-040 Aircraft. (1) Except as authorized by the director or the director of the department of natural resources, it is unlawful to land aircraft on department lands, except in the case of a bona fide emergency.

(2) This section does not apply to official aircraft used in the performance of research, search and rescue missions, medical emergencies, law enforcement activities, emergency evacuations, fire fighting activities, or other agency administrative activities.

NEW SECTION

WAC 232-13-050 Behavior and conduct. (1)(a) It is unlawful to engage in disorderly conduct on department lands. Disorderly conduct is a misdemeanor, pursuant to RCW 9A.84.030.

(b) For the purposes of this subsection, a person is guilty of disorderly conduct if he or she:

(i) Uses abusive language and thereby intentionally creates a risk of assault;

(ii) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority; or

(iii) Intentionally obstructs vehicular or pedestrian traffic without lawful authority.

(2)(a) It is unlawful to possess or dispense beer or malt liquor in quantities subject to keg registration laws under RCW 66.28.210, on department lands, without a permit from the director.

(b) It is unlawful to hold, sponsor, or attend an event requiring a banquet permit under chapter 314-18 WAC from the liquor control board, on department lands without a permit from the director.

(3) Pursuant to RCW 77.15.230 and WAC 232-12-187, it is unlawful to use department lands in a manner or for a purpose contrary to signs or notices posted on those lands, waters, or access areas. Pursuant to RCW 77.15.230, unlawful use of department lands is a misdemeanor.

NEW SECTION

WAC 232-13-060 Camping. (1) It is unlawful to establish or occupy a camp on department lands in excess of twenty-one days within a thirty-day period, except where designated by the director or when allowed by posted notice.

(2) It is unlawful to establish or occupy a residence camp on department lands. For purposes of this section, a residence camp is an encampment, occupancy, or presence on department lands that is the principal place of residence for the person or occupant.

(3) A residence camp on department lands is declared to be a public nuisance and may be abated by the department without notice or process.

NEW SECTION

WAC 232-13-070 Fires and campfires. With the exception of fires used by the department for habitat management and restoration, and campfires, fires for stoves, candles, torches, barbecues, and charcoal, all fires are prohibited on department lands. Campfires are limited to a maximum of three feet in diameter and three feet high. All fires must be attended to at all times and extinguished before leaving.

NEW SECTION

WAC 232-13-080 Commercial use or activity. (1) It is unlawful to use department lands for any commercial purposes, including but not limited to the placement of bee hives, collecting mushrooms or plants or plant parts; guiding or outfitting hunters, anglers, or whitewater rafters; or sales or services, without a permit from the director.

NEW SECTION

WAC 232-13-090 Noncommercial use or activity. It is unlawful to sponsor, conduct, or hold a private or public event, involving more than thirty people, on department lands without a permit from the director.

NEW SECTION

WAC 232-13-100 Dumping and sanitation. (1) It is unlawful for any person to throw, drop, or leave any discarded object, garbage, trash, rubbish, or waste upon any department lands except into a litter or garbage receptacle or container installed for that purpose on such property.

(2) It is unlawful to burn trash and rubbish, except that a person may use paper products to build a campfire in accordance with WAC 232-13-070, on department lands.

(3) It is unlawful to drain or dump refuse or waste from any trailer, camper, automobile, other vehicle, or vessel on department lands.

(4) Except for department-owned vehicles or vehicles used by the department for department administration, it is unlawful to clean or wash any automobile, vessel, or other vehicle on department lands. This subsection does not apply to department-directed actions for invasive species control and prevention.

NEW SECTION

WAC 232-13-110 Enforcement. (1) Fish and wildlife officers and ex officio fish and wildlife officers have the authority to remove from department lands people who have violated the law or failed to obey department regulations.

(2) It is unlawful to fail, neglect, or refuse to obey the directions of such officers regarding the use of department lands.

NEW SECTION

WAC 232-13-120 Erecting structures on department lands. (1)(a) It is unlawful to erect, establish, use, or occupy a permanent or temporary structure on department lands without a permit from the director.

(b) This provision does not apply to portable hunting blinds or tents or other temporary structures established as part of a camp. Such tents or temporary structures must be entirely removed by camp occupants at the end of the trip or season. A structure may in no case remain for more than twenty-one days within a thirty-day period, unless otherwise posted.

(c) This provision does not apply to certain hunting blinds. Hunting blinds are defined for purposes of this section as temporary structures made entirely of natural materials and that do not use metal, concrete, furniture, wire, rope, twine, plastic, or lumber in their construction. Floating blinds for waterfowl hunting may be used and left on department lands for the waterfowl-hunting season.

(d) Unauthorized or unlawful permanent or temporary structures or hunting blinds may be declared to be public nuisances and may be removed by the department without notice or process.

(2)(a) It is unlawful to dig, use, or occupy a pit-type hunting blind on department lands except when such pit-type hunting blinds are established by the department or are authorized by a permit from the director.

(b) It is unlawful to assert or attempt to assert a claim of exclusive occupancy on department lands unless such claim is supported or authorized by a permit from the director.

NEW SECTION

WAC 232-13-130 Firearms and target practicing. (1)(a) It is unlawful to discharge tracer or incendiary ammunition on department lands.

(b) It is unlawful to discharge firearms in those portions of department lands where or when such discharge is prohibited by posted notice or from or within five hundred feet of a designated campground.

(c) It is unlawful to fail to remove expended shell casings, ammunition packaging, or other related target debris, excluding clay pigeons, when target practicing on department lands at the conclusion of the target practice session and prior to departure from the area. Failure to remove any debris constitutes littering.

(d) The use of glass, signs, appliances, mattresses, TVs, furniture, and exploding items as targets in target practicing is prohibited.

(2) The department may designate locations and times for target practicing.

NEW SECTION

WAC 232-13-140 Fireworks. It is unlawful to discharge or possess fireworks, model rockets, or other devices containing any explosive or flammable compounds on department lands. This does not apply to gasoline or diesel powered equipment, cooking stoves or grills, lanterns, lighters, or heaters.

NEW SECTION

WAC 232-13-150 Regulating public access. (1) The director may close or restrict access to department lands by an emergency or other permanent regulation on a seasonal, emergent, or permanent basis to protect human safety, vulnerable fish and wildlife resources or habitats, and department or other infrastructures from damage or abuse.

(2) The director may control public access on department lands to increase wildlife use, improve hunter success, and manage wildlife viewing opportunities. Public access may be controlled by limiting the number of users in the areas and/or limiting the days of the week or hours of the day that the public can access the areas during the hunting season.

(3) It is unlawful to enter or remain on department lands or portions thereof when such restrictions are in place or are established by posted notice. This does not apply during the administration of a valid department grazing permit or agricultural lease by the permittee or lessee.

NEW SECTION

WAC 232-13-160 Livestock. (1) It is unlawful for any person to allow livestock to be unattended or to graze or utilize department lands without a permit from the director.

(2) In addition to other penalties provided by law, any such person shall be liable to the department for a compensatory fee of two dollars per head of livestock per day.

(3) It is unlawful to fail to pay the compensatory fees assessed by the department pursuant to this section.

NEW SECTION

WAC 232-13-170 Parking. (1)(a) It is unlawful to park or leave a vehicle unattended for more than twenty-one days on department lands without a permit from the director.

(b) It is unlawful to leave a motor vehicle or trailer parked or standing on department lands when the vehicle is blocking access to a boat ramp, roadway, gate, or driveway or otherwise prevents egress or ingress to a department facility.

(c) Vehicles unlawfully parked or abandoned on department lands may be impounded by a fish and wildlife officer or ex officio fish and wildlife officer.

(2) Vehicles, vessels, motor homes, and trailers parked or abandoned for more than twenty-one consecutive days within a thirty-day period on department lands are declared to be public nuisances and may be impounded by a fish and wildlife officer or ex officio fish and wildlife officer without notice or process.

(3) It is unlawful to moor a houseboat, other floating occupancy structure, or dock on department lands without a permit from the director. Such unauthorized or unlawful boats, houseboats or other floating structures are declared to be public nuisances and may be removed by the department without notice or process.

NEW SECTION

WAC 232-13-180 Pets. (1) The department may prohibit or regulate pets, except for bona fide service animals for persons with disabilities, on department lands.

(2) It is unlawful for any person to leave pets unattended on department lands.

(3)(a) It is unlawful to cause or allow a dog to roam unleashed on department-owned lands from April 1 through July 31, except in designated areas.

(b) It is unlawful to cause or allow a dog to roam unleashed on designated access sites or within five hundred feet of a designated campground on department lands.

NEW SECTION

WAC 232-13-190 Resource removal. (1) Except for down dead wood collected for camping on department lands, it is unlawful to remove timber, wood, soils, minerals, fossils, plants, plant seeds or other property or artifacts from department lands without a permit from the director. This does not apply to mushrooms, fruits, or berries collected in quantities not to exceed one gallon per person for personal consumption.

(2) Unlawful removals constitute theft under chapter 9A.56 RCW.

NEW SECTION

WAC 232-13-200 Vehicle use. Except for permitted use by persons with disabilities, or for persons holding valid grazing permits or agricultural leases on department lands, it is unlawful to possess or operate any motorized vehicle, including snowmobiles, on or across department lands, except on roads, unless posted otherwise.

NEW SECTION

WAC 232-13-210 Penalties. Unless otherwise provided, violation of any of the provisions of this chapter constitutes an infraction, pursuant to RCW 77.15.020.

WSR 07-13-102
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 20, 2007, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-115.

Title of Rule and Other Identifying Information: WAC 232-28-295 Landowner hunting permits and 232-28-354 2007 Elk special permits; adopting WAC 232-28-431 2007-08 Migratory waterfowl seasons and regulations; and repealing WAC 232-28-430.

Hearing Location(s): Seafarer's Memorial Park Building, 601 14th Street, Anacortes, WA 98221, (360) 293-0694, on August 3-4, 2007, at 8:00 a.m.

Date of Intended Adoption: August 3, 2007.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by Tuesday, July 17, 2007.

Assistance for Persons with Disabilities: Contact Susan Yeager by July 31, 2007, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 232-28-295, in 2006, the landowner hunting permit (LHP) program was implemented to increase hunter access to private lands (Buckrun and 4-O Cattle Company) and to help a landowner (4-O Cattle Company) address long-standing elk damage issues. In 2007, the LHP program was expanded to include three new hunting areas in central Washington. The department is recommending changing the 24 "any bull" permits to 24 "any elk" permits. This amendment will affect permits for the Silver Dollar Association Landowner Hunting Permits.

WAC 232-28-354, increase the number of modern fire-arm bull elk special permits for the Nooksack A hunt from 6 to 7.

WAC 232-28-431, the new WAC specifies legal season dates, bag limits, and open areas to hunt waterfowl, coot, and

snipe for the 2007-08 hunting season. WAC 232-28-431 replaces 232-28-430.

Reasons Supporting Proposal: WAC 232-28-295, the proposed permits are consistent with the commission's policy on private lands hunter access program. They will result in general public hunter access on private property and will help mitigate deer and elk foraging on private agricultural lands. The effectiveness of the existing agreement should increase by allowing hunters to harvest any elk instead of being limited to bull elk only.

WAC 232-28-354, public welfare.

WAC 232-28-431, waterfowl seasons and regulations are developed based on cooperative management programs among states of the Pacific Flyway and the United States Fish and Wildlife Service, considering population status and other biological parameters. The rule establishes waterfowl seasons and regulations to provide recreational opportunity, control waterfowl damage, and conserve the waterfowl resources of Washington.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: Washington fish and wildlife commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules regulate recreational hunters and do not directly regulate small business.

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

June 20, 2007

Morris Barker

for Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 07-62, filed 5/3/07, effective 6/3/07)

WAC 232-28-295 Landowner hunting permits. A landowner may enter into a contract with the department and establish boundaries and other requirements for hunter access consistent with commission policy.

Hunters must possess both an access permit from the landowner and a hunting permit from the department when hunting on lands and for species covered under contract.

(1) Buckrun

Buckrun is located in Grant County, near the town of Wilson Creek. A legal description of the property has been filed with the county and is in the contract between Buckrun and the department.

Hunting on Buckrun is managed for a quality experience by scheduling hunt dates and keeping the number of hunters in the field low. Hunters with limited flexibility for hunt dates may experience scheduling problems. Hunters can generally expect one day hunts with written authorization from the Buckrun manager. All hunters must check in and out on hunt day. Schedule hunts in advance by calling 509-345-2577.

Deer

2007 Buckrun Landowner Hunting Permits

The manager of Buckrun will distribute these hunting permits. An access fee may be charged in order to utilize these permits. No access fee will be charged for the raffle permit winners. Only hunters possessing a modern firearm deer tag are eligible for permits on Buckrun properties. Contact the manager at 509-345-2577 for additional information.

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Buckrun	10	Sept. 1 - Dec. 31	Antlerless Mule Deer or any Whitetail Deer	Buckrun
Buckrun	30	Sept. 1 - Dec. 31	Any deer	Buckrun
Buckrun Raffle	10	Sept. 1 - Dec. 31	Any deer	Buckrun

Deer

2007 Buckrun Special Hunting Permits

Hunters apply to Washington department of fish and wildlife for these permits. Only hunters possessing a modern firearm deer tag are eligible for Buckrun special permits. All hunters must check in and out on hunt day. Schedule hunts in advance by calling 509-345-2577.

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
Buckrun	10	Sept. 1 - Dec. 31	Antlerless Mule Deer or any White-tail Deer	Buckrun

(2) 4-O Cattle Company

The 4-O Cattle Company is located in southwest Asotin County near the Washington/Oregon border. A legal description of the property is in the contract between the 4-O Cattle Company and the department.

2007 4-O Cattle Company Landowner Hunting Permits

The manager of the 4-O Cattle Company will distribute these hunting permits. An access fee may be charged in order to utilize these permits.

Elk

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
4-O Cattle Company	1	Sept. 15-24	Any Bull	4-O Cattle Company
4-O Cattle Company	6	Oct. 27 - Nov. 4	Spike Bull Only	4-O Cattle Company
4-O Cattle Company - A	5	Oct. 1-7	Antlerless Only	4-O Cattle Company
4-O Cattle Company - B	10	Oct. 31 - Nov. 6	Antlerless Only	4-O Cattle Company
4-O Cattle Company - C	3	Nov. 23-30	Antlerless Only	4-O Cattle Company
4-O Cattle Company - D	5	Dec. 29 - Jan. 4	Antlerless Only	4-O Cattle Company

Whitetail Deer

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
4-O Cattle Company	1	Nov. 15-19	Any Whitetail Buck	4-O Cattle Company

Mule Deer

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
4-O Cattle Company	6	Oct. 13-16	Any Mule Deer Buck	4-O Cattle Company

2007 4-O Cattle Company Special Hunting Permits

Hunters apply to the Washington department of fish and wildlife for these permits.

Elk

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
4-O Any Bull Elk	1	Sept. 26 - Oct. 6	Any Bull	4-O Cattle Company
4-O Spike Bull Elk	2	Oct. 27 - Nov. 4	Spike Bull Only	4-O Cattle Company
4-O Antlerless Elk A	15	Oct. 1-7	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk B	10	Oct. 31 - Nov. 6	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk C	7	Nov. 23-30	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk D	5	Dec. 1-7	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk E	5	Dec. 8-14	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk F	5	Dec. 15-21	Antlerless Only	4-O Cattle Company

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
4-O Antlerless Elk G	5	Dec. 22-28	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk H	3	Dec. 29 - Jan. 4	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk I	5	Jan. 12-18	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk J	5	Jan. 26-31	Antlerless Only	4-O Cattle Company

Whitetail Deer

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
4-O White-tailed Buck	1	Nov. 20-25	Any White-tailed Deer Buck	4-O Cattle Company

Mule Deer

Hunt Name	Permit Number	Access Season	Special Restrictions	Boundary Description
4-O Mule Deer Buck	2	Oct. 17-21	Any Mule Deer Buck	4-O Cattle Company

(3) Silver Dollar Association

The Silver Dollar Association is located in Yakima and Benton counties, on the western edge of the Hanford Reservation. A legal description of the property is in the contract between the Silver Dollar Association and the department.

2007 Silver Dollar Association Landowner Hunting Permits

The manager of the Silver Dollar Association will distribute these hunting permits. An access fee may be charged in order to utilize these permits.

Elk

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Silver Dollar	24	Aug. 1 - March 31	Any (Bull) <u>Elk</u>	Silver Dollar
Silver Dollar	15	Aug. 1 - March 31	Antlerless	Silver Dollar

2007 Silver Dollar Special Hunting Permits

Hunters apply to the Washington department of fish and wildlife for these permits.

Elk

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
Silver Dollar	6	Aug. 1 - March 31	Youth Only, Any Elk	Silver Dollar
Silver Dollar Antlerless Elk	12	Aug. 1 - March 31	Youth Only, Antlerless Elk Only	Silver Dollar
Silver Dollar Any Elk	2	Aug. 1 - March 31	Persons of Disability Only, Any Elk	Silver Dollar
Silver Dollar Antlerless Elk	3	Aug. 1 - March 31	Persons of Disability Only, Antlerless Elk Only	Silver Dollar

(4) Blackrock Ranches

Blackrock Ranches is located in Yakima County, west of the Hanford Reservation. A legal description of the property is in the contract between Blackrock Ranches and the department.

2007 Blackrock Ranches Landowner Hunting Permits

The manager of Blackrock Ranches will distribute these hunting permits. An access fee may be charged in order to utilize these permits.

Elk

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Blackrock Ranches	6	Aug. 1 - March 31	Any Elk	Blackrock Ranches
Blackrock Ranches	8	Aug. 1 - March 31	Antlerless	Blackrock Ranches

2007 Blackrock Ranches Special Hunting Permits

Hunters apply to the Washington department of fish and wildlife for these permits.

Elk

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
Blackrock Ranches	1	Aug. 1 - March 31	Any Elk	Blackrock Ranches
Blackrock Ranches	4	Aug. 1 - March 31	Antlerless Only	Blackrock Ranches
Blackrock Ranches	1	Aug. 1 - March 31	Youth Only, Any Elk	Blackrock Ranches
Blackrock Ranches	4	Aug. 1 - March 31	Youth Only, Antlerless Only	Blackrock Ranches

(5) Teanaway Ranch

The Teanaway Ranch is located in Kittitas County, 7 miles west of Cle Elum. A legal description of the property is in the contract between the Teanaway Ranch and the department.

2007 Teanaway Ranch Landowner Hunting Permits

The manager of the Teanaway Ranch will distribute this hunting permit. An access fee may be charged in order to utilize this permit.

Elk

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Teanaway Ranch	1	Aug. 1 - March 31	Any Bull	Teanaway Ranch

2007 Teanaway Ranch Special Hunting Permits

Hunters apply to the Washington department of fish and wildlife for this permit.

ELK

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Teanaway Ranch	1	Aug. 1 - March 31	Any Bull	Teanaway Ranch

AMENDATORY SECTION (Amending Order 07-62, filed 5/3/07, effective 6/3/07)

WAC 232-28-354 2007 Elk special permits.

Special Elk Permit Hunting Seasons (Open to Permit Holders Only)

Hunters must purchase an elk hunting license prior to purchase of a permit application. Hunters may only apply for permits consistent with the tag required for the hunt choice; however, Multiple Season Permit holders may apply for Eastern or Western Washington archery, muzzleloader, or modern firearm permit hunts. Applicants must have purchased the proper tag for these hunts. The elk tag prefixes required to apply for each hunt are shown in the following table. Hunters drawn for a special permit hunt must comply with weapon restrictions and dates listed for the hunt.

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Modern Firearm Bull Permit Hunts (Only modern firearm elk tag holders may apply.)					
Prescott A	Oct. 22 - Nov. 4	Any bull	EF	GMU 149	2
Blue Creek A	Oct. 22 - Nov. 4	Any bull	EF	GMU 154	2
Watershed	Oct. 27 - Nov. 4	3 pt. min. or Antlerless	EA, EF, EM	GMU 157	45
Dayton A	Oct. 22 - Nov. 4	Any bull	EF	GMU 162	13

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Tucannon A	Oct. 22 - Nov. 4	Any bull	EF	Elk Area 1014	4
Wenaha A	Oct. 22 - Nov. 4	Any bull	EF	GMU 169	17
Mountain View A	Oct. 22 - Nov. 4	Any bull	EF	GMU 172	6
Couse A	Oct. 22 - Nov. 4	Any bull	EF	GMU 181	1
Mission A	Oct. 22 - Nov. 4	Any bull	EF	GMU 251	2
Colockum A	Oct. 22 - Nov. 4	Any bull	EF	GMUs 328, 329	9
Teanaway A	Dec. 19-30	Any bull	EF	GMU 335	22
Teanaway A-1	Oct. 22 - Nov. 4	Any bull	EF	GMU 335	1
Peaches Ridge A	Oct. 22 - Nov. 4	Any bull	EF	GMUs 336, 346	135
Little Naches A	Oct. 1-10	Any bull	EF	GMU 346	15
Observatory A	Oct. 22 - Nov. 4	Any bull	EF	GMUs 340, 342	80
Goose Prairie A	Oct. 22 - Nov. 4	Any bull	EF	GMUs 352, 356	96
Bethel A	Oct. 22 - Nov. 4	Any bull	EF	GMU 360	62
Rimrock A	Oct. 22 - Nov. 4	Any bull	EF	GMU 364	123
Cowiche A	Oct. 22 - Nov. 4	Any bull	EF	GMU 368	24
Klickitat Meadows A	Oct. 22 - Nov. 4	Any bull	EF	Elk Area 3068	1
Nooksack A	Oct. 13 - Nov. 11	Any bull	WF	GMU 418	((6)) 7
Green River	Oct. 27 - Nov. 2	Any bull	WF	GMU 485	3
Margaret A	Nov. 3-12	Any bull	WF	GMU 524	35
Toutle A	Nov. 3-12	Any bull	WF	GMU 556	130
Clearwater	Oct. 1-10	Any bull	WA, WF, WM	GMU 615	2
Matheny	Oct. 1-10	Any bull	WA, WF, WM	GMU 618	3
Olympic A	Nov. 1-9	3 pt. min.	WF	GMU 621, EXCEPT for Elk Area 6071	14
Skokomish A	Nov. 1-9	3 pt. min.	WF	GMU 636	9
Wynoochee	Oct. 1-10	Any bull	WA, WF, WM	GMU 648	1
White River A	Nov. 3-12	Any bull	WF	GMU 653	40
Modern Firearm Elk Permit Hunts (Only modern firearm elk tag holders may apply.)					
Aladdin A	Oct. 27 - Nov. 4	Any elk	EF	GMU 111	15
Selkirk A	Oct. 27 - Nov. 4	Any elk	EF	GMU 113	20
49 Degrees North A	Oct. 27 - Nov. 4	Any elk	EF	GMU 117	45
Blue Creek B	Oct. 27 - Nov. 4	Antlerless	EF	GMUs 149, 154	100
Prescott B	Oct. 27 - Nov. 4	Antlerless	EF	GMU 149	75
Dayton B	Oct. 27 - Nov. 4	Antlerless	EF	GMU 163 and Elk Area 1011	100
Dayton C	Oct. 27 - Nov. 4	Antlerless	EF	GMU 149 and Elk Area 1012	100
Peola A	Oct. 27 - Nov. 4	Antlerless	EF	GMU 178	50
Couse B	Oct. 1-12	Antlerless	EF	GMU 181	30
Mountain View B	Oct. 27 - Nov. 6	Antlerless	EF	Elk Area 1013	20
Lick Creek A	Oct. 27 - Nov. 4	Antlerless	EF	GMU 175	25
Malaga A	Sept. 8-30	Any elk	EF	Elk Area 2032	5
Malaga B	Sept. 15-25	Antlerless	EF	Elk Area 2032	35
Malaga C	Nov. 6 - Dec. 31	Antlerless	EF	Elk Area 2032	100
Malaga D	Nov. 6 - Dec. 18	Any elk	EF	Elk Area 2032	7
Peshastin A	Sept. 15 - Oct. 5	Antlerless	EF	Elk Area 2033	20
Peshastin B	Oct. 13-31	Any elk	EF	Elk Area 2033	5
West Bar A	Oct. 27-31	Antlerless	EF	GMU 330	5
West Bar B	Nov. 1-4	Antlerless	EF	GMU 330	5
Teanaway B	Dec. 19 - Jan. 13, 2008	Antlerless	EF	GMU 335	100
Taneum A	Oct. 31 - Nov. 4	Antlerless	EF	GMU 336	150
Manastash A	Oct. 31 - Nov. 4	Antlerless	EF	GMU 340	250
Umtanum A	Oct. 31 - Nov. 4	Antlerless	EF	GMU 342	250
Cleman	Dec. 1-15	Antlerless	EF	Elk Area 3944	50
Little Naches B	Oct. 31 - Nov. 4	Antlerless	EF	GMU 346	150
Nile A	Oct. 31 - Nov. 4	Antlerless	EF	GMU 352	50

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Bumping B	Oct. 31 - Nov. 4	Antlerless	EF	GMU 356	100
Bethel B	Oct. 31 - Nov. 4	Antlerless	EF	GMU 360	100
Rimrock B	Oct. 31 - Nov. 4	Antlerless	EF	GMU 364	150
Cowiche B	Oct. 31 - Nov. 4	Antlerless	EF	GMU 368	150
Klickitat Meadows B	Oct. 31 - Nov. 4	Spike bull or antlerless	EF	Elk Area 3068	9
Alkali A	Oct. 20 - Nov. 4	Any elk	EF	GMU 371	25
Mossyrock A	Nov. 3-12	Antlerless	WF	GMU 505	50
Willapa Hills A	Nov. 3-12	Antlerless	WF	GMU 506	35
Winston A	Nov. 3-12	Antlerless	WF	GMU 520	130
Margaret B	Nov. 3-12	Antlerless	WF	GMU 524	50
Margaret C	Nov. 24 - Dec. 2	Antlerless	WF	GMU 524	50
Ryderwood A	Nov. 3-12	Antlerless	WF	GMU 530	35
Coweeman A	Nov. 3-12	Antlerless	WF	GMU 550	225
Coweeman B	Jan. 1-15, 2008	Antlerless	WF	GMU 550	50
Toutle B	Nov. 3-12	Antlerless	WF	GMU 556	70
Toutle C	Nov. 24 - Dec. 2	Antlerless	WF	GMU 556	100
Toledo A	Nov. 3-12	Antlerless	WF	Elk Area 5029	20
Green Mtn C	Nov. 3-12	Antlerless	WF	Elk Area 5051	10
Carlton	Sept. 22-30	Any bull	WF	Elk Area 5057	5
West Goat Rocks	Sept. 22-30	Any bull	WF	Elk Area 5058	5
Mt. Adams	Sept. 22-30	Any bull	WF	Elk Area 5059	5
Wildwood A	Jan. 16-30, 2008	Antlerless	WF	Elk Area 5061	15
Lewis River A	Nov. 3-12	Antlerless	WF	GMU 560	375
Siouxon A	Nov. 3-12	Antlerless	WF	GMU 572	125
Raymond A	Nov. 5-10	3 pt. min. or antlerless	WF	Elk Area 6010	20
Raymond B	Dec. 16-31	Antlerless	WF	Elk Area 6010	30
Raymond C	Jan. 1-30, 2008	Antlerless	WF	Elk Area 6010	15
Raymond D	Feb. 1-28, 2008	Antlerless	WF	Elk Area 6010	15
Chehalis Valley A	Oct. 1-31	Antlerless	WF	Elk Area 6066	5
Chehalis Valley B	Nov. 5-10	Antlerless	WF	Elk Area 6066	5
North Minot A	Oct. 20-31	Antlerless	WF	Elk Area 6067	20
Deschutes	Jan. 15-23, 2008	Antlerless	WF	GMU 666	10
North River	Nov. 8-13	Antlerless	WF	GMU 658	10
Williams Creek	Nov. 8-13	Antlerless	WF	GMU 673	50
Tri Valley A	Dec. 1 - Jan. 30, 2008	Antlerless	WF	Elk Area 6012	10
North Shore A	Nov. 4-8	Antlerless	WF	Elk Area 6068	5
Muzzleloader Bull Permit Hunts (Only muzzleloader elk tag holders may apply.)					
Note: Fire closures may limit access during early October seasons.					
Prescott C	Oct. 1-10	Any bull	EM	GMU 149	1
Blue Creek C	Oct. 1-10	Any bull	EM	GMU 154	1
Dayton D	Oct. 1-10	Any bull	EM	GMU 162	2
Tucannon B	Oct. 1-10	Any bull	EM	Elk Area 1014	1
Wenaha B	Oct. 1-10	Any bull	EM	GMU 169	3
Mountain View C	Oct. 1-10	Any bull	EM	GMU 172	2
Couse D	Oct. 1-10	Any bull	EM	GMU 181	1
Mission B	Oct. 1-10	Any bull	EM	GMU 251	1
Colockum B	Oct. 1-10	Any bull	EM	GMUs 328, 329	2
Teanaway C	Dec. 9-18	Any elk	EM	GMU 335	7
Peaches Ridge B	Oct. 1-10	Any bull	EM	GMUs 336, 346	19
Observatory B	Oct. 1-10	Any bull	EM	GMUs 340, 342	23
Goose Prairie B	Oct. 1-10	Any bull	EM	GMUs 352, 356	14
Bethel C	Oct. 1-10	Any bull	EM	GMU 360	12
Rimrock C	Oct. 1-10	Any bull	EM	GMU 364	17
Cowiche C	Oct. 1-10	Any bull	EM	GMU 368	8
Klickitat Meadows C	Oct. 1-10	Any bull	EM	Elk Area 3068	1

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Nooksack B	Sept. 29 - Oct. 12 and Nov. 12-30	Any bull	WM	GMU 418	3
Margaret D	Oct. 6-12	Any bull	WM	GMU 524	8
Toutle D	Oct. 6-12	Any bull	WM	GMU 556	26
Olympic B	Oct. 4-10	Any bull	WM	GMU 621, EXCEPT for Elk Area 6071	3
Skokomish B	Oct. 4-10	Any bull	WM	GMU 636	2
White River B	Oct. 1-10	Any bull	WM	GMU 653	3
Muzzleloader Permit Hunts (Only muzzleloader elk tag holders may apply.)					
Aladdin B	Oct. 6-12	Any elk	EM	GMU 111	10
Selkirk B	Oct. 6-12	Any elk	EM	GMU 113	10
49 Degrees North B	Oct. 6-12	Any elk	EM	GMU 117	20
Blue Creek D	Dec. 9 - Jan. 30, 2008	Antlerless	EM	GMUs 149, 154	60
Mountain View D	Oct. 1-12	Antlerless	EM	Elk Area 1013	20
Lick Creek B	Oct. 1-10	Antlerless	EM	GMU 175	25
Couse E	Dec. 1-31	Antlerless	EM	GMU 181	30
Couse F	Jan. 1-30, 2008	Antlerless	EM	GMU 181	30
Malaga E	Oct. 1-21	Antlerless	EM	Elk Area 2032	50
Malaga F	Oct. 1-21	Any elk	EM	Elk Area 2032	8
West Bar C	Oct. 6-12	Antlerless	EM	GMU 330	5
Taneum B	Oct. 6-12	Antlerless	EM	GMU 336	25
Manastash B	Oct. 6-12	Antlerless	EM	GMU 340	25
Umtanum B	Oct. 6-12	Antlerless	EM	GMU 342	250
Nile B	Oct. 6-12	Antlerless	EM	GMU 352	40
Bumping B	Oct. 6-12	Antlerless	EM	GMU 356	90
Bethel D	Oct. 6-12	Antlerless	EM	GMU 360	40
Cowiche D	Oct. 6-12	Antlerless	EM	GMU 368	225
Klickitat Meadows D	Oct. 6-12	Spike bull or antlerless	EM	Elk Area 3068	4
Alkali B	Oct. 1-15	Any elk	EM	GMU 371	15
Stella A	Nov. 21 - Dec. 15	Antlerless	WM	GMU 504	150
Stella B	Jan. 1-16, 2008	Antlerless	WM	GMU 504	100
Toledo B	Dec. 7-20	Antlerless	WM	Elk Area 5029	30
Mossyrock B	Jan. 1-16, 2008	Antlerless	WM	Elk Area 5052	30
Randle A	Jan. 1-16, 2008	Antlerless	WM	Elk Area 5053	15
Boistfort A	Jan. 1-16, 2008	Antlerless	WM	Elk Area 5054	40
Willapa Hills B	Nov. 21 - Dec. 15	Antlerless	WM	GMU 506	15
Green Mt. A	Jan. 1-16, 2008	Antlerless	WM	Elk Area 5051	30
Wildwood B	Jan. 1-15, 2008	Antlerless	WM	Elk Area 5061	15
Winston B	Nov. 21 - Dec. 15	Antlerless	WM	GMU 520	60
Margaret E	Oct. 6-12	Antlerless	WM	GMU 524	40
Ryderwood B	Oct. 6-12	Antlerless	WM	GMU 530	15
Coweeman C	Nov. 21 - Dec. 15	Antlerless	WM	GMU 550	60
Toutle E	Oct. 6-12	Antlerless	WM	GMU 556	75
Lewis River B	Oct. 6-12	Antlerless	WM	GMU 560	225
Siouxon B	Oct. 6-12	Antlerless	WM	GMU 572	75
Yale A	Oct. 6-12	Antlerless	WM	GMU 554	75
Yale B	Nov. 21 - Dec. 15	3 pt. min. or antlerless	WM	GMU 554	75
Twin Satsop A	Jan. 5-15, 2008	Antlerless	WM	Elk Area 6061	10
Mashel A	Jan. 1-15, 2008	Antlerless	WM	Elk Area 6054	25
North River	Nov. 26 - Dec. 15	Antlerless	WM	GMU 658	20
North Minot B	Oct. 1-7	Antlerless	WM	Elk Area 6067	20
Raymond E	Oct. 1-31	Antlerless	WM	Elk Area 6010	30
Chehalis Valley C	Jan. 1-30, 2008	Antlerless	WM	Elk Area 6066	15
Capitol Peak A	Nov. 19 - Dec. 15	Antlerless	WM	GMU 663	15
Tri Valley B	Dec. 16 - Jan. 30, 2008	Antlerless	WM	Elk Area 6012	30

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Archery Permit Hunts (Only archery elk tag holders may apply.)					
Note: Fire closures may limit access during September seasons.					
Prescott D	Sept. 8-21	Any bull	EA	GMU 149	1
Blue Creek E	Sept. 8-21	Any bull	EA	GMU 154	2
Dayton E	Sept. 8-21	Any bull	EA	GMU 162	7
Tucannon C	Sept. 8-21	Any bull	EA	Elk Area 1014	3
Wenaha C	Sept. 8-21	Any bull	EA	GMU 169	4
Mountain View E	Sept. 8-21	Any bull	EA	GMU 172	3
Couse G	Sept. 8-21	Any bull	EA	GMU 181	1
Colockum C	Sept. 8-21	Any bull	EA	GMUs 328, 329	3
Teanaway E	Nov. 20 - Dec. 8	Any bull	EA	GMU 335	34
Peaches Ridge C	Sept. 8-21	Any bull	EA	GMUs 336, 346	104
Observatory C	Sept. 8-21	Any elk	EA	GMUs 340, 342	91
Goose Prairie C	Sept. 8-21	Any bull	EA	GMUs 352, 356	138
Bethel E	Sept. 8-21	Any bull	EA	GMU 360	43
Rimrock D	Sept. 8-21	Any bull	EA	GMU 364	93
Cowiche E	Sept. 8-21	Any bull	EA	GMU 368	18
Klickitat Meadows E	Oct. 11-22	Any bull	EA	Elk Area 3068	1
Klickitat Meadows F	Oct. 11-22	Spike bull or antlerless	EA	Elk Area 3068	9
Malaga G	Sept. 1-7	Antlerless	EA	Elk Area 2032	25
Peshastin C	Sept. 1-14	Any elk	EA	Elk Area 2033	15
Nooksack C	Sept. 1-28 and Dec. 1-31	Any bull	WA	GMU 418	3
Margaret F	Sept. 15-30 and Dec. 1-15	Any bull	WA	GMU 524	13
Margaret G	Sept. 15-30 and Dec. 1-15	Antlerless	WA	GMU 524	50
Toutle F	Sept. 15-30 and Dec. 1-15	Any bull	WA	GMU 556	66
Toutle G	Sept. 15-30 and Dec. 1-15	Antlerless	WA	GMU 556	90
Lewis River C	Nov. 21-30	3 pt. min. or antlerless	WA	GMU 560	50
Siouxon C	Nov. 21-30	3 pt. min. or antlerless	WA	GMU 572	25
Olympic C	Sept. 8-21	3 pt. min.	WA	GMU 621, EXCEPT for Elk Area 6071	7
Skokomish C	Sept. 8-21	3 pt. min.	WA	GMU 636	6
White River C	Sept. 8-21	Any bull	WA	GMU 653	11
Advanced Hunter Education (AHE) Master Hunter Special Elk Permit Hunts: Only AHE master hunters may apply; antlerless only hunts will not affect accumulated points; and any weapon may be used.					
Peshastin D	Aug. 18-31	Any elk	Any elk tag	Elk Area 2033	5
Mossyrock C	Jan. 17-30, 2008	Antlerless	Any elk tag	Elk Area 5052	20
Randle B	Jan. 17-30, 2008	Antlerless	Any elk tag	Elk Area 5053	15
Quinalt Ridge	Oct. 1-10	3 pt. min. or antlerless	Any elk tag	GMU 638	5
Green Mt. B	Jan. 17-30, 2008	Antlerless	Any elk tag	Elk Area 5051	20
Merwin A	Nov. 21 - Dec. 15	Antlerless	Any elk tag	Elk Area 5060	10
Merwin B	Jan. 17-30, 2008	Antlerless	Any elk tag	Elk Area 5060	10
Advanced Hunter Education (AHE) Master Hunter, Second Elk Tag Hunts: Only AHE master hunters may apply; these hunts will not affect accumulated points; a second tag may be purchased by successful applicants as needed; and any weapon may be used. The second elk license and tag type must be the same tag type as the first one.					
Peola B	Oct. 1-12	Antlerless	Any elk tag	GMU 178	15
Malaga H	Aug. 1 - Mar. 31, 2008	Antlerless	Any elk tag	Elk Area 2032	100 ^{HM}
Malaga I	Aug. 1 - Feb. 28, 2008	Any elk	Any elk tag	Elk Area 2032	20 ^{HM}
Peshastin E	Aug. 1 - Mar. 31, 2008	Antlerless	Any elk tag	Elk Area 2033	50 ^{HM}
Peshastin F	Aug. 1 - Feb. 28, 2008	Any elk	Any elk tag	Elk Area 2033	20 ^{HM}
Fairview	Feb. 1-29, 2008	Antlerless	Any elk tag	Elk Area 3911	20 ^{HM}
Rattlesnake Hills	Aug. 1 - Feb. 29, 2008	Antlerless or spike bull	Any elk tag	Designated areas in GMU 372	20 ^{HM}
Toledo C	Dec. 21-31	Antlerless and spike bull	Any elk tag	Elk Area 5029	20
Toledo D	Aug. 1-7	Antlerless and spike bull	Any archery elk tag	Elk Area 5029	5

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Toledo E	Aug. 8-14	Antlerless and spike bull	Any archery elk tag	Elk Area 5029	5
Toledo F	Aug. 15-21	Antlerless and spike bull	Any archery elk tag	Elk Area 5029	5
Toledo G	Aug. 22-28	Antlerless and spike bull	Any archery elk tag	Elk Area 5029	5
Boistfort B	Aug. 1-7	Antlerless and spike bull	Any archery elk tag	Elk Area 5054	5
Boistfort C	Aug. 8-14	Antlerless and spike bull	Any archery elk tag	Elk Area 5054	5
Boistfort D	Aug. 15-21	Antlerless and spike bull	Any archery elk tag	Elk Area 5054	5
Boistfort E	Aug. 22-28	Antlerless and spike bull	Any archery elk tag	Elk Area 5054	5
JBH *	Nov. 12 - Feb. 28, 2008	Antlerless	Any elk tag	Elk Area 5090	20 ^{HM}
Trout Lake A**	Nov. 21-30	Antlerless	Any elk tag	Elk Area 5062	5
Trout Lake B**	Dec. 1-14	Antlerless	Any elk tag	Elk Area 5062	5
Trout Lake C**	Dec. 15-31	Antlerless	Any elk tag	Elk Area 5062	5
Trout Lake D**	Jan. 1-14, 2008	Antlerless	Any elk tag	Elk Area 5062	5
Trout Lake E**	Jan. 15-30, 2008	Antlerless	Any elk tag	Elk Area 5062	5
North River B	Dec. 16 - Feb. 28, 2008	Antlerless	Any elk tag	Designated areas in GMU 658	10 ^{HM}
Chehalis Valley D	Aug. 1 - Feb. 28, 2008	Antlerless	Any elk tag	Designated areas in Elk Area 6066	10 ^{HM}
Raymond F	Dec. 1 - Mar. 31, 2008	Antlerless	Any elk tag	Elk Area 6010	10 ^{HM}
Hanaford C	Aug. 1 - Mar. 31, 2008	Antlerless	Any elk tag	Designated areas in Elk Area 6069	5 ^{HM}
Dungeness A	Sept. 1 - Feb. 28, 2008	3 pt. min.	Any elk tag	Elk Area 6071 north of Hwy 101 only	12
Dungeness B	Oct. 1 - Dec. 31	Antlerless	Any elk tag	Elk Area 6071 north of Hwy 101 only	8
Youth - Special Elk Permit Hunts (Must be eligible for the youth hunting license and accompanied by an adult during the hunt.)					
Mudflow A	Oct. 9-14	Antlerless	WF	Elk Area 5099	6
Mudflow B	Oct. 23-28	Antlerless	WF	Elk Area 5099	6
Mudflow C	Nov. 20-25	Antlerless	WF	Elk Area 5099	6
Dungeness C	Sept. 1 - Feb. 28, 2008	Any elk	Any elk tag	Elk Area 6071 north of Hwy 101 only	4
Sol Duc Valley	Aug. 1 - Jan. 22, 2008	Antlerless	Any elk tag	Elk Area 6072	10
Clearwater Valley	Aug. 1 - Mar. 31, 2008	Antlerless	Any elk tag	Elk Area 6073	1
Persons of Disability Only - Special Elk Permit Hunts					
Sol Duc Valley B	Aug. 1 - Jan. 22, 2008	Antlerless	Any elk tag	Elk Area 6072	5
Observatory D	Oct. 22 - Nov. 4	Any elk	EF or EM	GMUs 340, 342	7
Little Naches C	Oct. 1-10	Any elk	EF, EM, EA	GMU 346	5
Little Naches D	Oct. 31 - Nov. 4	Antlerless	EF, EM, EA	GMU 346	8
Alkali C	Oct. 20 - Nov. 4	Any elk	EF	GMU 371	4
Mudflow F	Oct. 16-21	Antlerless	Any elk tag	Elk Area 5099	6
Mudflow D	Sept. 25-30	Any elk	Any elk tag	Elk Area 5099	6
Mudflow E	Oct. 2-7	Any elk	Any elk tag	Elk Area 5099	6
Mudflow G	Oct. 30 - Nov. 4	Antlerless	Any elk tag	Elk Area 5099	6
Centralia Mine A	Oct. 27-28	Antlerless	Any elk tag	Elk Area 6011	2
Centralia Mine B	Nov. 3-4	Antlerless	Any elk tag	Elk Area 6011	2
North Shore B	Oct. 1-31	Antlerless	Any elk tag	Elk Area 6068	5
North Shore C	Dec. 16-31	Antlerless	Any elk tag	Elk Area 6068	5
Chehalis Valley E	Dec. 16-31	Antlerless	Any elk tag	Elk Area 6066	15
Hanaford A	Jan. 1-15, 2008	Antlerless	Any elk tag	Elk Area 6069	5
Hunters 65 or Older Only - Special Elk Permit Hunts					
Hanaford B	Jan. 16-30, 2008	Antlerless	Any elk tag	Elk Area 6069	5

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Mudflow H	Sept. 18-23	Antlerless	Any elk tag	Elk Area 5099	6
Mudflow I	Nov. 6-12	Antlerless	Any elk tag	Elk Area 5099	6
Mudflow J	Nov. 27 - Dec. 2	Antlerless	Any elk tag	Elk Area 5099	6

*Muzzleloaders only; scopes allowed in JBH hunt.

**May only hunt on privately owned lands. Must use only archery or legal shotgun (10 or 12 gauge; slugs only).

^{HM}This is a damage hunt administered by a WDFW designated hunt master. Successful applicants will be contacted on an as-needed basis to help with specific sites of elk damage on designated landowner's property. Not all successful applicants will be contacted in any given year depending on elk damage activity for that year.

Hunter Education Instructor Incentive Permits				
<ul style="list-style-type: none"> - Special elk permits will be allocated through a random drawing to those hunter education instructors that qualify. - Permit hunters must use archery equipment during archery seasons, muzzleloader equipment during muzzleloader seasons, and any legal weapon during modern firearm seasons. - Qualifying hunter education instructors must be certified and have been in active status for a minimum of three consecutive years, inclusive of the year prior to the permit drawing. - Instructors who are drawn, accept a permit, and are able to participate in the hunt, will not be eligible for these incentive permits for a period of ten years thereafter. - Permittees may purchase a second license for use with the permit hunt only. 				
Area	Dates	Restrictions	GMUs	Permits
Region 3	All general season and permit seasons established for GMUs included with the permit	Any elk	GMUs 335-368	2
Region 5		Any elk	All 500 series GMUs except GMU 522	4
Region 6		Any elk	GMUs 654, 660, 672, 673, 681	1

NEW SECTION

WAC 232-28-431 2007-08 Migratory waterfowl seasons and regulations.

DUCKS

Statewide

Oct. 13-17, 2007 and Oct. 20, 2007 - Jan. 27, 2008.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 22-23, 2007.

Daily bag limit: 7 ducks, to include not more than 2 hen mallard, 1 pintail, 3 scaup, 1 canvasback, 2 redhead, 1 harlequin, 4 scoter, and 4 long-tailed duck.

Possession limit: 14 ducks, to include not more than 4 hen mallard, 2 pintail, 6 scaup, 2 canvasback, 4 redhead, 1 harlequin, 8 scoter, and 8 long-tailed duck.

Season limit: 1 harlequin.

WRITTEN AUTHORIZATION REQUIRED TO HUNT SEA DUCKS.

All persons hunting sea ducks (harlequin, scoter, long-tailed duck) in Western Washington are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who did not possess a 2006-07 authorization must submit an application form to WDFW (forms available at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2008, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest

information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2008-09 sea duck season.

COOT (Mudhen)

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 25 coots.

Possession limit: 25 coots.

COMMON SNIPE

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 8 snipe.

Possession limit: 16 snipe.

GEESE (except Brant)

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 22-23, 2007, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily bag limit: 4 Canada geese.

Possession limit: 8 Canada geese.

Western Washington Goose Seasons

Goose Management Area 1

Island, Skagit, Snohomish counties.

Oct. 13, 2007 - Jan. 27, 2008 for snow, Ross', or blue geese. Oct. 13-25, 2007 and Nov. 3, 2007 - Jan. 27, 2008 for other geese (except Brant).

Daily bag limit: 4 geese.

Possession limit: 8 geese.

WRITTEN AUTHORIZATION REQUIRED TO HUNT SNOW GEESE.

All persons hunting snow geese in this season are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who did not possess a 2006-07 authorization must submit an application form to WDFW (forms available at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a snow goose into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2008, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2008-09 snow goose season.

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County. While hunting snow geese on Fir Island, if a hunter is convicted of 1) trespass, 2) shooting from, across, or along the maintained part of any public highway, 3) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County, or 4) exceeding the daily bag limit for snow geese, written authorization will be invalidated for the remainder of the 2007-08 snow goose season and an authorization will not be issued for the 2008-09 snow goose season.

QUALITY HUNTING AREAS IN GOOSE MANAGEMENT AREA 1.

Hunters possessing written authorization to hunt snow geese in Goose Management Area 1 can apply for a special authorization to access private lands around Fir Island enrolled in a new quality snow goose hunting program. Hunters must apply for special authorization to hunt on these special areas by September 28, 2007, using the department's internet or mail application systems. A random drawing will select hunters for participation, and special hunt authorizations will be mailed prior to the season. Up to 3 individuals possessing snow goose authorizations can hunt with the successful applicant on each hunt day. Successful applicants must check in with the WDFW hunt coordinator at least 24 hours prior to hunting and all hunters must hunt over decoys. Special authorizations are not valid for commercial uses. Authorizations are valid for one week (only on Tuesday, Thursday, Saturday, and Sunday) and only on private lands specified by the WDFW hunt coordinator. Hunters will be assigned at random to private farms participating in the program.

Goose Management Area 2A

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River.

Open in all areas except Ridgefield NWR from 8 a.m. to 4:00 p.m., Saturdays, Sundays, and Wednesdays only, Nov. 10-25, 2007 and Dec. 5, 2007 - Jan. 27, 2008. Ridgefield NWR open from 8 a.m. to 4:00 p.m. Tuesdays, Thursdays, and Saturdays

only, Nov. 13-24, 2007 and Dec. 6, 2007 - Jan. 19, 2008, except closed Nov. 22 and Dec. 25, 2007, and Jan. 1, 2008.

Bag limits for Goose Management Area 2A:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 4 cackling geese.

Season limit: 1 dusky Canada goose.

Goose Management Area 2B

Pacific County.

Open from 8 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. 13, 2007 - Jan. 12, 2008.

Bag limits for Goose Management Area 2B:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose, 1 Aleutian goose, and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose, 2 Aleutian geese, and 4 cackling geese.

Season limit: 1 dusky Canada goose.

Special Provisions for Goose Management Areas 2A and 2B:

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

The Canada goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total 80 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of 80 dusky, to be distributed 15 for Zone 1 (Ridgefield NWR); 25 for Zone 2 (Cowlitz County south of the Kalama River); 20 for Zone 3 (Clark County except Ridgefield NWR); 10 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); and 10 for Zone 5 (Pacific County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunting is only permitted by written authorization from the Washington department of fish and wildlife. New hunters and those who did not maintain a valid 2006-07 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive written authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time.

With written authorization, hunters will receive a harvest report. Hunters must carry the authorization card and harvest report while hunting. Immediately after taking a Canada goose (dusky, lesser/Taverner, cackling, or other subspecies) into possession, hunters must record in ink the information required on the harvest report. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. If a hunter takes the season bag

limit of one dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest report, written authorization will be invalidated and the hunter will not be able to hunt Canada geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late Canada goose season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

Special Late Canada Goose Season for Goose Management Area 2A:

Open to Washington department of fish and wildlife advanced hunter education (AHE) program graduates and youth hunters (15 years of age or under, who are accompanied by an AHE hunter) possessing a valid 2007-08 southwest Washington Canada goose hunting authorization, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.:

Saturdays and Wednesdays only, Feb. 2 - Mar. 5, 2008.

Daily bag limit: 4 Canada geese, to include not more than 1 dusky Canada goose, and 2 cackling geese.

Possession limit: 8 Canada geese, to include not more than 1 dusky Canada goose, and 4 cackling geese.

Season limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. Washington department of fish and wildlife will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late Canada goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds 85 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding written authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.

Goose Management Area 3

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B.

Oct. 13-25, 2007 and Nov. 3, 2007 - Jan. 27, 2008.

Daily bag limit: 4 geese.

Possession limit: 8 geese.

Eastern Washington Goose Seasons

Goose Management Area 4

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties.

Oct. 13-15, 2007, and Saturdays, Sundays, and Wednesdays only during Oct. 20, 2007 - Jan. 20, 2008; Nov. 12, 22, and 23, 2007; Dec. 24, 25, 27, and 28, 2007; January 1, 2008; and every day Jan. 21-27, 2008.

Goose Management Area 5

Includes all parts of Eastern Washington not included in Goose Management Area 4.

Oct. 13-15, 2007, every day from Oct. 20, 2007 - Jan. 27, 2008.

Bag limits for all Eastern Washington Goose Management Areas:

Daily bag limit: 4 geese.

Possession limit: 8 geese.

BRANT

Open in Skagit County only on the following dates:

Jan. 17, 19, 20, 22, 24, 26, and 27, 2008.

If the 2007-08 preseason brant population in Skagit County is below 6,000 (as determined by the early January survey), the brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates:

Jan. 10, 12, 13, 15, 17, 19, and 20, 2008.

WRITTEN AUTHORIZATION REQUIRED:

All hunters participating in this season are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who did not possess a 2006-07 authorization must submit an application form to WDFW (forms available at Washington department of fish and wildlife regional offices).

Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2008, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2008-09 brant season.

Bag limits for Skagit and Pacific counties:

Daily bag limit: 2 brant.

Possession limit: 4 brant.

SWANS

Season closed statewide.

FALCONRY SEASONS

DUCKS, COOTS, AND SNIPE (Falconry)

(Bag limits include geese and mourning doves.)

Oct. 13-17, 2007 and Oct. 20, 2007 - Jan. 27, 2008 statewide.

Daily bag limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession limit: 6, straight or mixed bag with geese and mourning doves during established seasons.

GEESE (Falconry)

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: Oct. 13, 2007 - Jan. 27, 2008 for snow, Ross', or blue geese. Oct. 13-25, 2007 and Nov. 3, 2007 - Jan. 27, 2008 for other geese.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. 10-25, 2007 and Dec. 5, 2007 - Jan. 27, 2008.

Goose Management Area 2B: Wednesdays and Saturdays only, Oct. 13, 2007 - Jan. 12, 2008.

Goose Management Areas 3, 4, and 5: Oct. 13-15, 2007 and Nov. 3, 2007 - Jan. 27, 2008.

Daily bag limit for all areas: 3 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession limit for all areas: 6 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-430 2006-07 Migratory water-fowl seasons and regulations.

WSR 07-13-104
PROPOSED RULES
DEPARTMENT OF
GENERAL ADMINISTRATION

[Filed June 20, 2007, 11:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-132.

Title of Rule and Other Identifying Information: Revising rules related to parking fees on the state capitol grounds.

The proposed rule change will apply only to state-owned parking spaces and facilities on the state capitol campus. This proposal does not extend to parking spaces and facilities anywhere outside the state capitol campus.

Hearing Location(s): General Administration Building, First Floor Auditorium, 210 11th Street, Olympia, WA 98504, on July 26, 2007, at 6 p.m. to 8 p.m.

Date of Intended Adoption: September 15, 2007.

Submit Written Comments to: Barton Potter, Rules Coordinator, P.O. Box 41000, Olympia, WA 98504-1000, e-mail bpotter@ga.wa.gov, fax (360) 586-5898, by August 31, 2007.

Assistance for Persons with Disabilities: Contact Barton Potter by July 12, 2007, TTY (360) 664-3799 or (360) 902-7208.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: General administration proposes to raise parking fees on the capitol campus beginning in January 2008. The revision of this rule will also allow the department of general administration to adjust rental parking fees on the state capitol campus at the director's discretion as the market and business needs dictate. The effect of revising this rule will be that general administration will not need to go through rule making every time the director determines a need to adjust parking rates. General administration will give proper notice to state agency stakeholders and capitol campus parkers and provide for a public comment process before any proposed fee adjustment is implemented.

This proposal will amend WAC 236-12-290 to allow the department of general administration to adjust rental parking rates on the state capitol campus at the discretion of the director of the department. RCW 46.08.172 directs the director of general administration to set rates for parking that reduce state subsidization of employee parking and take into account comparable private market rates.

Statutory Authority for Adoption: RCW 43.19.011 (2)(d), 46.08.150, and 46.08.172.

Statute Being Implemented: RCW 46.08.172.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The Washington state patrol provides parking enforcement services to general administration.

Name of Proponent: Department of general administration, governmental.

Name of Agency Personnel Responsible for Drafting: Nick Cockrell, P.O. Box 41000, Olympia, WA 98504-1000, (360) 902-7383; Implementation: Barton Potter, P.O. Box 41000, Olympia, WA 98504-1000, (360) 902-7208; and Enforcement: Bob Bippert, P.O. Box 41000, Olympia, WA 98504-1000, (360) 902-7395.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule change will impose no costs on business in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule does not constitute a significant legislative rule as described in chapter 34.05 RCW.

June 18, 2007

Linda Villegas Bremer
Director

AMENDATORY SECTION (Amending WSR 04-18-064, filed 8/30/04, effective 7/1/05)

ing fee increases. The director shall consider the comments in adopting adjustments to the rental parking fees.

WAC 236-12-290 Parking fees. (1) The fees for rental parking shall be ~~((as follows:))~~ set by the director of the department of general administration.

(a) Adjustments to the fees may be made at the discretion of the director of the department of general administration.

((PARKING USES	PARKING FEES
(a) Agency assigned uses (visitor, off-campus staff, state cars, etc.)	\$ 30.00
(b) Employee uses	
(i) General, "zoned"	\$ 20.00
(ii) Leased/reserved areas and/or stalls	\$ 25.00
(iii) Disabled employees	\$ 15.00
(c) Motoreycle, motor-driven eye/moped uses	\$ 10.00
(d) Nonstate personnel uses (concession-vendors, lobbyists, day care providers, press corps, etc.)	\$ 30.00
(e) Disabled visitor use	no charge
(f) Metered parking for visitor use	\$.50 per hour

~~(g) No charge for carpools/vanpools to which permits have been issued in accordance with WAC 236-12-295.~~

~~(h) In addition to the permits issued under (a), (b), (c), (d), (e), (f), and (g) of this subsection, the department may issue other permits including but not limited to agency pre-paid monthly, service/delivery and temporary/daily permits; the department will establish a fee schedule for such permits other than permits issued under (a), (b), (c), (d), (e), (f), and (g) of this subsection, and will keep such fee schedule on file at 218 General Administration Building, P.O. Box 41000, Olympia, Washington 98504-1000 and will make it available to any person upon request.~~

~~(i) The director has authority to create reserved parking spaces/areas and to determine the rates for such parking:))~~

~~(b) The director will establish a fee schedule for ((reserved)) parking spaces/areas and will keep such fee schedule on file at 218 General Administration Building, P.O. Box 41000, Olympia, Washington 98504-1000 and will make it available to any person upon request.~~

(2) In determining whether to adjust rental parking fees, the director will consider one or more of the following factors:

- (a) Parking facility costs;
- (b) Available commuting alternatives;
- (c) Change in the demand for parking facilities;
- (d) Transportation demand management requirements;
- (e) Market rates of comparable privately owned or leased property; and
- (f) Other circumstances as determined by the director, whereby a change in parking fees is necessary.

(3) The director shall provide notice to state agency stakeholders and capitol campus parkers no later than 60 days prior to any proposed rental parking fees adjustment and provide them a 30-day comment period about the proposed park-