

WSR 17-15-020
PROPOSED RULES
HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed July 7, 2017, 9:18 a.m.]

July 7, 2017

Wendy Barcus

Rules Coordinator

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-043.

Title of Rule and Other Identifying Information: WAC 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care (LTC) services.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on August 22, 2017, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 23, 2017.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, email arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m., on August 22, 2017.

Assistance for Persons with Disabilities: Contact Amber Lougheed by August 18, 2017, email amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to correct an error in WAC 182-513-1350 (6)(b)(i), which was recently filed. The subsection should have read "... no more than three months before the month of the medicaid application."

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 1902 (r)(1)(A) of the Social Security Act, and 42 C.F.R. 435.725 and 435.726.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 1902 (r)(1)(A) of the Social Security Act, and 42 C.F.R. 435.725 and 435.726.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Darcy Eliason, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1642; Implementation and Enforcement: Sarah Michael, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1919.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care (LTC) services. (1) General information.

(a) This section describes how the agency or its designee defines the resource standard and countable or excluded resources when determining a person's eligibility for SSI-related long-term care (LTC) services.

(b) "Resource standard" means the maximum amount of resources a person can have and still be resource eligible for program benefits.

(c) For a person not SSI-related, the agency applies program specific resource rules to determine eligibility.

(2) Resource standards.

(a) The resource standard for the following people is \$2000:

(i) A single person; or

(ii) An institutionalized spouse.

(b) The resource standard for a legally married couple is \$3000, unless subsection (3)(b)(ii) of this section applies.

(c) The resource standard for a person with a qualified long-term care partnership policy under WAC 182-513-1400 may be higher based on the dollar amount paid out by a partnership policy.

(d) Determining the amount of resources that can be allocated to the community spouse when determining resource eligibility is under WAC 182-513-1355.

(3) Availability of resources.

(a) General. The agency or its designee applies the following rules when determining available resources for LTC services:

(i) WAC 182-512-0300 SSI-related medical—Resources eligibility;

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources; and

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(b) Married couples.

(i) When both spouses apply for LTC services, the resources of both spouses are available to each other through the month in which the spouses stopped living together.

(ii) When both spouses are institutionalized, the agency or its designee determines the eligibility of each spouse as a single person the month following the month of separation.

(iii) If the agency or its designee has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, but after eligibility has been established and services authorized for the institutionalized spouse, then the agency applies the standard under subsection (2)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the agency applies subsection (2)(b) of this section for the couple.

(iv) The resources of the community spouse are unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless (v) or (vi) of this subsection applies.

(v) When a single institutionalized individual marries, the agency or its designee redetermines eligibility applying the resource and income rules for a legally married couple.

(vi) A redetermination of the couple's resources under this section is required if:

(A) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(B) The institutionalized spouse's countable resources exceed the standard under subsection (2)(a) of this section, and WAC 182-513-1355 (2)(b) applies; or

(C) The institutionalized spouse does not transfer the amount, under WAC 182-513-1355 (3) or (5), to the community spouse by either:

(I) The end of the month of the first regularly scheduled eligibility review; or

(II) A reasonable amount of time necessary to obtain a court order for the support of the community spouse.

(4) Countable resources.

(a) The agency or its designee determines countable resources using the following sections:

(i) WAC 182-512-0200 SSI-related medical—Definition of resources.

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources.

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(iv) WAC 182-512-0300 SSI-related medical—Resources eligibility.

(v) WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources;

(vi) WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources;

(vii) WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource; and

(viii) WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.

(ix) Chapter 182-516 WAC, Trusts, annuities, life estates, and promissory notes—Effect on medical programs.

(b) The agency or its designee determines excluded resources based on federal law and WAC 182-512-0550, except:

(i) For institutional and HCB waiver programs, pension funds owned by a nonapplying spouse are counted toward the resource standard.

(ii) For long-term services and supports (LTSS), based on the need for either nursing facility level of care or intermediate care facility for the intellectually disabled level of care, one home is excluded only if it meets the home equity limits of subsection (8) of this section. See WAC 182-512-0350 (1)(b).

(c) The agency or its designee adds together the countable resources of both spouses if subsections (3)(b)(i) and (iv) apply, but not if subsection (3)(b)(ii) or (iii) apply. For a person with a community spouse, see WAC 182-513-1355.

(5) Excess resources.

(a) For LTC programs, a person may reduce excess resources by deducting incurred medical expenses under subsection (6) of this section;

(b) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) In a medical institution, excess resources and available income must be under the state medicaid rate based on the number of days the person spent in the medical institution in the month.

(B) For HCB waiver eligibility, incurred medical expenses must reduce resources within allowable resource standards. The cost of care for the HCB waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program, see:

(A) WAC 182-513-1395 for LTC programs; and

(B) WAC 182-513-1245 for hospice.

(c) Excess resources not otherwise applied to medical expenses will be applied to the projected cost of care for services in a medical institution under WAC 182-513-1380.

(6) Allowable medical expenses.

(a) The following incurred medical expenses may be used to reduce excess resources:

(i) Premiums, deductibles, coinsurance, or copayment charges for health insurance and medicare;

(ii) Medically necessary care defined under WAC 182-500-0070, but not covered under the state's medicaid plan. Information regarding covered services is under chapter 182-501 WAC;

(iii) Medically necessary care defined under WAC 182-500-0070 incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the specific facility that provided the services.

(b) To be allowed, the medical expense must:

(i) Have been incurred no more than three months before the month of the medicaid application;

(ii) Not be subject to third-party payment or reimbursement;

(iii) Not have been used to satisfy a previous spenddown liability;

(iv) Not have been previously used to reduce excess resources;

(v) Not have been used to reduce participation;

(vi) Not have been incurred during a transfer of asset penalty under WAC 182-513-1363; and

(vii) Be an amount for which the person remains liable.

(7) Nonallowable expenses. The following expenses are not allowed to reduce excess resources:

(a) Unpaid adult family home (AFH) or assisted living facility expenses incurred prior to medicaid eligibility;

(b) Personal care cost in excess of approved hours determined by the CARE assessment under chapter 388-106 WAC; and

(c) Expenses excluded by federal law.

(8) Excess home equity.

(a) A person with an equity interest in a primary residence in excess of the home equity limit is ineligible for long-

July 10, 2017

Mark Neary

Assistant Secretary of State

term services and supports (LTSS) that are based on the need for either nursing facility level of care or intermediate care facility for the intellectually disabled level of care, unless one of the following persons lawfully resides in the home:

(i) That person's spouse; or

(ii) That person's dependent child under age twenty-one, blind child, or disabled child.

(b) The home equity provision applies to all applications for LTSS received on or after May 1, 2006.

(c) Effective January 1, 2016, the excess home equity limit is \$552,000. On January 1, 2017, and on January 1st of each year thereafter, this standard may change by the percentage in the consumer price index-urban.

(d) A person who is denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver under WAC 182-513-1367.

(9) Institutional resource standards are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

WSR 17-15-028

PROPOSED RULES

SECRETARY OF STATE

[Filed July 10, 2017, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-027.

Title of Rule and Other Identifying Information: Combined fund drive rule clarification.

Hearing Location(s): Office of the secretary of state conference room, on August 22, 2017, at 2:30 p.m.

Date of Intended Adoption: August 22, 2017.

Submit Written Comments to: Heather Lucas, P.O. [Box] 40250, Olympia, WA 98504-0250, email Heather.Lucas@sos.wa.gov, fax (360) 586-5629, by August 22, 2017.

Assistance for Persons with Disabilities: Contact Heather Lucas by August 22, 2017, (360) 902-4181.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule is intended to clarify procedures as defined in WAC for the combined fund drive office and charitable organizations.

Reasons Supporting Proposal: The proposed rule changes clarify and update existing WAC and update processes used by staff supporting the combined fund drive process.

Statutory Authority for Adoption: RCW 41.04.033.

Statute Being Implemented: Chapter 41.04 RCW.

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

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Heather Lucas, P.O. Box 40250, Olympia, WA 98504-0250, (360) 902-4181.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

AMENDATORY SECTION (Amending WSR 17-12-089, filed 6/6/17, effective 7/7/17)

WAC 434-750-040 Definitions. The following definitions apply to chapter 434-750 WAC:

"Beneficiaries of the CFD" means any nonprofit organization that receives funds disbursed from the CFD.

"CFD" means Washington state combined fund drive.

"CFD campaign" means the period of organized solicitation of state employees, higher education employees and public agency retirees. This solicitation is conducted to obtain voluntary contributions, donations and charitable commitments to be allocated to participating organizations and federations. State agencies and higher education institutions have the flexibility to conduct ((a)) CFD campaign ((one a year)) events at any time during the year.

"Federation" means a public or private not-for-profit umbrella organization made up of five or more individual member organizations approved by the CFD to participate in the CFD campaign.

"Participating employer" means Washington state agencies, higher education institutions, government-related entities and related boards.

"Participating organization" means a public or private not-for-profit organization designated as tax-exempt under the Internal Revenue Code 26 U.S.C. Sec. 501 (c)(3) or Sec. 170 (c)(1) and approved by the CFD to participate in the CFD campaign.

"Volunteer" means a state employee or higher education employee chosen to represent the CFD and run the CFD campaign at their respective agency or higher education institution. Volunteers may be referred to as "volunteer," "campaign leader," or "local coordinator."

WSR 17-15-037

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Financial Services Administration)

[Filed July 11, 2017, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-07-122.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-06-0700 What definitions apply to WAC 388-06-0710 through 388-06-0720? and create new WAC 388-06-0800 When must BCCU include a statement about a certificate of restoration of opportunity? and 388-06-0810 Does a certificate of restoration of opportunity apply to any state abuse and neglect registry?

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/>

driving-directions-office-bldg-2), on August 22, 2017, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 23, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., August 22, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by August 8, 2017, phone (360) 664-6092, TTY (360) 664-6178, or email KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 9.97.020 (4)(a) mandates rule making by the department regarding the inclusion of certificates of restoration of opportunity (CROP) as part of reports, letters, or other assessments, and the application of a CROP to the state abuse and neglect registries. The proposed rules add language to explain when a CROP will be a part of such assessments and when they are not required, and clarify and update the definitions related to the background check central unit of the department and its processes.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 9.97.020.

Statute Being Implemented: RCW 9.97.020.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Teva Weissman, P.O. Box 45025, Olympia, WA 98504-5025, (360) 902-0237; Implementation and Enforcement: Kerry Breen, P.O. Box 45025, Olympia, WA 98504-5025, (360) 902-7823.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and concluded that they do not impact small businesses and are further exempt under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328. The department has analyzed the proposed rules and concluded they do not meet the definition of "significant legislative rule" under RCW 34.05.328 (5)(c)(iii).

July 7, 2017

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0700 What definitions apply to WAC ((388-06-0710)) 388-06-0700 through ((388-06-0720)) 388-06-0800? The following definitions apply to WAC 388-06-0700 through 388-06-0810:

"Applicant" means an employee, volunteer, student, intern, licensee, service provider, contractor, or other individual who is the subject of the background check and who will work in a position that:

(1) May have unauthorized access to vulnerable adults, the developmentally disabled, juveniles, or children; or

(2) Is designated by the department as having access to sensitive information.

"Authorized entity" means a department ((of social and health services)), administration, division, program, unit, service provider, licensee, contractor, or other public or private ((agency)) entity that has permission from the department to ((conduct)) submit and receive background checks through ((the background check central unit)) BCCU.

~~("Background check applicant" means an employee, volunteer, student, intern, licensee, service provider, contractor or other individual who is the subject of the background check and who will work in a position that:~~

~~(1) May have unsupervised access to vulnerable adults, juveniles or children as described in WAC 388-06-0610; or~~

~~(2) Is designated by the department as a sensitive position.)~~

"Background check central unit" or "BCCU" is the program responsible for conducting background checks for the department ((of social and health services)).

(1) ((The background check central unit)) BCCU is responsible for:

(a) Compiling background check information from external and internal data sources; ~~(and)~~

(b) Determining whether an applicant's background check information matches the appropriate department list of disqualifying crimes and negative actions; and

(c) Providing information to the authorized entity who requested the background check.

(2) ((The background check central unit)) BCCU does not:

(a) Make the final hiring, contracting, placement, or licensing decision for the department or authorized entity; ~~((or))~~

(b) Determine what program, service provider, licensee, contractor, or other public or private agency qualifies as an authorized entity; or

(c) Determine what crimes and negative actions are disqualifying under the respective department lists.

"Background check result" means a written notification that provides information on the results of the background check process conducted for a background check applicant. A disqualify result, review required result, or no record result are all background check results.

"Certificate of restoration of opportunity" or "CROP" means a certificate obtained under chapter 9.97 RCW.

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

"Disqualify result" means that BCCU has determined that the applicant's background check information has one or more items requiring automatic disqualification.

"No record result" means that BCCU has determined that no background information has been reported requiring automatic disqualification or review.

"Review required result" means that BCCU has determined that the applicant has one or more items of background check information, none of which require automatic disqualification.

NEW SECTION

WAC 388-06-0800 When must BCCU include a statement about a certificate of restoration of opportunity? (1) BCCU must include a statement about any existing CROP in background check results for all background check applicants that the department is authorized to disqualify for a license, certificate of authority, qualification to engage in the practice of a profession or business, or for admission to an examination to qualify for such a license or certificate, except as provided for in subsections (2) through (4) of this section.

(2) BCCU is not required to include a statement about any existing CROP for an applicant who is exempt under chapter 9.97 RCW.

(3) BCCU is not required to include a statement about any existing CROP when BCCU issues any interim communications, including when:

- (a) Requesting additional information;
- (b) Notifying about an error;
- (c) Rejecting a form;
- (d) Requesting a thumbprint; or
- (e) Any other communication that does not assess the final results of a processed background check.

(4) BCCU is not required to include a statement about any existing CROP in any no record result.

NEW SECTION

WAC 388-06-0810 Does a certificate of restoration of opportunity apply to any state abuse and neglect registry? A CROP does not apply to the state abuse and neglect registry. No finding of abuse, neglect, or misappropriation of property may be removed from the registry based solely on a CROP.

WSR 17-15-044
PROPOSED RULES
HEALTH CARE AUTHORITY
 (Washington Apple Health)
 [Filed July 11, 2017, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-08-089.

Title of Rule and Other Identifying Information: WAC 182-526-0100 Expedited administrative hearings for urgent health care needs, 182-526-0280 Continuing a hearing when an appellant is an applicant or recipient, and 182-526-0290 Reinstating a hearing after an order of default or an order of dismissal.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on August 22, 2017, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 23, 2017.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, email arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m., on August 22, 2017.

Assistance for Persons with Disabilities: Contact Amber Loughheed by August 18, 2017, email amber.loughheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To comply with new federal rules in 42 C.F.R. Part 431, the agency is creating new WAC 182-526-0100 to allow for expedited administrative hearings for urgent health care needs. The agency is revising WAC 182-526-0290 (4) and (6) to correct an error in the recently filed permanent rules for chapter 182-526 WAC. In subsection (4), if an appellant fails to appear at the scheduled prehearing conference to address the petition to vacate, the order becomes a final order. The administrative law judge (ALJ) or review judge does not dismiss the matter with prejudice. In subsection (6), if the petition to vacate is not filed timely or the appellant fails to establish good cause to excuse any default or to reinstate the matter for hearing, the ALJ must issue an initial order, not a final order, dismissing the appeal. In WAC 182-526-0280, the agency is proposing to strike the introductory statement "This section applies to continuance requests made by applicants or recipients."

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 42 C.F.R. Part 431, Subpart E - Fair Hearings for Applicants and Beneficiaries.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 42 C.F.R. Part 431, Subpart E - Fair Hearings for Applicants and Beneficiaries.

Rule is necessary because of federal law, 42 C.F.R. Part 431, Subpart E - Fair Hearings for Applicants and Beneficiaries.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Darcy Eliason, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1642; Implementation and Enforcement: Evelyn Cantrell, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-9970.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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

July 11, 2017
 Wendy Barcus
 Rules Coordinator

NEW SECTION

WAC 182-526-0100 Expedited administrative hearings for urgent health care needs. (1) Requesting an expedited hearing.

(a) An expedited hearing may be requested only in matters involving applicants or recipients.

(b) An applicant or recipient may request an expedited administrative hearing when the applicant or recipient believes there is an urgent health care need as defined in subsection (3) of this section.

(c) The applicant or recipient bears the burden of proof to establish an urgent health care need and must submit evidence or arrange for evidence to be submitted to the office of administrative hearings (OAH) with the expedited hearing request to support the need for an expedited hearing.

(d) A recipient may be eligible for continued coverage according to WAC 182-504-0130.

(2) **Exception to notice requirements.** The notice requirements in this section prevail over notice requirements in WAC 182-526-0250.

(3) **Standard for granting an expedited hearing request.**

(a) For the purposes of this section, an urgent health care need means that waiting for an otherwise timely final order could jeopardize the applicant's or recipient's life, health or ability to attain, maintain, or regain maximum function.

(b) The administrative law judge (ALJ) grants a request for an expedited hearing only if the ALJ finds by a preponderance of the evidence submitted with the applicant's or recipient's expedited hearing request and the information listed below that the applicant or recipient has an urgent health care need.

(c) Information the ALJ may consider when determining whether the applicant or recipient has an urgent health care need and whether to subsequently grant or deny an expedited hearing request includes, but is not limited to:

(i) The documentation submitted with the expedited hearing request to show an urgent health care need;

(ii) Whether the recipient is eligible for continued coverage of the benefits denied, reduced, or terminated by the agency or the agency's designee pending resolution of the appeal as an expedited hearing request may not be granted for individuals receiving continued coverage;

(iii) The length of time between the applicant's or recipient's receipt of the agency's or the agency designee's adverse notice and the applicant's or recipient's request for an expedited hearing; and

(iv) Whether the documentation submitted with the expedited hearing request shows that an appointment with a provider for a health care procedure or treatment to address the applicant's or recipient's stated urgent health care need:

(A) Is scheduled; or

(B) Cannot be scheduled due to a lack of coverage.

(4) **Time frame and notice requirements for expedited hearing request determination.** The ALJ must grant or deny the expedited hearing request and issue the determination within four business days of receipt of the request by OAH or as expeditiously as possible. OAH must immediately notify the parties orally and in writing of the ALJ's determination, unless notification in writing is waived by the parties. The oral and written notice must clearly state:

(a) Whether the expedited hearing request was approved or denied;

(b) That a hearing has been or will be scheduled; and

(c) The information listed in subsection (3)(c) of this section that the ALJ relied upon.

(5) **Scheduling an expedited hearing.** If the ALJ grants a request for an expedited hearing, OAH will schedule a hearing and provide notice as expeditiously as possible, allowing for a reasonable amount of notice and time for the parties to prepare for hearing. The notice rules in WAC 182-526-0250 do not apply.

(6) **Denial of expedited hearing.** If the ALJ denies an expedited hearing request, OAH will schedule the hearing based on standard scheduling practices and the notice rules in WAC 182-526-0250.

(7) **Appeal right.** There is no right to appeal an ALJ's determination to grant or deny an expedited hearing request.

(8) **Expedited hearing initial order.** If an expedited hearing request is granted and an expedited hearing is held, the ALJ must issue an initial order as expeditiously as possible.

(9) **Expedited final order.** Any party may request administrative review of the initial order with the health care authority board of appeals according to WAC 182-526-0560 through 182-526-0600. The board of appeals will issue a final order as expeditiously as possible.

(10) **Delayed expedited hearing request determination or expedited hearing initial order.** The ALJ has a duty to determine whether to grant or deny an expedited hearing request and, if granted, to issue an expedited hearing initial order as expeditiously as possible, except in unusual circumstances when:

(a) An ALJ is unable to reach a decision because the applicant or recipient requests a delay or does not take a required action; or

(b) There is an administrative or other emergency beyond OAH's or the agency's control.

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0280 Continuing a hearing when an appellant is an applicant or recipient. ~~((This section applies to continuance requests made by applicants or recipients.))~~ (1) Any party may request a continuance under this section either orally or in writing.

(2) Before contacting the office of administrative hearings (OAH) to request a continuance, the party seeking the continuance must make a good faith effort to contact the other parties to find out if they agree to a continuance. The party making the request for a continuance must let OAH know whether the other parties agreed to the continuance.

(3) **Standard when less than sixty days.** When a continuance request is made less than sixty days from the date OAH received the hearing request:

(a) If all parties agree to the continuance, the ALJ must grant the request unless the ALJ holds a prehearing conference and finds that good cause for a continuance does not exist under WAC 182-526-0020.

(b) If the parties do not agree to the continuance, the ALJ must schedule a prehearing conference and determine if good cause for a continuance exists under WAC 182-526-0020 and under the following factors:

(i) Why the party is requesting a continuance;

(ii) Why the other party or parties are objecting to the request;

(iii) Whether a continuance in the case has previously been granted at the request of the same party who is now requesting the continuance and, if so, whether it was for the same reason;

(iv) The extent to which the requesting or objecting parties could have prevented the need for delay;

(v) The number and duration of previous continuances in the case and who requested them;

(vi) The legal or factual complexity of the case;

(vii) The relative harm to the parties if the continuance is granted or denied, including the risk of harm to the appellant if he or she is not receiving continued benefits;

(viii) The impact of a continuance on the parties' ability to adequately prepare and present their cases;

(ix) Any need to provide accommodation, translation, or interpreter services; and

(x) The impact of a continuance on the ability of OAH to issue a timely initial decision; or

(xi) Other relevant factors.

(4) **Standard when sixty days or greater.** When a continuance request is made sixty days or more from the date OAH received the hearing request:

(a) The ALJ must not only consider whether there is good cause to continue the hearing but also must find a compelling reason for the continuance.

(b) Compelling reasons include:

(i) Medical evidence is required;

(ii) Extraordinary circumstances exist, such as the sudden unforeseen onset of an illness or adverse event that was beyond the party's ability to prevent;

(iii) The hearing format changes or the ALJ finds a compelling reason to change the way a witness appears at the hearing according to WAC 182-526-0360;

(iv) The appellant needs more time to prepare or present evidence or argument because the agency issued an amended notice under WAC 182-526-0260;

(v) The need for more time was caused by another party's action or inaction, considering the relative capacity and resources of the parties;

(vi) The need to provide accommodation, translation, or interpreter services;

(vii) A party received notice of the date or deadline thirty days or more after OAH received the hearing request;

(viii) Whether the continuance is needed to allow for effective assistance of counsel of record; or

(ix) Other compelling reasons.

(5) The ALJ must notify all parties whether a continuance was granted or denied orally on the record, or must do so in writing within five business days of the prehearing conference.

(6) If the ALJ grants a continuance, OAH must serve a new notice of hearing on the parties at least fourteen calendar days before the new hearing date, unless the parties agree to a shorter time period.

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0290 Reinstating a hearing after an order of default or an order of dismissal. (1) If an order of default was entered under WAC 182-526-0284, or an order of dismissal was entered under WAC 182-526-0285, the appellant may file a petition (request) to vacate (set aside) the order.

(a) The petition to vacate must be filed with the office of administrative hearings (OAH) or the board of appeals (BOA) for nursing home rates cases.

(b) BOA forwards any petition to vacate to OAH except for nursing home rates cases.

(c) The appellant must specify in the petition to vacate the reason why the order should be vacated.

(2) The petition to vacate must be filed within twenty-one calendar days of service (mailing) of the order to the parties. If the petition to vacate is not filed by the deadline, the order of default or order of dismissal becomes a final order.

(3) If OAH receives a petition to vacate, OAH schedules a prehearing conference and serves all parties with a notice of a prehearing conference under WAC 182-526-0250.

(4) If the appellant fails to appear at the scheduled prehearing conference to address the petition to vacate, ~~(the)~~ ~~the order becomes ((the)) a final order ((and~~ ~~(b) The ALJ or review judge must dismiss the matter with prejudice)).~~

(5)(a) If the appellant appears for the scheduled prehearing conference:

(b) The ALJ or review judge will receive evidence and argument from the parties regarding whether:

(i) The petition to vacate was timely filed; and

(ii) The appellant has established good cause to excuse any default and to reinstate the matter for hearing.

(6) The ALJ ~~((or review judge))~~ must issue ~~((a final)) an initial order or the review judge must issue a final order dismissing the appeal ((and terminating the hearing process))~~ if:

(a) The petition to vacate was not filed timely; or

(b) The appellant fails to establish good cause to excuse any default or to reinstate the matter for hearing.

(7) If the ALJ or review judge rules that the order of default or order of dismissal is vacated, the matter may proceed to hearing and the parties may present argument and evidence about the issues identified in the original request for hearing. The hearing may occur:

(a) Immediately following the prehearing conference if agreed to by the parties and the ALJ; or

(b) At a hearing date scheduled by OAH under WAC 182-526-0250.

WSR 17-15-060

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed July 13, 2017, 2:31 p.m.]

Supplemental Notice to WSR 16-23-149 [17-08-092].

Preproposal statement of inquiry was filed as WSR 16-23-149.

Title of Rule and Other Identifying Information: WAC 182-538C-040 Behavioral health services and 182-538C-110 Grievance and appeal system and agency administrative hearing for behavioral health administrative services organizations (BH-ASO).

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on August 22, 2017, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 23, 2017.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, email arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m., on August 22, 2017.

Assistance for Persons with Disabilities: Contact Amber Lougheed by August 18, 2017, email amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to comply with the federal rule changes adopted by the Centers for Medicare and Medicaid Services (CMS), which revised 42 C.F.R. Parts 431, 433, 438, 440, 457, and 495. These changes modernize the medicaid managed care regulations to reflect changes in the use of managed care delivery systems and are primarily related to the grievance and appeals process rules.

Reasons Supporting Proposal: A public hearing was originally held on these rule amendments on May 9, 2017. However, the proposal erroneously added a provision for independent review in WAC 182-538C-040 (5)(b). As no federal funds are used for these services, clients are not entitled to an independent review. The current amendment does not include that provision. The agency is also striking language that allows up to forty-five days for an appeal determination.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, 42 C.F.R. Parts 431, 433, 438, 440, 457, and 495.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408; Implementation and Enforcement: Evelyn Cantrell, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1408.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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

July 13, 2017

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-051, filed 2/11/16, effective 4/1/16)

WAC 182-538C-040 Behavioral health services. (1)

This chapter governs crisis-related and other behavioral health services provided under the medicaid agency's behavioral health administrative services organization (BH-ASO) contract.

(2) The BH-ASO contracts with the agency to provide behavioral health services within a fully integrated managed care (FIMC) regional service area.

(a) The BH-ASO provides the following services to all ~~((individuals))~~ people, regardless of insurance status, income level, ability to pay, and county of residence:

(i) Mental health crisis services; and

(ii) Operation of a behavioral health ombuds ~~(ombudsman)~~.

(b) The BH-ASO may provide substance use disorder crisis services within available resources to all ~~((individuals))~~ people, regardless of the ~~((individual's))~~ person's insurance status, income level, ability to pay, and county of residence.

(c) The BH-ASO provides the following services to ~~((individuals))~~ people who are not eligible for medicaid coverage and are involuntarily or voluntarily detained under chapter 71.05 or 71.34 RCW, RCW 70.96A.140, or a less restrictive alternative (LRA) court order:

(i) Evaluation and treatment services;

(ii) Substance use disorder residential treatment services; and

(iii) Outpatient behavioral services, under an LRA court order.

(d) To be eligible to contract with the agency, the BH-ASO must:

(i) Accept the terms and conditions of the agency's contracts; and

(ii) Be able to meet the network and quality standards established by the agency.

(e) Services related to the administration of chapters 71.05 and 71.34 RCW and RCW 70.96A.140.

(3) The BH-ASO may provide contracted noncrisis behavioral health services to ~~((individuals))~~ people in an FIMC regional service area:

(a) Within available resources;

(b) Based on medical necessity; and

(c) In order of priority to populations as identified by state and federal authorities.

(4) Within an FIMC regional service area, the BH-ASO is a subcontractor with all FIMC managed care organizations (MCOs) to provide crisis services for medicaid enrollees and the administration of involuntary treatment acts under RCW 70.96A.140 or chapter 71.05 or 71.34 RCW.

(5) For medicaid-funded services subcontracted for by FIMC managed care organizations (MCOs) to the BH-ASO:

(a) Grievances and appeals must be filed with the FIMC MCO; and

(b) The grievance and appeal system and the agency's administrative hearing rules in chapter 182-538 WAC apply instead of the grievance and appeal system and hearing rules in this chapter.

AMENDATORY SECTION (Amending WSR 16-15-030, filed 7/13/16, effective 8/13/16)

WAC 182-538C-110 Grievance and appeal system and agency administrative hearing for behavioral health administrative services organizations (BH-ASOs). (1) **General.** This section applies to the behavioral health administrative service organization (BH-ASO) grievance system for people within fully integrated managed care (FIMC) regional service areas.

(a) The BH-ASO must have a grievance and appeal system to allow a person to file a grievance and request a review of a BH-ASO action as defined in this chapter.

(b) The agency's administrative hearing rules in chapter 182-526 WAC apply to agency administrative hearings requested by a person to review the resolution of an appeal of a BH-ASO action.

(c) If a conflict exists between the requirements of this chapter and other rules, the requirements of this chapter take precedence.

(d) The BH-ASO must maintain records of grievances and appeals.

(e) The BH-ASO is not obligated to continue services pending the results of an appeal or subsequent agency administrative hearing.

(2) **The BH-ASO grievance and appeal system.** The BH-ASO grievance system includes:

(a) A process for addressing complaints about any matter that is not an action(~~(, which is called a grievance)~~);

(b) An appeal(~~(s)~~) process to address a person's request for a review of a BH-ASO action as defined in this chapter; and

(c) Access to the agency's administrative hearing process for a person to request a review of a BH-ASO's resolution of an appeal.

(3) **The BH-ASO grievance process.**

(a) A person or a person's authorized representative may file a grievance with a BH-ASO. A provider may not file a grievance on behalf of a person without the written consent of the person or the person's authorized representative.

(b) There is no right to an agency administrative hearing regarding the BH-ASO's decision on a grievance, since a grievance is not an action.

(c) The BH-ASO must notify a person of the decision regarding the person's grievance within five business days of the decision.

(4) **The BH-ASO appeal(~~(s)~~) process.**

(a) Parties to the appeal include:

(i) The person and the person's authorized or legal representative; or

(ii) The authorized representative of the deceased person's estate.

(b) A person, the person's authorized representative, or the provider acting with the person's written consent may appeal a BH-ASO action.

(c) A BH-ASO must treat oral inquiries about appealing an action as an appeal in order to establish the earliest possible filing date for the appeal.

(d) The BH-ASO must confirm any oral appeal in writing to the person or provider acting on behalf of the person.

(e) The person or provider acting on behalf of the person must file an appeal, either orally or in writing, within (~~ninety~~) sixty calendar days of the date on the BH-ASO's notice of action.

(f) The BH-ASO must acknowledge receipt of each appeal to both the person and the provider requesting the service within three calendar days of receipt. The appeal acknowledgment letter sent by the BH-ASO serves as written confirmation of an appeal filed orally by a person.

(g) If the person requests an expedited appeal for a crisis-related service, the BH-ASO must make a decision on whether to grant the person's request for expedited appeal and provide written notice as expeditiously as the person's health condition requires, within three calendar days after the BH-ASO receives the appeal. The BH-ASO must make reasonable efforts to provide oral notice.

(h) The BH-ASO appeal(~~(s)~~) process:

(i) Provides the person a reasonable opportunity to present evidence and allegations of fact or law in writing.

(ii) Provides the person and the person's authorized representative opportunity before and during the appeals process to examine the person's case file, including medical records and any other documents and records considered during the appeal(~~(s)~~) process free of charge.

(iii) If the person requests an expedited appeal, the BH-ASO must inform the person that it may result in the person having limited time to review records and prepare for the appeal.

(i) The BH-ASO ensures the staff making decisions on appeals:

(i) Were not involved in any previous level of review or decision making; and

(ii) Are health care professionals with appropriate clinical expertise in treating the person's condition or disease if deciding any of the following:

(A) An appeal of an action; or

(B) An appeal that involves any clinical issues.

(j) Time frames for standard resolution of appeals.

(i) For appeals involving termination, suspension, or reduction of previously authorized noncrisis services, the BH-ASO must make a decision within fourteen calendar days after receipt of the appeal.

(ii) If the BH-ASO cannot resolve an appeal within fourteen calendar days, the BH-ASO must notify the person that an extension is necessary to complete the appeal.

(k) Time frames for expedited appeals for crisis-related services or behavioral health prescription drug authorization decisions.

(i) The BH-ASO must resolve the expedited appeal and provide notice of the decision no later than three calendar days after the BH-ASO receives the appeal.

(ii) The BH-ASO may extend the time frame by fourteen additional calendar days if:

(A) The person requests the extension; or

(B) The BH-ASO determines additional information is needed and the delay is in the interests of the person.

(iii) If the BH-ASO denies a request for expedited resolution of a noncrisis related service appeal, it must:

(A) Process the appeal based on the time frame for standard resolution;

(B) Make reasonable efforts to give the person prompt oral notice of the denial; and

(C) Follow-up within two calendar days of the oral notice with a written notice of denial.

(l) Extension of a standard resolution or expedited appeal not requested by the person.

(i) The BH-ASO must notify the person in writing of the reason for the delay, if not requested by that person.

(ii) The extension cannot delay the decision beyond twenty-eight calendar days of the request for appeal, without the informed written consent of the person.

~~((iii) The appeal determination must not exceed forty-five calendar days from the day the BH-ASO receives the appeal.))~~

(m) Notice of resolution of appeal. The notice of the resolution of the appeal must:

(i) Be in writing and be sent to the person and the provider requesting the services;

(ii) Include the results of the resolution process and the date it was completed; and

(iii) Include notice of the right to request an agency administrative hearing and how to do so as provided in the agency hearing rules in chapter 182-526 WAC, if the appeal is not resolved wholly in favor of the person.

(5) Agency administrative hearings.

(a) Only a person or a person's authorized representative may request an agency administrative hearing. A provider may not request a hearing on behalf of a person.

(b) If a person does not agree with the BH-ASO's resolution of an appeal, the person may file a request for an agency administrative hearing based on this section and the agency hearing rules in chapter 182-526 WAC.

(c) The BH-ASO is an independent party and responsible for its own representation in any agency administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

~~((d) A person must exhaust the appeals process within the BH-ASO's grievance system before requesting an administrative hearing with the agency.))~~

(6) Effect of reversed resolutions of appeals. If the BH-ASO's decision not to provide services is reversed on appeal by the BH-ASO or through a final order from the agency administrative hearing process, the BH-ASO must authorize or provide the disputed services promptly and as expeditiously as the person's health condition requires.

~~((Grievance system termination.))~~ **Available resources exhausted.** When available resources are exhausted, any appeals or administrative hearing process related to a request for authorization of a noncrisis service will be terminated, since noncrisis services cannot be authorized without funding, regardless of medical necessity.

WSR 17-15-062
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed July 13, 2017, 3:48 p.m.]

Supplemental Notice to WSR 17-11-109.

Preproposal statement of inquiry was filed as WSR 17-03-041 on January 7, 2017.

Title of Rule and Other Identifying Information: WAC 220-312-020 Freshwater exceptions to statewide rules—Coast.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on August 22, 2017, at 8:30 a.m. - 10 a.m.

Date of Intended Adoption: On or after August 23, 2017.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, email Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by August 22, 2017.

Assistance for Persons with Disabilities: Contact Dolores Noyes by August 22, 2017, TTY (360) 902-2207 or (360) 902-2349.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Recreational coastal freshwater salmon fishing rules based on North of Falcon (NOF) recommendation[s] change from year to year to reflect resource availability and to achieve conservation goals. Amendments to recreational salmon fishing rules are needed to implement the agreed-upon changes. This proposal reflects a change to WAC 220-312-020 from what was proposed in WSR 17-11-109 filed on May 22, 2017. The change requires the release of wild Chinook in the Humptulips River from September 1 through October 15, 2017.

This change is to address a harvest imbalance between comanagers.

Reasons Supporting Proposal: To protect fish species listed as endangered while supporting recreational fishing opportunity and to incorporate changes to the rule needed as a result of the recommendations of the NOF subgroup of the Pacific Fishery Management Council.

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

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: A separate CR-102 supplemental will be filed for the NOF coastal saltwater salmon rules and the NOF commercial salmon fishery in Grays Harbor.

Name of Proponent: [WDFW], governmental.

Name of Agency Personnel Responsible for Drafting: Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1213; Implementation: Ron Warren, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2799; and Enforcement: Chris Anderson, Chief, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule amendments do not affect small business; i.e., there is no direct regulation of small business. The rules apply to recreational fishers.

A cost-benefit analysis is not required under RCW 34.05.328. There is no requirement for a cost-benefit analysis for this rule making under RCW 34.05.328.

July 12, 2017
Scott Bird
Rules Coordinator

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

WAC 220-312-020 Freshwater exceptions to state-wide rules—Coast. (1) Aberdeen Lake (Grays Harbor County):

(a) Open the fourth Saturday in April through October 31.

(b) Trout: No more than 2 trout over 15 inches in length may be retained.

(2) Alder Creek (Pacific County) (Naselle River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(3) Anderson Lake (Jefferson County): ~~((a))~~ It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((b) Open September 1 through October 31:~~

~~(i) Selective gear rules apply.~~

~~(ii) Trout: Catch and release only.)~~

(4) Bear Creek (Clallam County) (Bogachiel River tributary):

(a) Open the first Saturday in June through ~~((August))~~ October 31.

(b) It is unlawful to use anything other than one barbless hook.

(c) It is unlawful to use bait.

(d) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release wild (unclipped) rainbow trout.

(5) Bear Creek (Clallam County) (Sol Duc River tributary):

(a) Open the first Saturday in June through ~~((August))~~ October 31.

(b) It is unlawful to use anything other than one barbless hook.

(c) It is unlawful to use bait.

(d) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release wild (unclipped) rainbow trout.

(6) Bear River (Pacific County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June through March 31.

(c) August 16 through November 30: Night closure in effect.

(i) From the mouth (Highway 101 Bridge) to Lime Quarry Road (approximately two river miles):

(A) August 16 through November 30:

(I) Barbless hooks required.

(II) Anti-snagging rule applies.

(B) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(C) Salmon:

(I) Open September 1 through January 31.

(II) Limit 6 fish; only 4 may be adults.

(III) Release wild Chinook.

(ii) From the Lime Quarry Road upstream to the Longview Fiber Bridge:

(A) Selective gear rules apply.

(B) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(7) Beaver Creek (Clallam County) (Sol Duc River tributary):

(a) From the mouth upstream to Beaver Falls:

(i) Open the first Saturday in June through ~~((August))~~ October 31.

(ii) It is unlawful to use anything other than one barbless hook.

(iii) It is unlawful to use bait.

(iv) Trout:

(A) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) Release wild (unclipped) rainbow trout.

(b) From Beaver Falls upstream to Beaver Lake: Open the first Saturday in June through October 31.

(8) Beaver Lake (Clallam County):

(a) Selective gear rules apply.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Trout: Maximum length 12 inches.

(9) Big Creek (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(10) Big River (Clallam County), outside of Olympic National Park:

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June through October 15, and January 1 through the last day of February.

(c) Selective gear rules apply.

(d) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(e) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(11) Black Creek (Grays Harbor County) (Wynoochee River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(12) **Black Lake (Pacific County):** Open the fourth Saturday in April through October 31.

(13) **Black River (Grays Harbor/Thurston counties):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to State Highway 12:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(c) From Highway 12 to bridge on 128th Ave. S.W.:

(i) Anti-snagging rule applies.

(ii) Night closure in effect.

(iii) Barbless hooks are required.

(iv) Open for game fish the first Saturday in June through October 31; trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(v) Salmon: Open October 1 through December 31.

(A) Daily limit 6, of which 2 may be adults.

(B) Only one wild coho may be retained.

(C) Release Chinook and chum.

(d) From bridge on 128th Avenue S.W. (west of Litterock) to Black Lake:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(14) **Bogachiel River (Clallam County):**

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Release wild (unclipped) rainbow trout.

(c) It is unlawful to use anything other than one barbless hook.

(d) From the mouth to ~~((mouth of Mill Creek))~~ Highway 101 Bridge:

(i) Open the first Saturday in June through ~~((August 31 and November 16 through))~~ April 30.

(ii) It is unlawful to use bait the first Saturday in June through ~~((September 30))~~ August 31 and February 16 through April 30.

(iii) Trout:

(A) From the first Saturday in June through ~~((August 31 and November 16 through))~~ March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From April 1 through April 30: Trout minimum length 14 inches.

(C) November ~~((16))~~ 1 through last day in February: The limit may include one additional hatchery steelhead.

(iv) Salmon open July 1 through ~~((August 31 and))~~ November ~~((16 through))~~ 30:

(A) From July 1 through August 31:

(I) Limit 6; no more than 2 adults may be retained.

(II) Release wild adult Chinook and wild adult coho.

(B) From ~~((November 16))~~ September 1 through November 30: Limit ~~((one; release wild coho.~~

~~(e) From the mouth of Mill Creek to the Highway 101 Bridge:~~

~~(i) Open the first Saturday in June through August 31 and December 1 through April 30.~~

~~(ii) It is unlawful to use bait the first Saturday in June through September 30 and February 16 through April 30.~~

~~(iii) Trout:~~

~~(A) From the first Saturday in June through August 31 and December 1 through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.~~

~~(B) From April 1 through April 30: Trout minimum length 14 inches.~~

~~(C) December 1 through last day in February: The limit may include one additional hatchery steelhead.~~

~~(iv) Salmon open July 1 through August 31.~~

~~(I) Limit 6; no more than 2 adults may be retained.~~

~~(II) Release wild adult Chinook and wild adult coho.~~

~~(F) 3; no more than one adult may be retained.~~

~~(e) From Highway 101 Bridge to Olympic National Park boundary:~~

~~(i) Open the first Saturday in June through ((August 31 and December 1 through)) April 30.~~

~~(ii) It is unlawful to use bait.~~

~~(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.~~

(15) Bone River (Pacific County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(16) Bunker Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(17) Butte Creek (Pacific County) (Smith River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(18) Calawah River (Clallam County):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Release wild (unclipped) rainbow trout.

(c) It is unlawful to use anything other than one barbless hook.

(d) From the mouth to the Highway 101 Bridge:

~~(i) Open the first Saturday in June through ((August 31 and November 16 through)) April 30.~~

~~(ii) It is unlawful to use bait the first Saturday in June through ((September 30)) August 31 and February 16 through April 30.~~

~~(iii) Trout:~~

~~(A) From the first Saturday in June through ((August 31 and November 16 through)) March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.~~

~~(B) From April 1 through April 30: Trout minimum length 14 inches.~~

~~(C) From November ((16)) 1 through the last day in February: The limit may include one additional hatchery steelhead.~~

(iv) Salmon open July 1 through ~~((August 31 and November 16 through))~~ November 30:

(A) From July 1 through August 31:

(I) Limit 6; only 2 adults may be retained.

(II) Release wild adult Chinook and wild adult coho.

(B) From ~~((November 16))~~ September 1 through November 30: Limit ~~((one; release wild coho))~~ 3; only one adult may be retained.

(e) From the Highway 101 Bridge to the forks:

(i) Open the first Saturday in June through ~~((August 31 and December 1 through))~~ April 30.

(ii) It is unlawful to use bait.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

(19) Calawah River, North Fork (Clallam County):

(a) Open the first Saturday in June through ~~((August))~~ October 31.

(b) It is unlawful to use anything other than one barbless hook.

(c) It is unlawful to use bait.

(d) Release wild (unclipped) rainbow trout.

~~((e))~~ (e) Trout: ~~((+))~~ Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii))~~ Release wild (unclipped) rainbow trout.

(20) Calawah River, South Fork (Clallam County):

(a) ~~((Open the first Saturday in June through August 31 and December 1 through the last day in February from the mouth to the Olympic National Park boundary.~~

~~((b))~~ (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((c))~~ (c) It is unlawful to use anything other than one barbless hook.

~~((d))~~ (d) It is unlawful to use bait.

~~((e))~~ (e) Trout:

~~((+))~~ (d) Release wild (unclipped) rainbow trout.

~~((e))~~ (e) From the mouth to the Olympic National Park boundary:

(i) Open the first Saturday in June through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii))~~ Release wild (unclipped) rainbow trout.

(21) Cases Pond (Pacific County):

(a) Open the fourth Saturday in April through November 30 to juvenile anglers only.

(b) Landlocked salmon rules apply.

(22) Cedar Creek (Clallam County), outside of Olympic National Park:

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June through October 31.

(c) Selective gear rules apply.

(d) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(23) Cedar Creek (Grays Harbor/Thurston counties) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(24) Cedar Creek (Jefferson County), outside Olympic National Park:

(a) Open the first Saturday in June through the last day in February.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(25) Cedar River (Pacific County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(26) Chehalis River (Grays Harbor County), including all channels, sloughs, and interconnected waterways:

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (Highway 101 Bridge in Aberdeen) to South Elma Bridge (Wakefield Road) including all channels, sloughs, and interconnected waterways:

(i) All species August 1 through November 30:

(A) Single-point barbless hooks are required.

(B) Anglers may fish with two poles from the mouth to the South Elma Bridge (Wakefield Road), provided they possess a valid two-pole endorsement.

(ii) Game fish:

(A) Open the first Saturday in June through April 15:

(B) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon:

~~((A))~~ (A) ~~((Open April 16 through June 30: Limit one salmon.~~

~~((B))~~ (B) Open August 1 through September 15:

(I) Limit 6.

(II) Release adult salmon.

~~((C))~~ (C) From September 16 through ~~((January))~~

December 31:

(I) Limit 6; only ~~((one))~~ two adults may be retained.

(II) Only one wild adult coho may be retained.

~~((III))~~ (III) Release ~~((wild))~~ adult Chinook ~~((and wild coho)).~~

(C) From January 1 through January 31:

(I) Limit 6; only two adults may be retained.

(II) Release Chinook and wild coho.

(c) From South Elma Bridge (Wakefield Road) to the ~~((Porter Boat Launch))~~ confluence with Black River:

(i) All species: Single-point barbless hooks are required August 1 through November 30.

(ii) Game fish:

(A) Open the first Saturday in June through April 15.

(B) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon:

~~((A))~~ (A) ~~((Open April 16 through June 30: Limit one salmon.~~

~~((B))~~ (B) Open August 1 through September 15:

~~((I))~~ (I) Limit 6:

~~((II))~~ (II) Release adult salmon.

~~(C) Open~~) From September 16 through ~~((January))~~
December 31:

(I) Limit 6; only ~~((one))~~ two adults may be retained.

(II) Only one wild adult coho may be retained.

~~(III) Release ((wild)) Chinook ((and wild coho)).~~

~~(B) From January 1 through January 31:~~

~~(I) Limit 6; only two adults may be retained.~~

~~(II) Release Chinook and wild coho.~~

~~(d) ((From Porter Boat Launch to the Highway 6 Bridge in the town of Adna:~~

~~(i) All species August 16 through November 30: Single-point barbless hooks are required.~~

~~(ii) Game fish:~~

~~(A) Open the first Saturday in June through April 15:~~

~~(B) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.~~

~~(iii) Salmon:~~

~~(A) Open April 16 through June 30: Limit one salmon.~~

~~(B) Open September 16 through January 31:~~

~~(I) Limit 6; only one adult may be retained.~~

~~(II) Release wild Chinook, wild coho, and chum.~~

~~(e)) From the ((Highway 6 Bridge in the town of Adna))
confluence of Black River to the high bridge on Weyerhaeuser 1000 line approximately 400 yards downstream of Roger Creek (south of Pe Ell):~~

~~(i) All species August 16 through November 30: Single-point barbless hooks are required.~~

~~(ii) Game fish:~~

~~(A) Open the first Saturday in June through April 15.~~

~~(B) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.~~

~~(iii) Salmon:~~

~~(A) ((Open)) From September 16 through ~~((January))~~~~

December 31:

(I) Limit 6; only ~~((one))~~ two adults may be retained.

(II) Only one wild coho may be retained.

~~(III) Release Chinook((, wild coho,)) and chum.~~

~~((#)) (B) From January 1 through January 31:~~

~~(I) Limit 6; only two adults may be retained.~~

~~(II) Release Chinook, chum, and wild coho.~~

~~(e) From high bridge on Weyerhaeuser 1000 line (approximately 400 yards downstream from Roger Creek, south of Pe Ell, including all forks) upstream:~~

~~(i) Open the first Saturday in June through April 15.~~

~~(ii) Selective gear rules apply.~~

~~(iii) Release all fish, except anglers may retain up to 2 hatchery steelhead.~~

~~(27) **Chehalis River, South Fork (Lewis County):**~~

~~(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.~~

~~(b) From the mouth to County Highway Bridge near Boistfort School:~~

~~(i) Open the first Saturday in June through April 15.~~

~~(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.~~

(c) From the County Highway Bridge near Boistfort School, upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

~~(28) **Chenois Creek (Grays Harbor County):**~~

~~(a) Open the first Saturday in June through October 31.~~

~~(b) Selective gear rules apply.~~

~~(29) **Chester Creek (Grays Harbor County):**~~

~~(a) Open the first Saturday in June through October 31.~~

~~(b) Selective gear rules apply.~~

~~(30) **Chimacum Creek (Jefferson County):**~~

~~(a) From the mouth to Ness's Corner Road:~~

~~(i) Open the first Saturday in June through August 31.~~

~~(ii) Selective gear rules apply.~~

~~(iii) Catch and release only.~~

~~(b) From Ness's Corner Road to headwaters:~~

~~(i) Open the first Saturday in June through October 31.~~

~~(ii) Selective gear rules apply.~~

~~(iii) Catch and release only.~~

~~(31) **Clallam River (Clallam County):**~~

~~(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.~~

~~(b) Open the first Saturday in June through January 31.~~

~~(c) Selective gear rules apply from the first Saturday in June through October 31.~~

~~(d) From the first Saturday in June through October 31: Catch and release only.~~

~~(e) Trout: Minimum length 14 inches.~~

~~(32) **Clearwater River (Jefferson County):**~~

~~(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(b) It is unlawful to use anything other than one barbless hook.~~

~~(c) Release wild (unclipped) rainbow trout.~~

~~(d) From the mouth to Snahapish River:~~

~~(i) Open the first Saturday in June through ~~((August 31))~~
September 30 and December 1 through April 15:~~

~~(ii) It is unlawful to use bait the first Saturday in June through ~~((September 30))~~ August 31 and February 16 through April 15.~~

~~(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.~~

~~(iv) Salmon: Open September 1 through September 30:~~

~~(A) Limit 3; only one adult may be retained;~~

~~(B) Release wild coho.~~

~~(e) From Snahapish River upstream:~~

~~(i) Open the first Saturday in June through ~~((August 31))~~
September 30.~~

~~(ii) It is unlawful to use bait.~~

~~(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.~~

~~(33) **Cloquallum Creek (Grays Harbor County):**~~

~~(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.~~

~~(b) From the mouth to the outlet at Stump Lake:~~

~~(i) Open the first Saturday in June through the last day in February.~~

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

(c) From the outlet at Stump Lake upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(34) Coal Creek (Clallam County) tributary to Ozette River, outside the Olympic National Park boundary:

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

(ii) Release kokanee.

(35) Connor Creek (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(36) Cook Creek (Grays Harbor County), from the Quinalt Indian Reservation boundary upstream:

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(37) Copalis River (Grays Harbor County):

(a) ~~((General river rules:))~~ From the mouth to Carlisle Bridge:

(i) From the first Saturday in June through last day in February: Open for game fish.

(ii) It is permissible to retain hatchery steelhead with a dorsal fin height of less than 2 1/8 inches or with an adipose or ventral fin clip.

~~((b) Rules by river section:~~

~~(i) From the mouth to Carlisle Bridge:~~

~~(A))~~ (iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((B))~~ (iv) Salmon:

~~((H) Open))~~ (A) From October 1 through ~~((January))~~ December 31.

~~((H))~~ (B) Limit 6; only ~~((one))~~ two adult salmon may be retained.

~~((H))~~ (I) Only one wild adult coho may be retained.

(II) Release ~~((adult))~~ Chinook ~~((and chum)).~~

~~((ii))~~ (b) From Carlisle Bridge upstream: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(38) Crim Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(39) Crocker Lake (Jefferson County): Closed.

(40) Crooked Creek (Clallam County) and tributaries that are outside of Olympic National Park:

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(41) Damon Lake (Grays Harbor County): Open the first Saturday in June through October 31.

(42) Deep Creek (Clallam County) ~~((Humptulips River tributary))~~:

(a) Open December 1 through January 31.

(b) Selective gear rules apply.

(c) Release all fish, except mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(43) Deep Creek (Grays Harbor County) (Humptulips River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(44) Delezene Creek (Grays Harbor County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(45) Dickey River (Clallam County):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Release wild (unclipped) rainbow trout.

(c) It is unlawful to use anything other than one barbless hook.

(d) From Olympic National Park boundary upstream to the confluence of the East and West forks:

(i) Open the first Saturday in June through ~~((August 31 and December 1 through))~~ April 30.

(ii) It is unlawful to use bait the first Saturday in June through ~~((September 30))~~ August 31 and February 16 through April 30.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iv) Salmon: Open July 1 through ~~((August 31))~~ November 30:

(A) July 1 through August 31:

(I) Limit 6; only 2 adults ~~((salmon))~~ may be retained.

(II) Release wild adult Chinook and wild adult coho.

(B) September 1 through November 30: Limit 3; only one adult may be retained.

(e) From the confluence of the East and West forks upstream (for both forks):

(i) Open the first Saturday in June through ~~((August 31 and December 1 through))~~ April 30.

(ii) It is unlawful to use bait.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(46) Donkey Creek (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(47) Duck Lake (Grays Harbor County):

(a) Crappie: No limit and no minimum length.

(b) Grass carp: No limit for anglers and bow and arrow fishing.

(48) Dungeness River (Clallam County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the forks at Dungeness Forks Campground:

(i) Open October 6 through January 31.

(ii) Trout: Minimum length 14 inches.

(iii) Salmon:

(A) Open ~~((only))~~ October 16 through November 30 from the mouth to the hatchery intake pipe at river mile 11.3 ~~((from October 16 through December 31))~~.

(B) Limit 4 coho only.

(C) Release wild coho.

(c) From Gold Creek upstream: Open the Saturday before Memorial Day through October 31.

(49) East Twin River (Clallam County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(50) Eight Creek (Lewis County) (tributary to Elk Creek, which is a Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(51) Elk Creek (Clallam County), outside of Olympic National Park:

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(52) Elk Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(53) Elk Lake (Clallam County):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(54) Elk River (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (Highway 105 Bridge) to the confluence of the middle branch:

(i) Open the first Saturday in June through the last day in February.

(ii) From August 16 through November 30: Single-point barbless hooks are required.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iv) Salmon: Open October 1 through November 30.

(A) Daily limit 6, of which 2 may be adults.

(B) Only one wild adult coho may be retained.

(C) Release adult Chinook.

(c) From confluence of the middle branch upstream:

(i) Open the first Saturday in June through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(55) Elkhorn Creek (Pacific County) (Smith Creek tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(56) Ellis Creek (Pacific County) (Willapa River tributary):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(57) Ellsworth Creek (Pacific County) (Naselle River tributary):

(a) Open the first Saturday in June through September 30.

(b) Selective gear rules apply.

(58) Failor Lake (Grays Harbor County):

(a) Open the fourth Saturday in April through October 31.

(b) Trout: It is unlawful to retain more than two trout over 15 inches in length per day.

(59) Fairchild Creek (Pacific County) (Wilson Creek tributary, which is a Willapa River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(60) Fall River (Pacific County) (North River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(61) Falls Creek (Pacific County) (Willapa River tributary):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(62) Fern Creek (Pacific County) (Willapa River tributary):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(63) Finn Creek (Pacific County) (North Nemah River tributary): Open the first Saturday in June through October 31.**(64) Fork Creek (Pacific County) (Willapa River tributary):**

(a) From Forks Creek Hatchery rack upstream 500 feet at fishing boundary sign:

(i) Open only for anglers with lower extremity disabilities who must permanently use a medically prescribed assistive device every time for mobility as defined in WAC 220-413-150 and possess a designated harvester companion card.

(ii) Night closure in effect.

(iii) From October 1 through November 30:

(A) Single-point barbless hooks are required.

(B) Stationary gear restriction applies.

(iv) Open the first Saturday in June through July 15 and October 1 through March 31: Release all fish, except anglers may retain up to 2 hatchery steelhead.

- (v) Salmon open October 1 through January 31.
 (A) From October 1 through November 30:
 (I) Limit 6; only 3 adults may be retained, and only 2 may be wild (~~adult~~) coho.
 (II) Release wild Chinook.
 (B) From December 1 through January 31:
 (I) Limit 6; only 2 adults may be retained, and only one may be a wild (~~adult~~) coho.
 (II) Release wild Chinook.
 (b) From the fishing boundary sign 500 feet above Forks Creek Hatchery rack upstream to the source:
 (i) Open the first Saturday in June through October 31.
 (ii) Selective gear rules apply.
- (65) Garrard Creek (Grays Harbor County) (Chehalis River tributary):**
 (a) Open the first Saturday in June through October 31.
 (b) Selective gear rules apply.
- (66) Gibbs Lake (Jefferson County):**
 (a) Selective gear rules apply.
 (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
 (c) Trout: Catch and release only.
- (67) Goodman Creek (Jefferson County), outside Olympic National Park:**
 (a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
 (b) Open the first Saturday in June through the last day in February.
 (c) Selective gear rules apply.
 (d) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
- (68) Grass Creek (Grays Harbor County):**
 (a) Open the first Saturday in June through October 31.
 (b) Selective gear rules apply.
- (69) Gray Wolf River (Clallam County):** From the bridge at river mile 1.0, upstream:
 (a) Open the first Saturday in June through October 31.
 (b) Selective gear rules apply.
 (c) Catch and release only.
- (70) Halfmoon Creek (Pacific County) (Willapa River tributary):**
 (a) Open the first Saturday in June through October 15.
 (b) Selective gear rules apply.
- (71) Halfway Creek (Lewis County) (tributary of Stillman Creek, which is a Chehalis River tributary):**
 (a) Open the first Saturday in June through October 31 from the mouth to the second bridge crossing on Pe Ell McDonald Road.
 (b) Selective gear rules apply.
- (72) Hanaford Creek (Lewis County) (Skookumchuck River tributary):**
 (a) Open the first Saturday in June through October 31.
 (b) Selective gear rules apply.
- (73) Harris Creek (Grays Harbor County) (Chehalis River tributary):**
 (a) Open the first Saturday in June through October 31.
 (b) Trout: Selective gear rules apply.

- (74) Hoh River (Jefferson County):**
 (a) It is unlawful to fish from a floating device equipped with an internal combustion motor.
 (b) Release wild (unclipped) rainbow trout.
 (c) It is unlawful to use anything other than one barbless hook.
 (d) From the Olympic National Park boundary upstream to the DNR Oxbow Campground Boat Launch:
 (i) Open (~~(August 1 through October 10 and November 21 through April 15:~~
 (A) From August 1 through October 10 and November 21 through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit) July 1 through August 31 and September 16 through April 15:
 (A) From July 1 through August 31 and September 16 through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
 (B) From April 1 through April 15: Trout minimum length 14 inches.
 (C) From November (~~(21)~~) 1 through February 15: The trout limit may include one additional hatchery steelhead.
 (ii) It is unlawful to use bait the first Saturday in June through September 30 and February 16 through April 15.
 (iii) Salmon: Open September (~~(4)~~) 16 through (~~(October 10 and November 21 through))~~ November 30: Limit 6; only (~~(one)~~) 2 adults may be retained(~~(-Release wild coho))~~ of which only one may be a Chinook.
 (e) From the DNR Oxbow Campground Boat Launch to Morgans Crossing Boat Launch (~~(site)~~):
 (i) Open (~~(August)~~) July 1 through (~~(October 10 and November 21 through))~~ August 31 and September 16 through April 15.
 (ii) It is unlawful to use bait.
 (iii) (~~(From August 1 through April 15:))~~ Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
 (iv) Salmon open (~~(November 21)~~) October 16 through November 30: Limit 6; only (~~(one)~~) 2 adults may be retained, of which only one may be a Chinook. (~~(Release wild coho.))~~
 (f) From Morgan's Crossing Boat Launch upstream to the Olympic National Park boundary below mouth of South Fork Hoh River:
 (i) Open (~~(August)~~) July 1 through (~~(October 10 and November 21 through))~~ August 31 and September 16 through April 15.
 (ii) It is unlawful to use bait.
 (iii) It is unlawful to fish from a floating device.
 (iv) Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.
- (75) Hoh River, South Fork (Jefferson County), outside the Olympic National Park boundary:**
 (a) It is unlawful to fish from a floating device equipped with an internal combustion motor.
 (b) Open (~~(August)~~) July 1 through (~~(October 10 and November 21 through))~~ August 31 and September 16 through April 15.

(c) It is unlawful to use anything other than one barbless hook.

(d) It is unlawful to use bait.

(e) Release wild (unclipped) rainbow trout.

(f) Trout: ((+)) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii) Release wild (unclipped) rainbow trout.)~~

(76) Hoko River (Clallam County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the upper Hoko Bridge:

(i) Closed to fishing from the hatchery ladder downstream 100 feet.

(ii) Open the first Saturday in June through March 15. Open to fly fishing only September 1 through October 31, except mandatory retention of hatchery steelhead.

(iii) Trout: Minimum length fourteen inches.

(c) From the upper Hoko Bridge to Ellis Creek Bridge (river mile 18.5):

(i) Open the first Saturday in June through March 31 to fly fishing only, except mandatory retention of hatchery steelhead.

(ii) Release all fish except anglers may retain up to two hatchery steelhead, except mandatory retention of hatchery steelhead.

(77) Hoquiam River, including West Fork (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (Highway 101 Bridge on Simpson) to Dekay Road Bridge (West Fork):

(i) August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day of February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon: Open October 1 through December 31.

(A) Daily limit 6, of which 2 may be adults.

(B) Only one wild coho may be retained.

(C) Release Chinook.

(c) From Dekay Road Bridge upstream:

(i) Open the first Saturday in June through the last day of February.

(ii) Selective gear rules apply.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(78) Hoquiam River, East Fork (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the confluence of Berryman Creek:

(i) August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day of February: Trout minimum length 14 inches, except it is

permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Salmon: Open October 1 through December 31.

(A) Daily limit 6, of which 2 may be adults.

(B) Only one wild coho may be retained.

(C) Release Chinook.

(c) From the confluence of Berryman Creek upstream to Youman's Road Bridge:

(i) Open the first Saturday in June through the last day of February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(79) Hoquiam River, Middle Fork (Grays Harbor County): From the mouth upstream:

(a) Open the first Saturday in June through last day of October.

(b) Selective gear rules apply.

(80) Horseshoe Lake (Jefferson County):

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Trout: Limit one.

(81) Howe Creek (Jefferson County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(82) Humptulips River (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (Jessie Slough) to the Highway 101 Bridge, including all channels, sloughs, and interconnected waterways:

(i) From August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open September 1 through January 31:

(A) From September 1 through ~~(September 30))~~ October 15:

(I) Limit 6; only 2 adults may be retained ~~((, and only one may be a wild adult Chinook)).~~

(II) Release wild Chinook and wild coho.

(B) From October ~~((+))~~ 16 through ~~((November 15))~~ October 31:

(I) Limit 6; only 2 adults may be retained, and only one may be ~~((an adult))~~ a Chinook.

(II) Release wild Chinook and wild coho.

(C) From November ~~((+6))~~ 1 through January 31:

(I) Limit 6: Only ~~((one))~~ two adults may be retained.

(II) Release Chinook and wild coho.

(c) From the Highway 101 Bridge to the confluence of the East and West forks:

(i) From December 1 through March 31: It is unlawful to fish from a floating device equipped with an internal combustion motor.

(ii) From August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(iii) Open the first Saturday in June through March 31:

(A) From the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From March 1 through March 31:

(I) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(II) Selective gear rules apply.

(iv) Salmon open September 1 through January 31:

(A) From September 1 through ~~((September 30))~~ October 15:

(I) Limit 6; only 2 adults may be retained ~~((and only one may be a wild adult Chinook))~~.

(II) Release wild Chinook and wild coho.

(B) From October ~~((4))~~ 16 through ~~((November 15))~~ October 31:

(I) Limit 6; only 2 adults may be retained, and only one may be ~~((an adult))~~ a Chinook.

(II) Release wild Chinook and wild coho.

(C) From November ~~((46))~~ 1 through January 31:

(I) Limit 6; only ~~((one))~~ two adults may be retained.

(II) Release Chinook and wild coho.

(83) Humptulips River, East Fork (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the concrete bridge on Forest Service Road 220:

(i) August 16 through October 31: Anti-snagging rule applies and night closure in effect.

(ii) Open the first Saturday in June through October 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((4b))~~ (c) From the concrete bridge on Forest Service Road 220 upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(84) Humptulips River, West Fork (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to Donkey Creek:

(i) August 16 through November 30: Anti-snagging rule applies and night closure in effect.

(ii) Open the first Saturday in June through March 31:

(A) From the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From March 1 through March 31:

(I) Selective gear rules apply.

(II) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(III) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(c) From Donkey Creek upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(85) Independence Creek (Grays Harbor County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(86) Jimmy-Come-Lately Creek (Clallam County):

(a) From the mouth to confluence with East Fork:

(i) Open the first Saturday in June through August 31.

(ii) Selective gear rules apply.

(iii) Catch and release only.

(b) From confluence with East Fork upstream, including East Fork: Open the first Saturday in June through October 31.

(87) Joe Creek (Grays Harbor County):

(a) From the mouth to Ocean Beach Road Bridge:

(i) August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through November 30: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open October 1 through ~~((November 30))~~ December 31:

(A) Limit 6; only ~~((one))~~ two adults may be retained.

(B) Only one wild adult Coho may be retained.

(C) Release ((adult)) Chinook ((and chum)).

(b) From Ocean Beach Road Bridge upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(88) Johns River (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (Highway 105 Bridge) to Ballon Creek:

(i) August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon: Open October 1 through November 30.

(A) Daily limit 6, of which 2 may be adults.

(B) Only one wild adult coho may be retained.

(C) Release adult Chinook.

(c) From Ballon Creek upstream, including North and South Forks:

(i) Open the first Saturday in June through September 30 and December 1 through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(89) Jones Creek (Lewis County) (Chehalis River tributary):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(90) Kalaloch Creek (Jefferson County), outside Olympic National Park:

(a) Closed within the section posted as the Olympic National Park water supply.

(b) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(c) Open the first Saturday in June through the last day in February:

(i) Selective gear rules apply.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(91) Leland Creek (Jefferson County):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.
- (c) Catch and release only.

(92) Lena Lake, Lower (Jefferson County): The inlet stream is closed from the mouth upstream to the footbridge (about 100 feet).

(93) Lincoln Creek, including South Fork (Lewis County) (Chehalis River tributary):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(94) Lincoln Pond (Clallam County): Open to juvenile anglers only.

(95) Little Hoko River (Clallam County):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.
- (c) Catch and release only.

(96) Little Hoquiam River (Grays Harbor County):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(97) Little North River (Grays Harbor County) (North River tributary):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(98) Little Quilcene River (Jefferson County):

(a) From the mouth to the Little Quilcene River Bridge on Penny Creek Road:

(i) Open the first Saturday in June through October 31.

(ii) From the mouth to Highway 101 Bridge: Open first Saturday in June through August 31.

(iii) Selective gear rules apply.

(iv) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(v) Catch and release only.

(b) From Little Quilcene River Bridge on Penny Creek Road upstream: Open the first Saturday before Memorial Day through October 31.

(99) Long Beach Peninsula waterways and lakes (Pacific County): Open the fourth Saturday in April through October 31.

(100) Loomis Lake (Pacific County): Open the fourth Saturday in April through October 31.

(101) Loomis Pond (Grays Harbor County): Closed.

(102) Lower Salmon Creek (Grays Harbor/Pacific counties) (North River tributary):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(103) Lucas Creek (Lewis County) (tributary to the Newaukum River North Fork):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(c) Trout: Catch and release only.

(104) Ludlow Creek (Jefferson County):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(c) Catch and release only.

(105) Ludlow Lake (Jefferson County): Open the fourth Saturday in April through October 31.

(106) Lyre River (Clallam County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to falls near river mile 3:

(i) Open the first Saturday in June through January 31.

(ii) Trout: Minimum length 14 inches.

(c) From the falls to the Olympic National Park boundary:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Catch and release only, except mandatory hatchery steelhead retention applies.

(107) Matheny Creek (Jefferson County) (Queets River tributary), outside Olympic National Park:

(a) Open the first Saturday in June through ~~(August 31)~~ September 30.

(b) It is unlawful to use ~~((anything other than one barbless hook))~~ bait.

(c) Release wild (unmarked) rainbow trout.

(d) It is unlawful to use anything other than one barbless hook.

(e) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((d) Release wild (unmarked) rainbow trout.))~~

(108) McDonald Creek (Clallam County):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(c) Catch and release only.

(109) Middle Nemah River (Pacific County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth upstream to the department of natural resources bridge on the Middle Nemah A-Line Road:

(i) Open the first Saturday in June through March 31: Release all fish except anglers may retain up to 2 hatchery steelhead.

(ii) August 1 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(iii) Salmon:

(A) Open September 1 through January 31.

(B) Limit 6; no more than 4 adults may be retained.

(C) Release wild Chinook.

(c) From the department of natural resources bridge on the Middle Nemah A-Line Road upstream:

(i) Open the first Saturday in June through March 31:

(A) Selective gear rules apply.

(B) Release all fish, except mandatory retention of hatchery steelhead.

(ii) August 16 through November 30:

(A) Anti-snagging rule applies (~~and~~).

(B) Night closure in effect.

(110) Mill Creek (Pacific County) (Willapa River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(111) Mill Creek Pond (Grays Harbor County): Open to juvenile anglers only.

(112) Mitchell Creek (Lewis County) (tributary to the Newaukum River North Fork):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Trout: Catch and release only.

(113) Moclips River (Grays Harbor County):

(a) Open from the mouth to the Quinault Indian Reservation boundary from the first Saturday in June through the last day in February.

(b) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) It is permissible to retain steelhead with a dorsal fin height of less than 2 1/8 inches or with an adipose or ventral fin clip.

(c) Salmon: Open October 1 through December 31.

(i) Daily limit 6, of which 2 may be adults.

(ii) Only one wild adult coho may be retained.

(iii) Release Chinook.

(114) Morse Creek (Clallam County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to Port Angeles Dam:

(i) Open from December 1 through January 31.

(ii) Trout: Minimum length 14 inches.

(c) From Port Angeles Dam upstream: Open the first Saturday in June through October 31.

(115) Mosquito Creek (Jefferson County):

(a) Open outside Olympic National Park upstream to the Goodman 3000 Mainline Bridge from the first Saturday in June through the last day in February.

(b) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(c) Selective gear rules apply.

(d) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

(116) Mox Chehalis Creek (Grays Harbor County) (Chehalis River tributary): Open the first Saturday in June through October 31: Selective gear rules apply.

(117) Naselle River (Pacific/Wahkiakum counties):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Selective gear rules apply February 1 through April 15.

(c) From the Highway 101 Bridge to the Highway 4 Bridge:

(i) From August 1 through November 15:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(C) Barbless hooks are required.

(D) From the South Fork upstream to the Highway 4 Bridge: Stationary gear restriction applies.

(ii) From Highway 101 Bridge upstream to Highway 401: Anglers may fish with two poles August 1 through January 31, provided they possess a valid two-pole endorsement.

(iii) Open the first Saturday in June through April 15: Release all fish except anglers may retain up to 2 hatchery steelhead.

(iv) Salmon open August 1 through January 31:

(A) From August 1 through October 31:

(I) Limit 6; only 4 adults may be retained.

(II) Release wild Chinook.

(B) From November 1 through January 31:

(I) Limit 6; only 4 adults may be retained and only two adults may be wild coho.

(II) Release wild Chinook.

(d) From the Highway 4 Bridge to the upstream entrance of the Naselle Hatchery Attraction Channel:

(i) Closed waters from the upstream entrance of the hatchery attraction channel downstream 300 feet.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) From August 16 through October 15: Bait or lure must be suspended below a float.

(iv) From August 16 through November 15:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(C) Barbless hooks are required.

(D) Stationary gear rules in effect.

((+)) (v) Open the first Saturday in June through July 31 and September 16 through April 15: Release all fish, except mandatory retention of hatchery steelhead.

((+)) (vi) Salmon open August 16 through January 31:

(A) From August 16 through September 15:

(I) Limit 6; only 2 adults may be retained.

(II) Release wild Chinook.

(B) From September 16 through October 31:

(I) Limit 6; only 4 adults may be retained.

(II) Release wild Chinook.

(C) From November 1 through January 31:

(I) Limit 6; only 4 adults may be retained and only two may be wild (~~adult~~) coho.

(II) Release wild Chinook.

(e) From the upstream entrance of the Naselle Hatchery Attraction Channel to the Crown Mainline (Salme) Bridge:

(i) The following areas are closed:

(A) From the falls in Sec. 6, T10N, R8W (Wahkiakum Co.) downstream 400 feet.

(B) Downstream of the full spanning concrete diversion structure at the Naselle Hatchery: Closed August 1 through October 15.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) From August 1 through November 15:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(C) Barbless hooks are required.

(D) Stationary gear rules in effect.

(iv) Open the first Saturday in June through April 15: Release all fish, except mandatory retention of hatchery steelhead.

(v) Salmon open October 16 through January 31:

(A) From October 16 through October 31:

(I) Limit 6; only 4 adults may be retained.

(II) Release wild Chinook.

(B) From November 1 through January 31:

(I) Limit 6; only 4 adults may be retained and only two may be wild (~~adult~~) coho.

(II) Release wild Chinook.

(f) From the Crown Mainline (Salme) Bridge to the mouth of the North Fork:

(i) Open the first Saturday in June through April 15: Release all fish except anglers may retain up to 2 hatchery steelhead.

(ii) From August 16 through November 30:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(g) Upstream from the mouth of the North Fork:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Release all fish, except mandatory retention of hatchery steelhead.

(118) North Naselle River (Pacific County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(119) South Naselle River (Pacific County):

(a) From the mouth to Bean Creek: Open the first Saturday in June through the last day in February.

(b) From the first Saturday in June through August 15: Selective gear rules apply.

(c) August 16 through November 30: Anti-snagging rule applies and night closure in effect.

(d) Release all fish except anglers may retain up to 2 hatchery steelhead.

(120) Neil Creek (Grays Harbor County) (Wynoochee River tributary):

(a) Open from the mouth to USFS 22 Road from the first Saturday in June through October 31.

(b) Selective gear rules apply.

(121) Newaukum River, including South Fork (Lewis County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to Leonard Road near Onalaska:

(i) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(iii) Salmon open October ~~(+)~~ 16 through December 31:

(A) Limit 6; only ~~(one)~~ two adults may be retained.

(B) Only one wild coho may be retained.

(C) Release Chinook(~~(-wild coho,)~~) and chum.

(c) From Leonard Road near Onalaska to Highway 508 Bridge near Kearny Creek:

(i) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(d) From Highway 508 Bridge upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Trout: Catch and release only.

(iv) August 16 through October 31: Night closure in effect.

(122) Newaukum River, Middle Fork (Lewis County), from the mouth to Tauscher Road Bridge:

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June to March 31.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length.

(123) Newaukum River, North Fork (Lewis County), from the mouth to 400 feet below the Chehalis city water intake:

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June through March 31.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length.

(124) Newman Creek (Grays Harbor County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(125) Newkah Creek (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(126) Niawiakum River (Pacific County): From Highway 101 Bridge to the South Bend/Palix Road Bridge:

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) August 16 through November 30:

(i) Night closure in effect.

(ii) Single-point barbless hooks are required.

(c) Open the first Saturday in June through November 30.

(d) Salmon open September 1 through November 30.

(i) Limit 6; only 2 adults may be retained.

(ii) Release wild Chinook.

(127) North Nemah River (Pacific County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From Highway 101 Bridge upstream to the bridge on Nemah Valley Road:

(i) Open the first Saturday in June through March 31.

(ii) Release all fish, except mandatory retention of hatchery steelhead and may retain one 15 inch or longer cutthroat trout.

(iii) From August 1 through November 30:

(A) Night closure in effect.

(B) Stationary gear restriction applies.

(C) Single-point barbless hooks are required.

(iv) Salmon open August 1 through January 31.

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(c) From the bridge on Nemah Valley Road upstream to approximately 1.66 miles to the Hancock property line:

(i) Open the first Saturday in June through July 31 and November 16 through March 31.

(ii) Release all fish, except mandatory retention of hatchery steelhead and may retain one 15 inch or longer cutthroat trout.

(iii) From August 16 through November 30:

(A) Anti-snagging rule applies.

(B) Night closure in effect.

(iv) Selective gear rules apply December 1 through March 31.

(d) From the Hancock property line upstream approximately 900 feet to Nemah Hatchery barrier dam:

(i) Closed from bridge at Nemah Hatchery upstream to Nemah Hatchery barrier dam, except open only for salmon for anglers that possess a senior's license (70 years old or older) from August 16 through November 15.

(ii) Open the first Saturday in June through July 31 and November 16 through March 31.

(iii) Release all fish, except mandatory retention of hatchery steelhead and may retain one 15 inch or longer cutthroat trout.

(iv) From August 16 through November 30:

(A) Anti-snagging rule applies.

(B) Night closure in effect.

(v) Selective gear rules apply December 1 through March 31.

(vi) Salmon open only for anglers that possess a senior's license (70 years old or older) from August 16 through November 15.

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(e) From the Nemah Hatchery barrier dam upstream to N-700 Road:

(i) Open the first Saturday in June through March 31.

(ii) Release all game fish, except mandatory retention of hatchery steelhead and may retain one 15 inch or longer cutthroat trout.

(iii) From August 16 through November 30:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(iv) Selective gear rules apply from December 1 through March 31:

(v) Salmon open October 1 through January 31:

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(f) From the N-700 Road upstream to Cruiser Creek:

(i) Open the first Saturday in June through March 31.

(ii) Release all fish, except mandatory retention of hatchery steelhead and may retain one 15 inch or longer cutthroat trout.

(iii) From August 16 through November 30:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

(iv) Selective gear rules apply from December 1 through March 31.

(128) **North River (Grays Harbor/Pacific counties):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the Highway 105 Bridge to ~~((Salmon Creek (located approximately 2 miles upstream from Highway 101)))~~ Fall River:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day in February: Release all fish, except mandatory retention of hatchery steelhead.

(iii) Salmon open October 1 through January 31:

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(c) From Salmon Creek (located approximately 2 miles upstream from Highway 101) to Fall River:

(i) August 16 through November 30(~~(A) Night closure in effect~~).

~~((B))~~ (ii) Anti-snagging rule applies.

~~((C) Single-point barbless hooks are required.~~

~~(ii) Open the first Saturday in June through the last day in February: Release all fish, except mandatory retention of hatchery steelhead.~~

~~(iii) Salmon open October 1 through January 31:~~

~~(A) Limit 6; only 4 adults may be retained.~~

~~(B) Release wild Chinook.)~~

(d) From Fall River to Raimie Creek:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Release all fish, except mandatory retention of hatchery steelhead.

(129) **Owens Pond (Pacific County):** The first Saturday in June through October 31 season.

(130) **Palix River, including all forks (Pacific County):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the Highway 101 Bridge to the mouth of the Middle Fork:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Release all fish, except mandatory retention of hatchery steelhead.

(iii) Salmon:

(A) Open September 1 through January 31.

(B) Limit 6; only 4 adults may be retained.

(C) Release wild Chinook.

(c) From the confluence with the Middle Fork upstream and all forks, including South Fork Palix and Canon rivers:

- (i) August 16 through October 15:
- (A) Anti-snagging rule applies.
- (B) Night closure in effect.

(ii) From the first Saturday in June through August 15, and from December 16 through March 31: Selective gear rules apply.

(iii) Open the first Saturday in June through October 15, and from December 16 through March 31.

(iv) Release all fish, except mandatory retention of hatchery steelhead.

(131) Palmquist Creek (Clallam County), outside of Olympic National Park:

- (a) Open the first Saturday in June through October 15.
- (b) Selective gear rules apply.
- (c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(132) Peabody Creek (Clallam County): Open the first Saturday in June through October 31 to juvenile anglers only.

(133) Penny Creek (Jefferson County): Open the first Saturday in June through October 31.

(134) Petroleum Creek (Clallam County): From the Olympic National Park boundary upstream:

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(135) Pheasant Lake (Jefferson County): Open the fourth Saturday in April through October 31.

(136) Pilchuck Creek (Clallam County) (Sooes River tributary):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(137) Pioneer Creek (Grays Harbor County) (North River tributary):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(138) Pleasant Lake (Clallam County): Trout: Kokanee minimum length 6 inches, maximum length 18 inches.

(139) Porter Creek (Grays Harbor County) (Chehalis River tributary):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(140) Promised Land Pond (Grays Harbor County): Open the first Saturday in June through October 31.

(141) Pysht River (Clallam County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June through January 31.

(c) Selective gear rules apply.

(d) From the first Saturday in June through October 31: Catch and release only.

(e) From November 1 through January 31: Trout minimum length 14 inches.

~~(142) ((Rock Creek (Lewis County) (Chehalis River tributary):~~

~~(a) Open the first Saturday in June through October 31.~~

~~(b) Selective gear rules apply.~~

~~(143) Stearns Creek (Lewis County) (Chehalis River tributary):~~

~~(a) Open the first Saturday in June through October 31.~~

~~(b) Selective gear rules apply.~~

~~(144) Stillman Creek (Lewis County) (Chehalis River tributary):~~

~~(a) Open the first Saturday in June through October 31~~

~~from the mouth to water supply pipeline at Mill Creek.~~

~~(b) Selective gear rules apply.~~

~~(145) Stowe Creek (Lewis County) (Chehalis River tributary):~~

~~(a) Open the first Saturday in June through October 31.~~

~~(b) Selective gear rules apply.~~

~~(146)) Quigg Lake (Grays Harbor County):~~

~~(a) Open the first Saturday in June through April 15.~~

~~(b) Trout: Minimum length 14 inches.~~

~~(c) Salmon:~~

~~(i) Open October 1 through January 31.~~

~~(ii) Limit 6 hatchery coho salmon; only 4 may be adult hatchery coho.~~

~~((147)) (143) Quillayute River (Clallam County), outside of Olympic National Park:~~

~~(a) Open ((January)) July 1 through ((September 30 and November 16 through December 31)) June 30.~~

~~(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.~~

~~(c) Release wild (unclipped) rainbow trout.~~

~~(d) It is unlawful to use anything other than one barbless hook.~~

~~(e) Trout:~~

~~(i) From May 1 through the Friday before the first Saturday in June: Release all ((fish)) trout except anglers may retain up to 2 hatchery steelhead.~~

~~((f)) (ii) From the first Saturday in June through ((September 30 and November 16 through)) March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.~~

~~((g)) (iii) From April 1 through April 30: Trout minimum length 14 inches.~~

~~((h)) (iv) From November ((16)) 1 through the last day in February: Anglers may retain one additional hatchery steelhead as part of the limit.~~

~~((i)) (f) Salmon: Open February 1 through ((September 30 and November 16 through)) November 30:~~

~~(i) From February 1 through August 31:~~

~~(A) Limit 6; only 2 adults may be retained.~~

~~(B) Release wild adult Chinook and wild adult coho.~~

~~(ii) From September 1 through ((September 30 and November 16 through)) November 30: ((A) Limit 2; only one may be a Chinook.~~

~~((B)) Release wild coho~~) Limit 6; only 3 adults may be retained, and only one of the adults may be wild.

~~((148))~~ (144) Quinault River (Grays Harbor County): From the mouth at the upper end of Quinault Lake upstream to the Olympic National Park boundary:

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Open the first Saturday in June through April 15.

(c) Release wild (unclipped) rainbow trout.

(d) It is unlawful to use anything other than one barbless hook.

(e) It is unlawful to use bait the first Saturday in June through September 30 and February 16 through April 15.

(f) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(g) Salmon open July 1 through November 30:

(i) From July 1 through September 30 limit 6 jack salmon only.

(ii) From October 1 through November 30:

(A) Limit 6; only 2 adults may be retained.

(B) Release sockeye and chum.

~~((149))~~ (145) Quinn Creek (Clallam County), outside of Olympic National Park:

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((150))~~ (146) Radar Ponds (Pacific County): Salmon: Landlocked salmon rules apply.

~~((151))~~ (147) Raimie Creek and all forks (Pacific County) (North River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((152))~~ (148) Ripley Creek (Jefferson County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((153))~~ (149) Rock Creek (Grays Harbor County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((154))~~ (150) Rock Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(151) Rocky Brook (Jefferson County) (Dosewallips River tributary): From the falls 1000 feet upstream of the mouth: Open the ~~((first Saturday in June))~~ the Saturday before Memorial Day through October 31.

~~((155))~~ (152) Rue Creek, including West Fork (Pacific County) (South Fork Willapa tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((156))~~ (153) Salmon Creek (Grays Harbor County) (North River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((157))~~ (154) Salmon Creek (Pacific County) (tributary of Naselle River):

(a) Open the first Saturday in June through the last day in February.

(b) Selective gear rules apply.

(c) Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((158))~~ (155) Salmon River (Jefferson County), outside Olympic National Park and the Quinault Indian Reservation:

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) It is unlawful to use anything other than one barbless hook.

(c) Release wild (unclipped) rainbow trout.

(d) Open the first Saturday in June through September 30 and December 1 through the last day in February:

(i) It is unlawful to use bait the first Saturday in June through August 31.

(ii) ~~((Release wild (unclipped) rainbow trout.~~

~~((iii)))~~ Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((iv)))~~ (iii) It is permissible to retain steelhead with a dorsal fin height of less than 2 1/8 inches or with an adipose or ventral fin clip.

~~((v)))~~ (iv) Salmon ((season)): Open September 1 through September 30:

~~((vi)))~~ (A) Limit ((2)) 6; only ((one)) 2 may be adults and only one of the adults may be a Chinook.

~~((vii)))~~ (B) Release wild coho.

~~((159))~~ (156) Salt Creek (Clallam County): From the mouth to the bridge on Highway 112:

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June through January 31.

(c) Selective gear rules apply.

(d) First Saturday in June through October 31: Catch and release only, except mandatory retention of hatchery steelhead.

(e) November 1 through January 31: Anglers may retain up to 2 hatchery steelhead.

~~((160))~~ (157) Sand Creek (Grays Harbor County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

~~((161))~~ (158) Sandysore Lake (Jefferson County): Open the fourth Saturday in April through October 31.

~~((162))~~ (159) Satsop Lakes (Grays Harbor County): Open the fourth Saturday in April through October 31.

~~((163))~~ (160) Satsop River and East Fork (Grays Harbor County):

(a) From the mouth to the bridge at Schafer State Park:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open (~~(September 16)~~) October 1 through (~~(December)~~) January 31:

(A) From October 1 through December 31:

(I) Limit 6; only ~~(one)~~ two adults may be retained.

~~((B))~~ (II) Only one wild coho may be retained.

(III) Release (~~(wild adult)~~) Chinook (~~(, and wild coho)~~).

(B) From January 1 through January 31.

(I) Limit 6; only two adults may be retained.

(II) Release Chinook and wild coho.

(b) From the bridge at Schafer State Park upstream to 400 feet below Bingham Creek Hatchery barrier dam:

(i) Open the first Saturday in June through October 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Open August 16 through October 31:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(c) From 400 feet downstream of the Bingham Creek Hatchery barrier dam upstream to the dam:

(i) Open within posted markers to anglers with disabilities who permanently use a wheelchair and possess a designated harvester companion card.

(ii) Night closure in effect.

(iii) From August 16 through October 31: Single-point barbless hooks are required.

(iv) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(v) Salmon open (~~(September 16)~~) October 1 through (~~(December)~~) January 31:

(A) From October 1 through December 31:

(I) Limit 6; only ~~(one)~~ two adults may be retained.

~~((B))~~ (II) Only one wild coho may be retained.

(III) Release (~~(wild adult)~~) Chinook (~~(and wild coho)~~).

(B) From January 1 through January 31.

(I) Limit 6; only two adults may be retained.

(II) Release Chinook and wild coho.

(d) From the Bingham Creek Hatchery dam upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) August 16 through October 31: Night closure in effect.

~~((164))~~ (161) Satsop River, Middle Fork (Turnow Branch):

(a) From the mouth to Cougar Smith Road:

(i) From August 16 through November 30:

(A) Anti-snagging rule applies.

(B) Night closure in effect.

(ii) Open the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) From Cougar Smith Road upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) August 16 through October 31:

(A) Night closure in effect.

(B) Anti-snagging rule applies.

~~((165))~~ (162) Satsop River, West Fork:

(a) From the mouth to Cougar Smith Road:

(i) August 16 through November 30:

(A) Anti-snagging rule applies.

(B) Night closure in effect.

(ii) Open the first Saturday in June through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) From Cougar Smith Road to USFS 2260 Road Bridge at Spoon Creek:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) August 16 through October 31: Night closure in effect.

(c) From USFS 2260 Road Bridge at Spoon Creek upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Eastern brook trout: No limit; no minimum size.

Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing.

~~((166))~~ (163) Schafer Creek (Grays Harbor County) (Wynoochee River tributary):

(a) From the mouth to USFS 22 Road:

(b) Open the first Saturday in June through October 31.

(c) Selective gear rules apply.

~~((167))~~ (164) Sekiu River (Clallam County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the forks:

(i) Open the first Saturday in June through January 31.

(ii) From the first Saturday in June through October 31: Selective gear rules apply.

(iii) November 1 through January 31: Catch and release only, except mandatory retention of hatchery steelhead.

(iv) Trout: Minimum length 14 inches.

(c) From the forks upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Catch and release only, except mandatory hatchery steelhead retention applies.

~~((168))~~ (165) Shine Creek (Jefferson County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((169))~~ (166) Shye Lake (Grays Harbor County):

Open the first Saturday in June through October 31.

~~((170))~~ (167) Siebert Creek (Clallam County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

~~((171))~~ (168) Silent Lake (Jefferson County):

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

~~((172))~~ **(169) Sitkum River (Clallam County) (Cala-wah River tributary):**

(a) Open the first Saturday in June through ~~((August))~~ October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) It is unlawful to use anything other than one barbless hook.

(d) Release wild (unclipped) rainbow trout.

(e) It is unlawful to use bait.

(f) Trout: ((+)) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii) Release wild (unclipped) rainbow trout.~~

~~(173))~~ **(170) Siwash Creek (Clallam County), outside of Olympic National Park:**

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((174))~~ **(171) Skookumchuck River (Thurston County):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to 100 feet below the outlet of the TransAlta/WDFW steelhead rearing pond located at the base of the Skookumchuck Dam:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through April 30:

(A) From the first Saturday in June through March 31, trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From April 1 through April 30: Trout minimum length 14 inches.

(iii) Salmon open October ~~((+))~~ 16 through December 31:

(A) Limit 6; only ~~((one))~~ two adults may be retained.

(B) Only one wild coho may be retained.

(C) Release Chinook (~~(wild coho)~~) and chum.

(c) From Skookumchuck Reservoir upstream, selective gear rules apply.

~~((175))~~ **(172) Smith Creek (near North River) (Pacific County):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the Highway 101 Bridge:

(i) August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through the last day in February: Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon open October 1 through December 31:

(A) Limit 6; only 3 adults may be retained.

(B) Release wild Chinook.

(c) From the Highway 101 Bridge upstream:

(i) Selective gear rules apply.

(ii) Open the first Saturday in June through the last day in February: Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((176))~~ **(173) Smith Creek (Pacific County) (Chehalis River tributary):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) Open the first Saturday in June through October 31.

(c) Selective gear rules apply.

~~((177))~~ **(174) Snahapish River (Jefferson County) (Clearwater River tributary):**

(a) Open the first Saturday in June through ~~((August 31))~~ September 30.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) It is unlawful to use anything other than one barbless hook.

(d) It is unlawful to use bait.

~~((Trout:~~

~~(+))~~ Release wild (unclipped) rainbow trout.

(f) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii) Release wild (unclipped) rainbow trout.~~

~~(178))~~ **(175) Sol Duc River (Clallam County):**

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) It is unlawful to use anything other than one barbless hook.

(c) Release wild (unclipped) rainbow trout.

~~((From the mouth to the concrete pump station at the Sol Duc Hatchery: Open July 1 through September 30 and November 16 through June 30.))~~ Open July 1 through June 30.

(e) From the mouth to the concrete pump station at the Sol Duc Hatchery:

(i) It is unlawful to use bait July 1 through ~~((September 30))~~ August 31 and February 16 through April 30.

(ii) Trout:

(A) May 1 through the Friday before the first Saturday in June: Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((iii) From the first Saturday in June through September 30 and November 16 through April 30:~~

~~(A))~~ (B) The first Saturday in June through ((September 30 and November 16 through)) March 31: ~~((Trout))~~ Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((B))~~ (C) April 1 through April 30: ((Trout)) Minimum length 14 inches.

~~((C))~~ ~~November 16 through the last day in February:~~ Anglers may retain one additional hatchery steelhead as part of the trout limit.

~~((iv))~~ ~~((iii))~~ ~~Salmon: Open February 1 through ((September 30 and November 16 through))~~ November 30:

(A) From February 1 through August 31:

(I) Limit 6; only 2 adults may be retained.

(II) Release wild adult Chinook and wild adult coho.

(B) From September 1 through ~~((September 30 and November 16 through))~~ November 30: Limit ~~((2))~~ 6; only ~~((one))~~ 3 may be ~~((a wild))~~ adults and only one adult may be wild. ~~((Release wild coho.~~

~~((e))~~ ~~((f))~~ From the concrete pump station at Sol Duc Hatchery to the Highway 101 Bridge upstream of Klahowya Campground:

(i) Open the first Saturday in June through ~~((August 31 and December 1 through))~~ April 30.

(ii) It is unlawful to use bait.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((f))~~ ~~((g))~~ From the Highway 101 Bridge upstream of Klahowya Campground to the Olympic National Park boundary:

(i) Open the first Saturday in June through ~~((August))~~ October 31.

(ii) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(iii) It is unlawful to use bait.

~~((179))~~ (176) Solberg Creek (Clallam County) (Big River tributary):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((180))~~ (177) Solleks River (Jefferson County) (Clearwater River tributary):

(a) Open the first Saturday in June through ~~((August 31))~~ September 30.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) It is unlawful to use anything other than one barbless hook.

(d) It is unlawful to use bait.

~~((Trout:))~~ Release wild (unclipped) rainbow trout.

~~((h))~~ ~~((i))~~ Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii))~~ Release wild (unclipped) rainbow trout.

~~((181))~~ (178) Sooes River (Tsoo-Yess River) (Clallam County), outside of Makah Indian Reservation:

(a) Open the first Saturday in June through the last day in February.

(b) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

~~((b))~~ Open the first Saturday in June through the last day in February.

(c) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(d) From the first Saturday in June through October 31: ~~((h))~~ Selective gear rules apply.

~~((ii))~~ Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((d))~~ Open November 1 through the last day in February: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((182))~~ (179) South Bend Mill Pond (Pacific County): Open to juvenile anglers only.

~~((183))~~ (180) South Creek (Clallam County), outside of Olympic National Park:

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

~~((184))~~ (181) South Nemah River (Pacific County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (Lynn Point, 117 degrees true to opposite shore) to the confluence with Middle Nemah River:

(i) September 1 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon:

(A) Open September 1 through January 31.

(B) Limit 6; only 4 adults may be retained.

(C) Release wild Chinook.

(c) From the confluence with the Middle Nemah River upstream to the second Highway 101 Bridge crossing:

(i) Open the first Saturday in June through March 31.

(ii) Selective gear rules apply.

(iii) Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((185))~~ (182) Stearns Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(183) Stevens Creek (Grays Harbor County):

(a) From the mouth to the Highway 101 Bridge:

(i) Closed from the WDFW hatchery outlet downstream 400 feet.

(ii) Open the first Saturday in June through September 30 and December 1 through the last day in February.

(iii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(b) From the Highway 101 Bridge upstream to the Newbury Creek Road Bridge:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(184) Stillman Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31 from the mouth to water supply pipeline at Mill Creek.

(b) Selective gear rules apply.

(185) Stowe Creek (Lewis County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(186) Sutherland Lake (Clallam County):

(a) Open the fourth Saturday in April through October 31.

(b) Trout: Minimum length 6 inches and maximum length 18 inches.

(187) Sylvia Creek (Grays Harbor County) (Wynoochee River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(188) Sylvia Lake (Grays Harbor County): It is unlawful to retain more than 2 trout over 15 inches in length.

(189) Tarboo Creek (Jefferson County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(190) Tarboo Lake (Jefferson County):

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(191) Teal Lake (Jefferson County):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Selective gear rules apply.

(c) Trout: Limit one.

(192) Thorndyke Creek (Jefferson County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(193) Thunder Creek (Clallam County) (Tributary to East Fork Dickey River):

(a) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) It is unlawful to use anything other than one barbless hook.

(c) It is unlawful to use bait.

(d) ~~((Trout:~~

~~(+))~~ Release wild (unclipped) rainbow trout.

~~(e) Trout:~~ Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((ii) Release wild (unclipped) rainbow trout.~~

~~(e))~~ (f) From mouth to D2400 Road: ((Game fish season)) Open the first Saturday in June through ((August 31 and December 1 through)) April 30.

~~((f))~~ (g) From D2400 Road upstream: Open the first Saturday in June through ((August)) October 31.

(194) Trap Creek (Pacific County) (Willapa River tributary):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(195) Trout Creek (Clallam County) (Big River tributary):

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(196) Twin Lake (Jefferson County): Open the fourth Saturday in April through October 31.

(197) Umbrella Creek (Clallam County), outside Olympic National Park, including tributaries:

(a) Open the first Saturday in June through October 15.

(b) Selective gear rules apply.

(c) Trout:

(i) Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Release kokanee.

(198) Valley Creek (Clallam County): Open the first Saturday in June through October 31 to juvenile anglers only.

(199) Vance Creek (Grays Harbor County) (Chehalis River tributary):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(200) Vance Creek/Elma Ponds (Grays Harbor County), Pond One (Bowers Lake) and Pond Two (Lake Ines):

(a) Pond One/Bowers Lake is open only to juvenile anglers, seniors, and anglers with a disability who possess a designated harvester companion card.

(b) Open the fourth Saturday in April through November 30:

(i) Anglers may not retain more than 2 trout over 15 inches in length.

(ii) Landlocked salmon rules apply.

(201) Van Winkle Creek (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) August 16 through November 30:

(i) Night closure in effect.

(ii) Anti-snagging rule applies.

(c) From the mouth to 400 feet below the outlet of Lake Aberdeen Hatchery:

(i) Open the first Saturday in June through January 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(ii) Salmon open September 16 through January 31:

(A) From September 16 through December 31:

(I) Limit 6; only ((one)) two adults may be retained.

((B)) (II) Only one wild adult coho may be retained.

(III) Release adult Chinook ((and wild coho)).

(B) From January 1 through January 31.

(I) Limit 6; only two adults may be retained.

(II) Release Chinook and wild coho.

(d) From Lake Aberdeen upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(202) **Vesta Creek and all forks (Grays Harbor County) (North River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(203) **Ward Creek (Pacific County) (Willapa River tributary):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(204) **Wentworth Lake (Clallam County):** It is unlawful to fish from a floating device equipped with an internal combustion motor.

(205) **West Twin River (Clallam County):**

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(c) Catch and release only.

(206) **Wildcat Creek (Grays Harbor County) (Cloquallum Creek tributary):**

(a) Open from the mouth to the confluence of the Middle and East Forks from the first Saturday in June through October 31.

(b) Selective gear rules apply.

(207) **Wildcat Creek, East Fork (Grays Harbor County) (Cloquallum Creek tributary):**

(a) Open from the mouth to the Highway 108 Bridge (Simpson Avenue, in the town of McCleary) from the first Saturday in June through October 31.

(b) Selective gear rules apply.

(208) **Willapa River (Pacific County):**

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth (city of South Bend boat launch) to the Highway 6 Bridge approximately 2 miles below the mouth of Trap Creek:

(i) From August 1 through November 30:

(A) It is unlawful to fish from a floating device from the second bridge on Camp One Road upstream to the mouth of Mill Creek (approximately 0.5 miles).

(B) Night closure in effect.

(C) Single-point barbless hooks are required.

(D) Stationary gear restriction applies, except from the mouth of the Willapa River to the WDFW access site at the mouth of Ward/Wilson creeks.

(ii) From the City of South Bend boat launch upstream to the second bridge on Camp One Road: Anglers may fish with two poles August 1 through January 31, provided they possess a valid two-pole endorsement.

(iii) Open the first Saturday in June through March 31; release all fish except anglers may retain up to 2 hatchery steelhead.

(iv) Salmon open August 1 through January 31:

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(c) From Highway 6 Bridge to Fork Creek:

(i) From August 16 through November 30:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(C) Stationary gear restriction applies.

(ii) Open the first Saturday in June through July 15 and from ~~((August))~~ September 16 through March 31: Release all fish, except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon open August 16 through September 15:

(A) Limit 6; only 2 adults may be retained.

(B) Release wild Chinook.

(iv) Salmon open September 16 through January 31:

(A) Limit 6; only 4 adults may be retained.

(B) Release wild Chinook.

(d) From Fork Creek upstream to the Highway 6 Bridge near the town of Lebam:

(i) From August 16 through October 31:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through October 31:

Release all fish except anglers may retain up to 2 hatchery steelhead.

(iii) Salmon open October 1 through January 31:

(A) Limit 6; only 4 adults may be retained and only two may be wild ~~((adult))~~ coho.

(B) Release wild Chinook.

(e) From the Highway 6 Bridge near the town of Lebam upstream:

(i) From August 16 through October 31:

(A) Night closure in effect.

(B) Single-point barbless hooks are required.

(ii) Open the first Saturday in June through October 31:

Release all fish except anglers may retain up to 2 hatchery steelhead.

(209) **Willapa River, South Fork (Pacific County):** ~~((From the mouth to the bridge on Pehl Road:))~~

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the bridge on Pehl Road:

(i) From the falls/fish ladder downstream 400 feet in Section 6, Township 13 North, and Range 8 West: Closed.

~~((+))~~ (ii) Selective gear rules apply from the first Saturday in June through July 31.

~~((+))~~ (iii) From August 1 through November 30:

~~((+))~~ (A) Night closure in effect.

~~((+))~~ (B) Anti-snagging rule applies.

~~((+))~~ (C) Barbless hooks are required.

~~((+))~~ (c) Open the first Saturday in June through the last day in February: Release all fish except anglers may retain up to 2 hatchery steelhead.

~~((+))~~ (i) Salmon open August 1 through January 31:

~~((+))~~ (ii) Limit 6; only 3 adults may be retained.

~~((+))~~ (iii) Release wild Chinook.

~~((+))~~ (d) From Pehl Road upstream:

(i) Open the first Saturday in June through the last day in February.

(ii) Release all fish except anglers may retain up to 2 hatchery steelhead.

(210) **Williams Creek (Pacific County) (North Nemah River tributary):**

(a) Open the first Saturday in June through October 15.

(b) Release all fish except anglers may retain up to two hatchery steelhead.

(211) Wilson Creek (Pacific County) (Willapa River tributary):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(212) Wilson Creek, North Fork (Pacific County):

- (a) Open the first Saturday in June through October 31.
- (b) Selective gear rules apply.

(213) Wishkah River (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From August 16 through November 30: Single-point barbless hooks are required.

(c) From the mouth to ~~((West Fork))~~ 200 feet below the weir at the Wishkah Rearing Ponds:

(i) Open the first Saturday in June through the last day in February.

(ii) Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open October 1 through December 31:

(A) Limit 6; only ~~((one))~~ two adults may be retained.

(B) Only one wild adult coho may be retained.

(C) Release Chinook ~~((and wild coho))~~.

~~((d))~~ From the mouth of West Fork to 200 feet below the weir at the Wishkah Rearing Ponds:

~~((i))~~ (iv) From 150 feet upstream to 150 feet downstream of the Wishkah adult attraction channel/outfall structure (within the posted fishing boundary): Open only to anglers with disabilities who permanently use a wheelchair and have a designated harvester companion card.

~~((ii))~~ Open the first Saturday in June through the last day in February.

~~((iii))~~ Trout: Minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

~~((iv))~~ Salmon open October 1 through December 31:

(A) Limit 6; only one adult may be retained.

~~((B))~~ Release Chinook and wild coho.

~~((e))~~ (d) From the weir upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(214) Wishkah River, East and West forks (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Selective gear rules apply.

(215) Wynoochee River (Grays Harbor County):

(a) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(b) From the mouth to the WDFW White Bridge Access Site:

(i) From August 16 through November 30: Single-point barbless hooks are required.

(ii) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(iii) Salmon open October 1 through ~~((November 30))~~ December 31.

(A) Limit 6; only ~~((one))~~ two adults may be retained.

(B) Only one wild adult coho may be retained.

~~((C))~~ Release Chinook ~~((and wild coho))~~.

(c) From the WDFW White Bridge Access Site to the 7400 line bridge:

(i) From August 16 through November 30: Single-point barbless hooks are required.

(ii) From September 16 through November 30: It is unlawful to use bait.

(iii) Open the first Saturday in June through March 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(d) From the 7400 line bridge to 400 feet below Wynoochee Dam, including the confluence of the reservoir upstream to Wynoochee Falls:

(i) Closed from 400 feet downstream of Wynoochee Dam and from the barrier dam near Grisdale.

(ii) Open the first Saturday in June through October 31 and from December 1 through March 31:

(A) From the first Saturday in June through October 31: Trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length as part of the limit.

(B) From December 1 through March 31:

(I) Selective gear rules apply.

(II) Release all fish, except anglers may retain up to 2 hatchery steelhead.

(e) From Wynoochee Falls upstream:

(i) Open the first Saturday in June through October 31.

(ii) Selective gear rules apply.

(iii) Eastern brook trout: No limit. Eastern brook trout do not count toward the trout limit. However, once the limit of trout other than eastern brook trout is reached, the limit for all species of trout is reached and the angler must cease fishing.

(216) Wynoochee Reservoir (Grays Harbor County):

(a) Open the first Saturday in June through October 31.

(b) Trout: Minimum length 12 inches.

(c) Landlocked salmon rules apply.

WSR 17-15-063**PROPOSED RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Filed July 13, 2017, 3:54 p.m.]

Supplemental Notice to WSR 17-11-108.

Preproposal statement of inquiry was filed as WSR 17-03-042 on January 7, 2017.

Title of Rule and Other Identifying Information: WAC 220-313-070 Coastal salmon—Saltwater seasons and daily limits.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on August 22, 2017, at 10:30 a.m. - 12 p.m.

Date of Intended Adoption: On or after August 23, 2017.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091,

email Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by August 22, 2017.

Assistance for Persons with Disabilities: Contact Dolores Noyes by August 22, 2017, TTY (360) 902-2207 or (360) 902-2349.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Recreational ocean and coastal marine salmon fishing rules based on North of Falcon (NOF) recommendation[s] change from year-to-year to reflect resource availability and to achieve conservation goals. Amendments to recreational salmon fishing rules are needed to implement the agreed-upon changes. This proposal reflects an additional change to WAC 220-313-070 from what was proposed in WSR 17-11-108 filed on May 22, 2017. The change requires the release of wild Chinook salmon in Grays Harbor (Catch Record Card Area 2-2) from August 1 through September 15, 2017. This change is to address a harvest imbalance between comanagers.

Reasons Supporting Proposal: To protect fish species listed as endangered while supporting recreational fishing opportunity and to make changes to salmon seasons and harvest amounts pursuant to agreements and recommendations made at NOF meetings.

Statutory Authority for Adoption: RCW 77.32.470, 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.32.470, 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

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: A separate CR-102 supplemental will be filed for the NOF coastal freshwater salmon rules and the NOF commercial salmon fishery in Grays Harbor.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1213; Implementation: Ron Warren, 1111 Washington Street, Olympia, WA 98501, (360) 902-2799; and Enforcement: Chris Anderson, Chief, 1111 Washington Street, Olympia, WA 98501, (360) 902-2936.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule amendments do not affect small business; i.e., there is no direct regulation of small business. The rules apply to recreational fishers.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals only impact recreational salmon fisheries and do not affect hydraulics.

July 12, 2017
Scott Bird
Rules Coordinator

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

WAC 220-313-070 Coastal salmon—Saltwater seasons and daily limits. (1) It is unlawful to take, fish for, or possess salmon taken by angling for personal use except from the following coastal areas, during the following seasons, in

the quantities and the sizes provided for in WAC 220-313-010, and for the species designated in this section. An area is open when a daily limit is provided:

(2) **Catch Record Card Area 1:**

(a) May 1 through June (~~(30)~~) 23: Closed.

(b) July (~~(+)~~) 24 through (~~(August 31)~~) September 4:

(i) Daily limit of 2 salmon; no more than one may be a Chinook.

(ii) Release wild coho.

(c) September (~~(+)~~) 5 through April 30: Closed.

(d) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-313-020.

(3) **Catch Record Card Area 2:**

(a) May 1 through June 30: Closed.

(b) July 1 through (~~(August 21)~~) September 4:

(i) Daily limit of (~~(one salmon)~~) 2 salmon; no more than one may be a Chinook.

(ii) Release wild coho.

(iii) Beginning August (~~(8)~~) 14, the Grays Harbor Control Zone is closed. Grays Harbor Control Zone - The area defined by a line drawn from the Westport Lighthouse (46°53.18'N latitude, 124°07.01'W longitude) to Buoy #2 (46°52.42'N latitude, 124°12.42'W longitude) to Buoy #3 (46°55.00'N latitude, 124°14.48'W longitude) to the Grays Harbor north jetty (46°55.36'N latitude, 124°10.51'W longitude).

(c) (~~(August 22)~~) September 5 through April 30 - Closed.

(4) **Willapa Bay (Catch Record Card Area 2-1):**

(a) May 1 through June 30: Closed.

(b) July 1 through July 31: Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

(c) August 1 through January 31:

(i) Daily limit of 6 salmon; no more than (~~(4)~~) 3 may be adult salmon.

(ii) Release wild Chinook.

(iii) Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

(iv) Waters north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green) then, northeasterly to the power transmission pole located at 46°43.19'N, 123°50.83'W are closed August 1 through September 30.

(d) February 1 through April 30: Closed.

(5) **Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):**

(a) May 1 through July 31: Closed.

(b) August 1 through September (~~(24)~~) 15:

(i) Daily limit of 2 salmon.

(ii) Release wild Chinook and wild coho.

(iii) Waters south of a line running from the south end of the eastern jetty at Ocean Shores Marina to the fishing boundary marker on Sand Island (46°57.52'N, 124°03.36'W) to the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) are closed.

(c) (~~(September 25 through September 30: Closed.~~

~~(+)~~ October 1) September 16 through November 30:

(i) Daily limit of (~~(+)~~) 2 salmon, of which one may be a wild coho.

(ii) Release (~~(wild)~~) Chinook.

(iii) Waters west of a line running from the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) through channel marker 27 (green) to the mouth of Johns River (Highway 105 Bridge) are closed.

~~((e))~~ (d) December 1 through April 30: Closed.

~~((f))~~ (e) Notwithstanding the provisions of this subsection, the Westport Boat Basin and Ocean Shores Boat Basin are open only August 16 through January 31:

(i) Daily limit of 6 salmon; no more than 4 may be adult salmon.

(ii) Release Chinook.

(iii) Night closure and anti-snagging rule in effect.

(6) **Grays Harbor (Catch Record Card Area 2-2 west of the Buoy 13 line):**

(a) May 1 through June 30: Closed.

(b) July 1 through August ~~((7))~~ 13: Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

(c) August ~~((8))~~ 14 through April 30: Closed.

(7) **Catch Record Card Area 3:**

(a) May 1 through June ~~((30))~~ 23: Closed.

(b) ~~((July 1))~~ June 24 through ~~((August 21))~~ September 4:

(i) Daily limit of 2 salmon.

(ii) Release wild coho.

~~((iii))~~ ~~In years ending in odd numbers, two additional pink salmon may be retained as part of the daily limit.~~

(c) ~~((August 22))~~ September 5 through April 30: Closed.

(8) **Catch Record Card Area 4:**

(a) May 1 through June ~~((30))~~ 23: Closed.

(b) ~~((July 1))~~ June 24 through ~~((August 21))~~ September 4:

(i) Daily limit of 2 salmon.

(ii) Release wild coho.

~~((iii))~~ ~~In years ending in odd numbers, two additional pink salmon may be retained as part of the daily limit.~~

~~((iv))~~ Waters east of a true north-south line through Sail Rock are closed through July 31.

~~((v))~~ (iv) Waters east of the Bonilla-Tatoosh line closed to Chinook retention beginning August 1.

~~((vi))~~ (v) Release chum salmon beginning August 1.

(c) ~~((August 22))~~ September 5 through April 30: Closed.

(9) A violation of this section is an infraction, punishable under RCW 77.15.160, unless the person has harvested salmon. If the person has harvested salmon, the violation is punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, unless the salmon are taken in the amounts or manner to constitute a violation of RCW 77.15.370, Unlawful recreational fishing in the first degree—Penalty.

Preproposal statement of inquiry was filed as WSR 17-02-079 on January 4, 2017.

Title of Rule and Other Identifying Information: WAC 220-354-290, salmon - Grays Harbor fall fishery.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on August 22, 2017, at 12:30 p.m. to 2:00 p.m.

Date of Intended Adoption: On or after August 23, 2017.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, email Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by August 22, 2017.

Assistance for Persons with Disabilities: Contact Dolores Noyes by August 22, 2017, TTY (360) 902-2207 or (360) 902-2349.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal includes rule changes to the Grays Harbor commercial fishery needed as a result of the recommendations of the North of Falcon (NOF) subgroup of the Pacific Fisheries [Fishery] Management Council (PFMC). This proposal reflects additional changes to WAC 220-354-290 from what was proposed in WSR 17-11-072, filed on May 17, 2017.

This summarizes changes made since the filing of the original CR-102 that was filed as WSR 17-11-072. These changes were to address a harvest imbalance between comanagers.

Changes:

Catch Area 2A/2D:

- Adjustment [to] the hour[s] during the October 24 opener from 12:01 p.m. to 11:59 p.m. to open 12:01 p.m. and close at 7:00 p.m.
- Shifting the openers on November 13, 14, 15, and 16 to one week earlier on November 6, 7, 8, and 9. No other change to these proposals, just the dates opened.

Reasons Supporting Proposal: These changes incorporate the recommendations of the NOF subgroup of PFMC to take harvestable numbers of salmon during the commercial salmon fisheries in Grays Harbor, while protecting species of fish listed as endangered.

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

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: [WDFW], governmental.

Name of Agency Personnel Responsible for Drafting: Kim Figlar-Barnes, 48 Devonshire Road, Montesano, WA 98563, (360) 249-4628; Implementation: Ron Warren, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2799; and Enforcement: Chris Anderson, Chief, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2403.

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

WSR 17-15-065
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed July 13, 2017, 4:00 p.m.]

Supplemental Notice to WSR 17-11-072.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

This proposed rule change incorporates the recommendations of the NOF subgroup of PFMC to take harvestable salmon in Grays Harbor while taking reasonable and prudent measures to protect local salmon and steelhead stocks of concern and nonlocal species of fish listed under the federal Endangered Species Act as threatened or endangered. The rule includes legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Grays Harbor.

2. Kinds of Professional Services That a Small Business is Likely to Need In Order to Comply with Such Requirements: None - these rule changes clarify dates for anticipated open periods, show areas in Grays Harbor that are closed to commercial harvest methods, and explain legal gear requirements. There are no anticipated professional services required to comply.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The proposed rule changes are similar to the requirements of the rule in previous years and primarily only adjust opening and closing dates. The proposed rule changes do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there are no additional costs to comply with the proposed rules.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rule changes do not affect the harvestable numbers of salmon available to commercial fisher[s] licensed to fish in Grays Harbor. Therefore, the proposed rule changes should not cause any businesses to lose sales or revenue.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs: The proposed rule changes do not require any additional equipment, supplies, labor, or administrative costs. Therefore, no costs for compliance are anticipated.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: Most businesses affected by these rule changes are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions WDFW has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacts with and receives input from affected businesses through the NOF process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating the agreements underlying these rules. Additionally, WDFW will allow for written public comment and hold a public hearing on these rule changes as required under the Administrative Procedures [Procedure] Act, chapter 34.05 RCW.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers attempting to harvest

salmon in the all-citizen commercial salmon fisheries occurring in Grays Harbor will be required to comply with the rule.

A copy of the statement may be obtained by contacting Kim Figlar-Barnes, 48 Devonshire Road, Montesano, WA 98563, phone (360) 249-4628, fax (360) 249-1229, email Kim.Figlar-Barnes@dfw.wa.gov.

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

July 12, 2013 [2017]

Scott Bird

Rules Coordinator

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

WAC 220-354-290 Grays Harbor salmon fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for Chinook, coho, and chum salmon, and shad as provided in this section and in the times and area identified in the chart below.

Time:	Areas:
((7:00 a.m.)) <u>12:01 p.m.</u> through 7:00 p.m. October 24; 7:00 a.m. through 7:00 p.m. October 25;	Area 2A and Area 2D
((AND 7:00 a.m. through 7:00 p.m. October 26. 6:30 a.m. through 6:30 p.m. October 17; 6:30 a.m. through 6:30 p.m. October 18. 7:00 a.m. through 7:00 p.m. October 30; AND 7:00 a.m. through 7:00 p.m. October 31.))	Area 2C
<u>6:00 a.m. through 6:00 p.m.</u> <u>October 30;</u>	
<u>6:00 a.m. through 6:00 p.m.</u> <u>October 31;</u>	
<u>7:00 a.m. through 7:00 p.m.</u> <u>November 6;</u>	
<u>7:00 a.m. through 7:00 p.m.</u> <u>November 7;</u>	
<u>7:00 a.m. through 7:00 p.m.</u> <u>November 8;</u>	

Time:	Areas:
<u>AND</u>	
<u>7:00 a.m. through 7:00 p.m.</u>	
<u>November 9;</u>	
<u>6:00 a.m. through 6:00 p.m.</u>	<u>Area 2C</u>
<u>October 23;</u>	
<u>6:00 a.m. through 6:00 p.m.</u>	
<u>November 2;</u>	
<u>7:00 a.m. through 7:00 p.m.</u>	
<u>November 6;</u>	
<u>AND</u>	
<u>7:00 a.m. through 7:00 p.m.</u>	
<u>November 7.</u>	

Gear:

(2) Gear restrictions:

(a) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be (~~onboard~~) aboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches in diameter or greater.

(b) Areas 2A and 2D from October 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

(c) Area 2C from October 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed nine inches.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

Other:

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked and any time a fish is being held in accordance with (b) and (c) of this subsection. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river or fresh bay water into each chamber.

(b) When fishing in Grays Harbor Areas 2A and 2D, all steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(c) When fishing in Grays Harbor Area 2C, all steelhead must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(d) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river or bay prior to landing or docking.

(e) For Areas 2A and 2D, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Retention of any species other than coho, chum, hatchery Chinook marked by a healed scar at the site of the adipose fin, or shad is prohibited in Areas 2A and 2D from October 1 through November 30.

(5) Retention of any species other than Chinook, chum, coho or shad, is prohibited in Area 2C from October 1 through November 30.

(6) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-352-180, reports must be made by 10:00 a.m. the day following landing.

(7) Report all encounters of green sturgeon to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or email at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of

the fish ticket and include encounters with each day's quick reporting.

(8) Do NOT remove tags from white or green sturgeon. Please obtain available information from tags without removing tags. Submit tag information to:

Washington Department of Fish and Wildlife
48 Devonshire Rd.
Montesano, WA 98563.

(9)(a) Fishers must take department observers, if requested, by department staff when participating in these openings.

(b) Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or email. Notice of intent must be given prior to 12:00 p.m. on October 1, for openings in Areas 2A, 2C, or 2D.

(10) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A(2C) and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

WSR 17-15-066

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed July 13, 2017, 4:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-044.

Title of Rule and Other Identifying Information: WAC 182-504-0125 Washington apple health—Effect of reported changes and 182-523-0100 Washington apple health—Medical extension.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000, on August 22, 2017, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 23, 2017.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, email arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m., on August 22, 2017.

Assistance for Persons with Disabilities: Contact Amber Lougheed by August 18, 2017, email amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this rule to clarify that a "parent or caretaker relative" who received coverage must also be eligible for that coverage and removing outdated information in subsection (9) of WAC 182-504-0125.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Darcy Eliason, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1642; Implementation and Enforcement: Rebecca Janeczko, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-0752.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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

July 13, 2017

Wendy Barcus

Rules Coordinator

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

WAC 182-504-0125 Washington apple health—Effect of reported changes. (1) If you report a change required under WAC 182-504-0105 during a certification period, you continue to be eligible for Washington apple health ((WAH)) coverage until we decide if you can keep getting ((WAH)) apple health coverage under your current ((WAH)) apple health program or a different ((WAH)) apple health program.

(2) If your ((WAH)) apple health categorically needy (CN) coverage ends due to a reported change and you meet all the eligibility requirements for a different ((WAH-CN)) apple health CN program, we will approve your coverage under the new ((WAH-CN)) apple health CN program. If you are not eligible for coverage under any ((WAH-CN)) apple health CN program but you meet the eligibility requirements for either ((WAH)) apple health alternative benefits plan (ABP) coverage or ((WAH)) apple health medically needy (MN) coverage, we will approve your coverage under the program you are eligible for. If you are not eligible for coverage under any ((WAH-CN)) apple health CN program but you meet the eligibility requirements for both ((WAH-ABP)) apple health ABP coverage and ((WAH-MN)) apple health MN coverage, we will approve the ((WAH-ABP)) apple health ABP coverage unless you notify us that you prefer ((WAH-MN)) apple health MN coverage.

(3) If your ((WAH)) apple health coverage ends and you are not eligible for a different ((WAH)) apple health program, we stop your ((WAH)) apple health coverage after giving you advance and adequate notice unless the exception in subsection (4) of this section applies to you.

(4) If you claim to have a disability and that is the only basis for you to be potentially eligible for ((WAH)) apple health coverage, then we refer you to the division of disability determination services (within the department of social

and health services) for a disability determination. Pending the outcome of the disability determination, we also determine if you are eligible for ~~((WAH))~~ apple health coverage under the SSI-related medical program described in chapter 182-512 WAC. If you have countable income in excess of the SSI-related categorically needy income level (CNIL), then we look to see if you can get coverage under ~~((WAH-MN))~~ apple health MN with spenddown as described in chapter 182-519 WAC pending the final outcome of the disability determination.

(5) If you are eligible for and receive coverage under the ~~((WAH))~~ apple health parent and caretaker relative program described in WAC 182-505-0240, you ~~((with))~~ may be eligible for the ~~((WAH))~~ apple health medical extension program described in WAC 182-523-0100, if your coverage ends as a result of an increase in your earned income.

(6) Changes in income during a certification period do not affect eligibility for the following programs:

- (a) ~~((WAH))~~ Apple health for pregnant women;
- (b) ~~((WAH))~~ Apple health for children, except as specified in subsection (7) of this section;
- (c) ~~((WAH))~~ Apple health for SSI recipients;
- (d) ~~((WAH))~~ Apple health refugee program; and
- (e) ~~((WAH))~~ Apple health medical extension program.

(7) We redetermine eligibility for children receiving ~~((WAH))~~ apple health for kids premium-based coverage described in WAC 182-505-0210 when the:

(a) Household's countable income decreases to a percentage of the federal poverty level (FPL) that would result in either a change in premium for ~~((WAH))~~ apple health for kids with premiums or the children becoming eligible for ~~((WAH))~~ apple health for kids (without premiums);

- (b) Child becomes pregnant;
- (c) Family size changes; or
- (d) Child receives SSI.

(8) If you get SSI-related ~~((WAH-CN))~~ apple health CN coverage and report a change in work or earned income which results in a determination by the division of disability determination services that you no longer meet the definition of a disabled person as described in WAC 182-512-0050 due to work or earnings at the level of substantial gainful activity (SGA), we redetermine your eligibility for coverage under the health care for workers with disabilities (HWD) program. The HWD program is a premium-based program that waives the SGA work or earnings test, and you must approve the premium amount before we can authorize coverage under this program. For HWD program rules, see chapter 182-511 WAC.

~~((9)) Prior to a scheduled renewal or March 31, 2014, whichever is later, your WAH coverage will not end and you will not pay more for your WAH coverage as a result of an eligibility determination if:~~

- ~~((a)) You are enrolled in WAH at the time of the eligibility determination;~~
- ~~((b)) You were enrolled in WAH prior to October 1, 2013; and~~
- ~~((c)) At the time of the eligibility determination, your enrollment in WAH is not yet based on MAGI methodologies;))~~

AMENDATORY SECTION (Amending WSR 14-16-019, filed 7/24/14, effective 8/24/14)

WAC 182-523-0100 Washington apple health—Medical extension. (1) A parent or caretaker relative who was eligible for and who received coverage under Washington apple health ~~((WAH))~~ for parents and caretaker relatives, ~~((€))~~ described in WAC 182-505-0240~~((€))~~, in any three of the last six months is eligible, along with all dependent children living in the household, for twelve months' extended health care coverage if the person becomes ineligible for his or her current coverage due to increased earnings or hours of employment.

(2) A person remains eligible for ~~((WAH))~~ apple health medical extension unless:

- (a) The person:
 - (i) Moves out of state;
 - (ii) Dies;
 - (iii) Becomes an inmate of a public institution; or
 - (iv) Leaves the household.
- (b) The family:
 - (i) Moves out of state;
 - (ii) Loses contact with the agency or its designee or the whereabouts of the family are unknown; or
 - (iii) No longer includes an eligible dependent child as defined in WAC 182-503-0565(2).

(3) When a person or family is determined ineligible for ~~((WAH))~~ apple health coverage under subsection (2)(a)(i) through (iii) or (b)(i) or (ii) of this section during the medical extension period, the agency or its designee redetermines eligibility for the remaining household members as described in WAC 182-504-0125 and sends written notice as described in chapter 182-518 WAC before ~~((WAH))~~ apple health medical extension is terminated.

WSR 17-15-069
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed July 14, 2017, 10:01 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-827-990 Medical assistant, 246-836-990 Naturopathic physician, 246-843-990 Nursing home administrator, 246-845-990 Nursing pool and 246-849-990 Ocularist fees and renewal cycle, proposing increases in application, renewal fees, adjustments to duplicate and license verification fees and changes in formatting to make it easier for licensees to identify the fees they will be required to pay for medical assistant, naturopathic physician, nursing home administrator, nursing pool, and ocularist credentials.

Hearing Location(s): Department of Health, Point Plaza East, 310 Israel Road S.E., Room 152/153, Olympia, WA 98504, on August 22, 2017, at 10:00 a.m.

Date of Intended Adoption: September 1, 2017.

Submit Written Comments to: Megan Mikkelsen, P.O. Box 47850, Olympia, WA 98504-7850, email <https://>

fortress.wa.gov/doh/policyreview, fax (360) 236-2901, by August 22, 2017.

Assistance for Persons with Disabilities: Contact Megan Mikkelsen by August 15, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current licensing fees do not generate sufficient revenue to cover the full cost of administering these licensing programs. In response, the department is proposing to increase application and renewal fees and adjust duplicate license and verification license fees for these professions. The remainder of the changes are clarifications and formatting changes to make it easier for licensees to identify the fees they will be required to pay.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on licensure costs. Increasing fees to the proposed levels will more closely align revenue with the programs' expenses and enable reserves to be maintained should unanticipated events occur, such as increased disciplinary costs.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Statute Being Implemented: RCW 43.70.250 and 43.70.-280.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Megan Mikkelsen, 111 Israel Road, Tumwater, WA 98501, (360) 236-4617.

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

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

July 14, 2017
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 12-24-015, filed 11/27/12, effective 7/1/13)

WAC 246-827-990 Medical assistant—Fees and renewal cycle. (1) Credentials must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for medical assistant-certified, medical assistant-hemodialysis technician, and medical assistant-phlebotomist credentials:

Title of Fee	Fee
Initial credential	\$((115.00)) <u>145.00</u>

Title of Fee	Fee
Renewal	((115.00)) <u>145.00</u>
<u>Late renewal penalty</u>	<u>75.00</u>
Expired credential reissuance	55.00
((Certification)) <u>Verification</u> of credential	((20.00)) <u>25.00</u>
((Late renewal penalty))	((55.00))
Duplicate credential	((30.00)) <u>10.00</u>

(3) The following nonrefundable fees will be charged for a medical assistant-registered credential:

Title of Fee	Fee
Initial credential	\$((90.00)) <u>115.00</u>
Renewal	((90.00)) <u>110.00</u>
<u>Late renewal penalty</u>	<u>60.00</u>
Expired credential reissuance	40.00
((Certification)) <u>Verification</u> of credential	((20.00)) <u>25.00</u>
((Late renewal penalty))	((40.00))
Duplicate credential	((30.00)) <u>10.00</u>

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

WAC 246-836-990 Naturopathic physician licensing fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Amount
Application initial/retake	\$100.00
State examination (initial/retake)	100.00
Initial license	100.00
License renewal	325.00
Late renewal penalty	62.50
Expired license reissuance	62.50
Duplicate license	15.00
Certification of license	15.00
UW online access fee (HEAL-WA)	*16.00))

Title of Fee	Amount
<u>Original application</u>	
<u>State jurisprudence examination</u>	<u>\$100.00</u>
<u>Initial state license</u>	<u>270.00</u>

<u>Title of Fee</u>	<u>Amount</u>
UW online access fee (HEAL-WA)	16.00
<u>License renewal</u>	
Renewal	440.00
Late renewal penalty	220.00
Expired license reissuance	65.00
UW online access fee (HEAL-WA)	16.00
<u>Duplicate license</u>	10.00
<u>Verification of license</u>	25.00
<u>State jurisprudence examination</u>	100.00

* The University of Washington HEAL-WA web portal access fee, required under RCW 43.70.110, is assessed with the initial application fee and the license renewal fee.

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-843-990 Nursing home administrator fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

(Title of Fee	Fee
Application – Original license	\$410.00
Administrator-in-training	285.00
Application – Endorsement	510.00
Temporary permit	325.00
Renewal	495.00
Inactive license renewal	315.00
Late renewal penalty	315.00
Expired license reissuance	285.00
Late renewal penalty – Inactive	255.00
Expired inactive license reissuance	190.00
Duplicate license	30.00
Certification of license	30.00))

<u>Title of Fee</u>	<u>Fee</u>
<u>Application-Original license</u>	\$575.00
<u>Administrator-in-training</u>	285.00
<u>Application-Endorsement</u>	715.00
<u>License renewal</u>	
Renewal	695.00
Late renewal penalty	300.00
Expired license reissuance	285.00
<u>Inactive license</u>	
Inactive license renewal	315.00
Late renewal penalty	160.00

<u>Title of Fee</u>	<u>Fee</u>
Expired inactive license reissuance	190.00
<u>Temporary permit</u>	325.00
<u>Duplicate license</u>	10.00
<u>Verification of license</u>	25.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-845-990 Nursing pool fees and renewal cycle. (1) Registrations must be renewed every year on the ~~((date of original issuance))~~ practitioner's birthday as provided in chapter 246-12 WAC, Part ~~((3. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment))~~ 2.

(2) The following nonrefundable fees will be charged:

(Title	Fee
Registration application	\$100.00
Registration renewal	115.00
Late renewal penalty	57.50
Expired registration reissuance	57.50))
<u>Title of Fee</u>	<u>Fee</u>
<u>Original application</u>	\$175.00
<u>Renewal</u>	155.00
Late renewal penalty	80.00
<u>Expired registration reissuance</u>	60.00
<u>Duplicate license</u>	10.00
<u>Verification of license</u>	25.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-849-990 Ocularist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

(Title of Fee	Fee
Application and examination	\$125.00
Renewal	225.00
Late renewal penalty	112.50
Expired license reissuance	112.50
Duplicate license	25.00
Certification of license	25.00
Apprentice registration	25.00
Apprentice renewal	25.00
Temporary practice permit	25.00
Retired active license	50.00)
<u>Title of Fee</u>	<u>Fee</u>
<u>Original application and examination</u>	<u>\$200.00</u>
<u>License renewal</u>	
<u>Renewal</u>	<u>300.00</u>
<u>Late renewal penalty</u>	<u>150.00</u>
<u>Apprentice registration</u>	<u>25.00</u>
<u>Apprentice renewal</u>	<u>25.00</u>
<u>Expired license reissuance</u>	<u>115.00</u>
<u>Temporary practice permit</u>	<u>25.00</u>
<u>Retired active license</u>	<u>50.00</u>
<u>Duplicate license</u>	<u>10.00</u>
<u>Verification of license</u>	<u>25.00</u>

**WSR 17-15-070
PROPOSED RULES
DEPARTMENT OF HEALTH**

[Filed July 14, 2017, 11:27 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle, 246-810-990 Counselors fees and renewal cycle, and 246-811-990 Chemical dependency professional and chemical dependency professional trainee—Fees and renewal cycle, proposing increases in application and renewal fees, adjustments to standardize fees for late renewal, verification of credentials and duplicate credentials, and clarifications in formatting for marriage and family therapists and associates, certified counselors and advisers, agency affiliated counselors, and chemical dependency professionals and associates.

Hearing Location(s): Department of Health, Point Plaza East, Room 153, 310 Israel Road S.E., Tumwater, WA 98501, on August 22, 2017, at 10:00 a.m.

Date of Intended Adoption: August 29, 2017.

Submit Written Comments to: Sherry Thomas, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2901, by August 22, 2017.

Assistance for Persons with Disabilities: Contact Sherry Thomas by August 8, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current licensing fees for these programs do not generate sufficient revenue to cover the full cost of administering these licensing programs. In response, the department is proposing to increase application and renewal fees. The department is also proposing adjustments to standardize fees for late renewal, verification of credentials and duplicate credentials, and minor formatting changes.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on licensure costs. Increasing fees to the proposed levels will allow these programs' revenues to align more closely with current and projected expenses and to significantly reduce each program's ending fund balance deficit over time. The other fee adjustments will create consistency in the fees for functions that require similar staff time to complete across health professions.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Statute Being Implemented: RCW 43.70.250 and 43.70.-280.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sherry Thomas, 111 Israel Road, Tumwater, WA 98501, (360) 236-4612.

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

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

July 14, 2017
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 15-19-149, filed 9/22/15, effective 1/1/16)

WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Associate licenses are valid for one year and must be renewed every year on the date of issuance. The associate license may be renewed no more than six times.

(3) The following nonrefundable fees will be charged:

Title	Fee	Title	Fee
Licensed marriage and family therapist		Expired license reissuance	65.00
Original application		UW online access fee (HEAL-WA)	16.00
Application <u>and initial license</u>	\$((150.00))	Retired active license renewal	
	<u>290.00</u>	Renewal retired active	70.00
(License)	75.00)	Late renewal penalty	35.00
UW online access fee (HEAL-WA)	16.00	UW online access fee (HEAL-WA)	16.00
Active license renewal		Duplicate license	10.00
Renewal	((140.00))	Verification of license	((10.00))
	<u>180.00</u>		<u>25.00</u>
Late renewal penalty	((70.00))	Licensed mental health counselor associate	
	<u>90.00</u>	Original application	
Expired license reissuance	85.00	Application	35.00
UW online access fee (HEAL-WA)	16.00	Renewal	
Retired active license renewal		Renewal	25.00
Renewal	70.00	Late renewal penalty	25.00
Late renewal penalty	35.00	Expired license reissuance	40.00
UW online access fee (HEAL-WA)	16.00	Duplicate license	((15.00))
Duplicate license	10.00		<u>10.00</u>
Verification of license	((10.00))	Verification of license	((15.00))
	<u>25.00</u>		<u>25.00</u>
Licensed marriage and family therapy associate		Licensed advanced social worker and licensed independent clinical social worker	
Original application		Original application	
Application	((50.00))	Application	100.00
	<u>65.00</u>	Initial license	100.00
UW online access fee (HEAL-WA)	16.00	UW online access fee (HEAL-WA)	16.00
Renewal		Active license renewal	
Renewal	((40.00))	Renewal	100.00
	<u>50.00</u>	Late renewal penalty	50.00
UW online access fee (HEAL-WA)	16.00	Expired license reissuance	72.50
Late renewal penalty	((40.00))	UW online access fee (HEAL-WA)	16.00
	<u>50.00</u>	Retired active license renewal	
Expired license reissuance	40.00	Renewal retired active	65.00
Duplicate license	((15.00))	Late renewal penalty	30.00
	<u>10.00</u>	UW online access fee (HEAL-WA)	16.00
Verification of license	((15.00))	Duplicate license	10.00
	<u>25.00</u>	Verification of license	((10.00))
Licensed mental health counselor			<u>25.00</u>
Original application		Licensed advanced social worker associate and licensed independent clinical social worker associate	
Application	95.00	Original application	
Initial license	80.00	Application	35.00
UW online access fee (HEAL-WA)	16.00	UW online access fee (HEAL-WA)*	16.00
Active license renewal			
Renewal	90.00		
Late renewal penalty	50.00		

Title	Fee
Renewal	
Renewal	25.00
Late renewal penalty	25.00
UW online access fee (HEAL-WA)*	16.00
Expired license reissuance	40.00
Duplicate license	((15.00))
	<u>10.00</u>
Verification of license	((15.00))
	<u>25.00</u>

* Surcharge applies to independent clinical social worker associate only.

AMENDATORY SECTION (Amending WSR 14-07-095, filed 3/18/14, effective 7/1/14)

WAC 246-810-990 Counselors fees and renewal cycle. (1) Under chapter 246-12 WAC, Part 2, a counselor must renew his or her credential every year on the practitioner's birthday.

(2) ~~((Any separate))~~ Examination and reexamination fees are the responsibility of the applicant and are paid directly to the testing company.

(3) The following nonrefundable fees will be charged:

Title	Fee
((3)) The following nonrefundable fees will be charged for)) <u>Registered hypnoterapist:</u>	
Application and registration	\$155.00
Renewal	\$80.00
Late renewal penalty	\$75.00
Expired registration reissuance	\$75.00
Duplicate registration	\$(30.00))
	<u>10.00</u>
((Certification)) <u>Verification</u> of registration	\$(30.00))
	<u>25.00</u>
((4)) The following nonrefundable fees will be charged for)) <u>Certified counselor:</u>	
Application and certification	\$(160.00))
	<u>255.00</u>
Examination or reexamination	\$85.00
Renewal	\$(140.00))
	<u>225.00</u>
Late renewal penalty	\$(50.00))
	<u>115.00</u>
Expired credential reissuance	\$100.00
Duplicate credential	\$(15.00))
	<u>10.00</u>
((Certification)) <u>Verification</u> of credential	\$(15.00))
	<u>25.00</u>

Title	Fee
((5)) The following nonrefundable fees will be charged for)) <u>Certified adviser:</u>	
Application and certification	\$(130.00))
	<u>210.00</u>
Examination or reexamination	\$85.00
Renewal	\$(115.00))
	<u>185.00</u>
Late renewal penalty	\$(50.00))
	<u>95.00</u>
Expired credential reissuance	\$100.00
Duplicate credential	\$(15.00))
	<u>10.00</u>
((Certification)) <u>Verification</u> of credential	\$(15.00))
	<u>25.00</u>

((6)) The following nonrefundable fees will be charged for)) <u>Registered agency affiliated counselor:</u>	
Application and registration	\$(60.00))
	<u>90.00</u>
Renewal	\$(50.00))
	<u>75.00</u>
Late renewal penalty	\$(40.00))
	<u>50.00</u>
Expired registration reissuance	\$50.00
Duplicate registration	\$(15.00))
	<u>10.00</u>
((Certification)) <u>Verification</u> of registration	\$(15.00))
	<u>25.00</u>

AMENDATORY SECTION (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

WAC 246-811-990 Chemical dependency professional and chemical dependency professional trainee— Fees and renewal cycle. (1) A chemical dependency professional (CDP) certificate must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) A chemical dependency professional trainee (CDPT) certificate must be renewed every year to correspond with issuance date.

(3) The following nonrefundable fees will be charged for a certified chemical dependency professional:

Title of Fee	Fee
Application <u>and initial certification</u>	\$(200.00))
	<u>640.00</u>
((Initial certification	225.00))
<u>Active renewal</u>	((230.00))
	<u>345.00</u>
<u>Active late renewal penalty</u>	<u>175.00</u>

Title of Fee	Fee
((Renewal)) <u>Retired active renewal</u>	115.00
<u>Retired active late renewal</u> ((retired-active)) <u>penalty</u>	((57.50)) 60.00
((Late renewal penalty	115.00))
Expired certification reissuance	115.00
Duplicate certification	10.00
((Certification)) <u>Verification</u> of certificate	((40.00)) 25.00

(4) The following nonrefundable fees will be charged for a certified chemical dependency professional trainee:

Title of Fee	Fee
Application <u>and initial certification</u>	\$(410.00)) 165.00
Renewal	((90.00)) 135.00
Late renewal penalty	((50.00)) 70.00
Expired certification reissuance	50.00
Duplicate certification	((15.00)) 10.00
((Certification)) <u>Verification</u> of certificate	((15.00)) 25.00

WSR 17-15-076
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed July 14, 2017, 2:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-074.

Title of Rule and Other Identifying Information: Topographic map requirements. The proposed rule is an addition to chapter 332-130 WAC creating a new section that provides requirements for the production of topographic maps prepared by a licensed land surveyor. The department of natural resources (DNR) is authorized by RCW 58.24.040 to set up standards of accuracy and methods of procedure as they relate to the practice of professional land surveying.

Hearing Location(s): Clark College, 1933 Fort Vancouver Way, Science Building, Room 125, Vancouver, WA 98663, on August 22, 2017, at 6 p.m.; at the Renton Tech Annex, 3407 N.E. 2nd Street, Room 113, Renton, WA 98056, on August 23, 2017, at 6 p.m.; and at the Hilton Garden Inn at Spokane Airport, 9015 West Highway 2, Spokane, WA 99224, on August 31, 2017, at 6 p.m.

Date of Intended Adoption: September 22, 2017.

Submit Written Comments to: Patrick J. Beehler, PLS, 1111 Washington Street S.E., Olympia, WA 98504-7030,

email pat.beehler@dnr.wa.gov, fax (360) 902-1778, by September 8, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Topographic surveys and the maps produced to document and display the results are a product of professional land surveying practice separate from boundary surveys. Our intention in drafting the proposed WAC is to provide a set of requirements for a topographic map that can stand on its own apart from boundary survey map requirements as set in WAC 332-130-050. It may be that maps produced by a professional land surveyor will have some elements of several or all of the different types of surveys. The proposed requirements are specifically for topographic maps.

Reasons Supporting Proposal: There are currently no requirements for the production of topographic maps by licensed professional land surveyors. Critical and pertinent information is often missing from the final map. This proposal will direct the land surveyor to provide information that is needed for the intelligent interpretation of the final topographic map. The proposed rule will be used by the board of registration for engineers and land surveyors to assure compliance.

Statutory Authority for Adoption: RCW 58.24.040.

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

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick J. Beehler, DNR, 1111 Washington Street S.E., Olympia, WA 98504-7030, (360) 902-1181; Implementation: Kristina Horton, DNR, 801 88th Street S.E., Tumwater, WA 98501-7019, (360) 902-1197; and Enforcement: Board of Registration for PE and LS, 6135 Martin Way East, Lacey, WA 98516, (360) 664-1564.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no fiscal impact to the professional surveyor preparing the topographic map.

A cost-benefit analysis is not required under RCW 34.05.328. There is no fiscal impact to the professional surveyor preparing the topographic map.

July 14, 2017
Angus W. Brodie
Deputy Supervisor State Uplands

NEW SECTION

WAC 332-130-145 Topographic map requirements.

The following requirements shall apply to topographic mapping surveys performed by individuals licensed under chapters 18.43, 18.96, and 18.210 RCW. Such requirements should be considered minimum only. The professional conducting the work will determine what precision and accuracy are expected to be utilized for topographic mapping services necessitating various levels of accuracy. Negotiation, requests, and contractual requirements with clients, jurisdictions or other professionals will determine the specifics and quality of the vertical information provided.

The following elements shall be included on every survey map that has topographic information.

(1) Graphic information:

- (a) North arrow;
- (b) Scale bar;
- (c) Legend of symbols used;
- (d) Company and licensee contact information;
- (e) Seal and signature of licensee.
- (2) Statements of clarification of vertical information shown on mapping.
 - (a) Vertical datum used;
 - (b) Purpose or intended use of topographic mapping (if relevant);
 - (c) Basis of elevations citing benchmark(s) used with elevation(s);
 - (d) Source of contours;
 - (e) Sufficient labeling to determine contour interval(s);
 - (f) Project bench marks established (if any);
 - (g) Statement of elevations and contour accuracy.
- (3) Boundary information (if shown).
 - (a) Source of the boundary information as required by WAC 196-23-020 (3)(c) if map is not prepared by a professional land surveyor;
 - (b) A record of survey prepared by a professional land surveyor is required if monuments are set per chapter 58.09 RCW;
 - (c) Survey map requirements as listed in WAC 332-130-050.
- (4) Underground utilities information (if shown).
 - (a) Source of surface markings (if any);
 - (b) Statement of accuracy of utility line depiction;
 - (c) Notification if utility line not exposed or marked for location purposes;
 - (d) Statement of underground utility depiction purpose and limitations of use.

WSR 17-15-077**PROPOSED RULES****DEPARTMENT OF REVENUE**

[Filed July 14, 2017, 2:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-21-091.

Title of Rule and Other Identifying Information: WAC 458-20-19404 (Rule 19404) Financial institutions—Income apportionment and 458-20-19404A (Rule 19404A) Financial institutions—Income apportionment, explain how financial institutions apportion their income under single factor receipts apportionment. Specifically, Rule 19404A will cover the period of June 1, 2010, through December 31, 2015, and Rule 19404 will cover periods beginning January 1, 2016. The rules are consistent with the model method of apportionment adopted by the Multistate Tax Commission (MTC).

Hearing Location(s): Conference Room 114A, 6400 Linderson Way S.W., Tumwater, WA 98501, on September 13, 2017, at 1:00 p.m. Copies of draft rules are available for viewing and printing on our web site at dor.wa.gov.

Call-in option can be provided upon request no later than three days before the hearing date.

Date of Intended Adoption: September 20, 2017.

Submit Written Comments to: Atif Aziz, Department of Revenue, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, email AtifA@dor.wa.gov, by September 13, 2017.

Assistance for Persons with Disabilities: Contact Julie King, (360) 704-5717, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules 19404 and 19404A explain how financial institutions must apportion gross income when they engage in business both within and outside the state. RCW 82.04.460(2) provides that the department adopt a rule for the apportionment of income of financial institutions that is consistent with the model adopted by MTC. The department proposes an update to Rule 19404 to remain consistent with MTC's change in its model method of apportionment for financial institutions that becomes effective January 1, 2016.

Reasons Supporting Proposal: To satisfy the requirement under RCW 82.04.460(2) that the department update its rule for the apportionment of income of financial institutions to be consistent with the model adopted by MTC.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.04.460(2).

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Atif Aziz, 6400 Linderson Way S.W., Tumwater, WA, (360) 534-1593; Implementation and Enforcement: Marcus Glasper, 6400 Linderson Way S.W., Tumwater, WA, (360) 534-1615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not impose more than minor costs on business[es] as they do not impose any new requirements not already provided for in statute or in the model method of apportionment adopted by MTC.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

July 14, 2017

Kevin Dixon

Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-04-004, filed 1/22/15, effective 2/22/15)

WAC 458-20-19404 Financial institutions—Income apportionment. (1) Introduction.

(a) Effective June 1, 2010, (~~section 108, chapter 23, Laws of 2010 1st sp. sess. changed Washington's~~) Washington changed its method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when

the financial institution engages in business both within and outside the state.

(b) RCW 82.04.460(2) requires the department, to the extent feasible, to adopt the multistate tax commission's recommended formula for apportionment and allocation of net income for financial institutions, with the exceptions that the definition of financial institution in the appendix to the recommended formula is advisory only and only the receipts factor will be used to apportion income.

(c) On July 29, 2015, the multistate tax commission approved amendments to its recommended formula for the apportionment and allocation of net income of financial institutions including amendments to how the receipts factor is calculated. The amendments are effective for tax years starting on or after January 1, 2016.

(d) This rule applies to the apportionment of income taxable under RCW 82.04.290 for periods beginning January 1, 2016.

(e) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401((;)) Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus standards that are effective after May 31, 2010.

(ii) WAC 458-20-19402((;)) Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment that is effective after May 31, 2010.

(iii) WAC 458-20-19403((;)) Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194((;)) Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the periods January 1, 2006, through May 31, 2010.

(v) WAC 458-20-19404A Financial institutions—Income apportionment. This rule describes the application of single factor receipts apportionment to gross income for financial institutions during the period June 1, 2010, through December 31, 2015.

(vi) WAC 458-20-14601((;)) Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

((;)) (f) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(2) Apportionment ~~((and allocation))~~.

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must attribute and apportion its service and other activities income as provided in this rule. ~~((Any other))~~ Apportionable income that is not taxable under RCW 82.04.290 must be apportioned pursuant to WAC 458-20-19402((;)) Single factor receipts apportionment—Generally or WAC 458-20-19403((;)) Single factor receipts apportionment—Royalties. "Apportionable income" means gross income of the business generated from engaging in appor-

tionable activities as defined in WAC 458-20-19401((;)) Minimum nexus thresholds for apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under chapter 82.04 RCW if received from activities in this state, less any deductions allowable under chapter 82.04 RCW. All gross income that is not ~~((includable))~~ from apportionable activities must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) ~~((Apportionable income))~~ service and other activities income, regardless of where that income is attributed, shall be apportioned to this state by multiplying such income, less any deductions or exemptions authorized under chapter 82.04 RCW, by the apportionment((s)) percentage. The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. ~~((Persons should))~~ For further guidance on the requirements of each accounting method refer to WAC 458-20-197((;)) When tax liability arises and WAC 458-20-199((;)) Accounting methods ~~((for further guidance on the requirements of each accounting method))~~.

(d) Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. The reconciliation must be filed on a form approved by the department. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the factors to reflect its changed operations.

~~((;))~~ (e) Interest and penalties on reconciliations under ~~((;))~~ (d) of this subsection apply as follows:

(i) In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments.

(ii) Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

~~((;))~~ (f) If the ~~((allocation and))~~ apportionment provisions of this rule do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) **"Billing address"** means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement ~~(and)~~ or bill relating to a customer's account is mailed.

(b) **"Borrower or credit card holder located in this state"** means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(c) **"Card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.

(d) **"Commercial domicile"** means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

~~((d)) (e) "Credit card" means ((credit, travel or entertainment card.~~

~~(e) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.~~

~~(f)) a card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.~~

~~(f) "Debit card" means a card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.~~

(g) **"Department"** means the department of revenue.

~~((g)) (h) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.~~

~~((h)) (i) "Financial institution" means:~~

~~(i) Any corporation or other business entity ((chartered) authorized under ((Title 30)) Title 30A, 31, 32, or 33 RCW((; or)) to engage in business in Washington, provided that persons authorized to act as a loan servicer pursuant to chapter 31.04 RCW or as a check casher or check seller pursuant to chapter 31.45 RCW shall not be considered a financial institution solely on that basis; or~~

~~(ii) Registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;~~

~~((ii)) (iii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;~~

~~((iii)) (iv) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813 (b)(1);~~

~~((iv)) (v) Any bank or thrift institution incorporated or organized under the laws of any state;~~

~~((v)) (vi) Any corporation organized under the provisions of 12 U.S.C. Secs. 611 to 631;~~

~~((vi)) (vii) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;~~

~~((vii) Any credit union, other than a state or federal credit union exempt under state or federal law;))~~

~~(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.~~

~~((i)) (j) "Gross income of the business," "gross income," or "income":~~

~~(i) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses; and~~

~~(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose ((of (3)(i)) of this subsection, affiliated means the affiliated person and the financial institution are under common control. Control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.~~

~~(iii) Financial institutions must determine their gross income of the business from gains realized from trading in~~

stocks, bonds, and other evidences of indebtedness on a net annualized basis.

~~((j))~~ (k) "Interest, fees, and penalties" means any fees related to a loan, credit card, or other extension of credit and includes any fees charged a prospective borrower prior to funding of a loan regardless of whether the loan is eventually funded.

(l) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security; and other similar items.

~~((k))~~ (m) "Loan secured by real property" means that more than fifty percent (~~or more~~) of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

~~((h))~~ (n) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any card holder charge-back and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its card holder.

~~((m))~~ (o) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

~~((n))~~ (p) "Person" has the meaning given in RCW 82.04.030.

~~((o))~~ (q) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

~~((p))~~ (r) "Service and other activities income" means the gross income of the business taxable under RCW 82.04.-290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state (~~, less the exemptions and deductions allowable under chapter 82.04 RCW~~).

~~((q))~~ (s) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

~~((r))~~ (t) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk

only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

~~((s))~~ (u) "Taxable in another state" means either:

(i) The taxpayer is subject to business activities tax by another state on its service and other activities income; or

(ii) The taxpayer is not subject to a business activities tax by another state on its service and other activities income, but that state (~~has~~) would have jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401.

~~((s-ef))~~ (iii) For purposes of (~~s-ef~~) this subsection (3)(u), "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. Business activities tax does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

~~((t))~~ (v) "Taxable period" means the calendar year during which tax liability is incurred.

(4) Receipts factor.

(a) General. The receipts factor is a fraction, the numerator of which is the (~~apportionable~~) service and other activities income of the taxpayer in this state during the taxable period and the denominator of which is the (~~apportionable~~) service and other activities income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(b) Interest (~~from~~), fees, and penalties imposed in connection with loans secured by real property.

(i) The numerator of the receipts factor includes interest (~~and~~), fees (~~or~~) and penalties (~~in the nature of interest from~~) imposed in connection with loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection (4)(b)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection (4)(b)(i) must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest (~~from~~), fees, and penalties imposed in connection with loans not secured by real property. The numerator of the receipts factor includes interest (~~and~~), fees (~~or~~), and penalties (~~in the nature of interest from~~) imposed in connection with loans not secured by real property if the borrower is located in this state.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded

under the coupon stripping rules of Section 1286 of the federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection and the denominator of which is the total amount of interest and fees or penalties (~~(in the nature of interest from)~~) imposed in connection with loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection ~~((4))~~ and the denominator of which is the total amount of interest and fees or penalties (~~(in the nature of interest from)~~) imposed in connection with loans not secured by real property.

(e) Receipts from ~~((credit card receivables))~~ fees, interest, and penalties charged to card holders. The numerator of the receipts factor includes fees, interest, and ((fees or)) penalties ((in the nature of interest from credit card receivables and income from fees)) charged to card holders((, such as)) including, but not limited to, annual fees and overdraft fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of interest ~~((and fees or penalties in the nature of interest from credit card receivables and fees)),~~ fees, and penalties charged to credit card holders.

(g) ~~((Credit))~~ Card issuer's reimbursement fees. The numerator of the receipts factor includes:

(i) All credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and ((fees or)) penalties ((in the nature of interest from credit card receivables and fees)) charged to credit card holders.

(ii) All debit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders.

(iii) All other card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(h) Receipts from merchant discount.

(i) If the taxpayer can readily determine the location of the merchant and if the merchant is in this state, the numerator of the receipts factor includes receipts from merchant discount ((if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder charge backs, but must not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

~~(i))~~ (ii) If the taxpayer cannot readily determine the location of the merchant, the numerator of the receipts factor includes such receipts from the merchant discount multiplied by a fraction:

(A) In the case of a merchant discount related to the use of a credit card, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders; and

(B) In the case of a merchant discount related to the use of a debit card, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders; and

(C) In the case of a merchant discount related to the use of all other types of cards, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(iii) The taxpayer's method for sourcing each receipt from a merchant discount must be consistently applied to such receipt in all states that have adopted sourcing methods substantially similar to (h)(i) and (ii) of this subsection and must be used on all subsequent returns for sourcing receipts from such merchant unless the department permits or requires application of the alternative method.

(i) Receipts from ATM fees. The receipts factor includes all ATM fees that are not forwarded directly to another bank.

(i) The numerator of the receipts factor includes fees charged to a card holder for the use at an ATM of a card issued by the taxpayer if the card holder's billing address is in this state.

(ii) The numerator of the receipts factor includes fees charged to a card holder, other than the taxpayer's card holder, for the use of such card at an ATM owned or rented by the taxpayer, if the ATM is in this state.

(j) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection and the denominator of which is the total amount of interest ~~((and fees or penalties in the nature of~~

~~interest from)), fees, and penalties imposed in connection with loans secured by real property.~~

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection and the denominator of which is the total amount of interest and fees or penalties ~~((in the nature of interest from))~~ imposed in connection with loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

~~((j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4), if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.))~~

(k) Receipts from the financial institution's investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities that are reported on the taxpayer's financial statements, call reports, or similar reports are included in the receipts factor. Investment assets and activities and trading assets and activities include, but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection, the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from both investment assets and activities and from trading assets and activities described in (k)(i) of this subsection that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in ~~((the))~~ each investment account to be attributed to this state and included in the numerator is determined by

multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(i)(A) and (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of (k)(ii) of this subsection, the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(ii) In lieu of using the method set forth in (k)(ii) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an ~~((investment))~~ asset or ~~((activity or trading asset or))~~ activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an ~~((investment))~~ asset or ~~((activity or trading asset or))~~ activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) All other receipts. The numerator of the receipts factor includes all other receipts from engaging in activities subject to tax under RCW 82.04.290 pursuant to the rules set forth in WAC 458-20-19402 Single factor receipts apportionment—Generally.

(m) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after ~~((June 1, 2010))~~ January 1, 2016.

NEW SECTION

WAC 458-20-19404A Financial institutions—Income apportionment. (1) Introduction.

(a) Effective June 1, 2010, Washington changed its method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state and applies to the period June 1, 2010, through December 31, 2015, only. See WAC 458-20-19404 Financial institutions—Income apportionment for the proper apportionment methodology for periods beginning January 1, 2016.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus standards that are effective after May 31, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment that is effective after May 31, 2010.

(iii) WAC 458-20-19403 Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the periods January 1, 2006, through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(c) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property.

(2) Apportionment and allocation.

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must attribute and apportion its service and other activities income as provided in this rule. Any other apportionable income must be apportioned pursuant to WAC 458-20-19402 Single factor receipts apportionment—Generally or WAC 458-20-19403 Single factor receipts apportionment—Royalties. "Apportionable income" means gross income of the business generated from engaging in apportionable activities as defined in WAC 458-20-19401 Minimum nexus thresholds for apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under chapter 82.04 RCW if received from activities in this state, less any deductions allowable under chapter 82.04 RCW. All gross income that is not includable from apportionable activities must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) All apportionable income shall be apportioned to this state by multiplying such income by the apportionment percentage. The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable

period. Persons should refer to WAC 458-20-197 When tax liability arises and WAC 458-20-199 Accounting methods for further guidance on the requirements of each accounting method. Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. The reconciliation must be filed on a form approved by the department. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the factors to reflect its changed operations.

(d) Interest and penalties on reconciliations under (c) of this subsection apply as follows:

(i) In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments.

(ii) Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

(e) If the allocation and apportionment provisions of this rule do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) **"Billing address"** means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(b) **"Borrower or credit card holder located in this state"** means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(c) **"Commercial domicile"** means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's

commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

(d) **"Credit card"** means credit, travel or entertainment card.

(e) **"Credit card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(f) **"Department"** means the department of revenue.

(g) **"Employee"** means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) **"Financial institution"** means:

(i) Any corporation or other business entity chartered under Title 30, 31, 32, or 33 RCW, or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813 (b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. Secs. 611 through 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

(vii) Any credit union, other than a state or federal credit union exempt under state or federal law;

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

(i) **"Gross income of the business," "gross income," or "income":**

(i) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount,

delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses; and

(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose of this subsection (3)(i), affiliated means the affiliated person and the financial institution are under common control. Control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.

(iii) Financial institutions must determine their gross income of the business from gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis.

(j) **"Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security; and other similar items.

(k) **"Loan secured by real property"** means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

(l) **"Merchant discount"** means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) **"Participation"** means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) **"Person"** has the meaning given in RCW 82.04.030.

(o) **"Regular place of business"** means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(p) **"Service and other activities income"** means the gross income of the business taxable under RCW 82.04.290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(q) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any

territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(r) **"Syndication"** means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(s) **"Taxable in another state"** means either:

(i) The taxpayer is subject to business activities tax by another state on its service and other activities income; or

(ii) The taxpayer is not subject to a business activities tax by another state on its service and other activities income, but that state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401. For purposes of this subsection (3)(s), "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. Business activities tax does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(t) **"Taxable period"** means the calendar year during which tax liability is incurred.

(4) **Receipts factor.**

(a) General. The receipts factor is a fraction, the numerator of which is the apportionable income of the taxpayer in this state during the taxable period and the denominator of which is the apportionable income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(b) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection (4)(b)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection (4)(b)(i) must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(e) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and income from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(g) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(h) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any card holder charge backs, but must not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(i) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

(j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection, if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.

(k) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include, but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection, the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from investment assets and activities and from trading assets and activities described in (k)(i) of this subsection that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal

funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(i)(A) and (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of (k)(ii) of this subsection, the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(iii) In lieu of using the method set forth in (k)(ii) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after June 1, 2010, and before January 1, 2016.

WSR 17-15-080

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed July 17, 2017, 7:33 a.m.]

Continuance of WSR 17-13-088.

Preproposal statement of inquiry was filed as WSR 17-10-015.

Title of Rule and Other Identifying Information: Chapter 308-20 WAC, Cosmetology, barber, manicurist, esthetician rules.

Hearing Location(s): Capital Events Center, ESD 113, 6005 Tyee Drive S.W., Tumwater, WA 98512, on August 28, 2017, at 10:00 a.m.

Date of Intended Adoption: August 29, 2017.

Submit Written Comments to: Cameron Dalmas, Department of Licensing, Cosmetology Program, P.O. Box 9026, Olympia, WA 98507, email pssunit@dol.wa.gov, fax (360) 664-2550, by August 27, 2017.

Assistance for Persons with Disabilities: Contact Cameron Dalmas by August 27, 2017, TTY 711 or (360) 664-6643.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed language amends rules for schools to clarify requirements for initial school licensure, facilities, school closure, school catalogs, enrollment contracts, and cancellation and refund policies. The proposed language also updates language by adding

the words hair design and master esthetician throughout the chapter to be consistent with chapter 18.16 RCW.

Reasons Supporting Proposal: Regulated licensees, including the cosmetology, hair design, barbering, esthetics and manicuring advisory board have requested rule amendments for schools and apprentice salons and to update existing language to make it consistent with RCW.

Statutory Authority for Adoption: RCW 18.16.030, 43.24.023.

Statute Being Implemented: Chapter 18.16 RCW.

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

Name of Proponent: Department of licensing, cosmetology program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Colard, Administrator, 6135 Martin Way East, #A, Lacey, WA 98616 [98516], (360) 664-6647.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are exempt under RCW 19.85.025(3) and 34.05.310 (4)(d), this rule clarifies language without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is exempt from this requirement under RCW 34.05.328 (5)(a).

July 17, 2017
Damon Monroe
Rules Coordinator

WSR 17-15-084
PROPOSED RULES
DEPARTMENT OF COMMERCE

[Filed July 17, 2017, 1:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-03-065.

Title of Rule and Other Identifying Information: Chapter 365-196 WAC, Procedural criteria for adopting comprehensive plans and development regulations.

Hearing Location(s): Washington State Department of Commerce, 1011 Plum Street S.E., Building 5, Large Conference Room 307, Olympia, WA, on August 23, 2017, at 10 a.m.

Date of Intended Adoption: September 22, 2017.

Submit Written Comments to: Scott Kuhta, 10 North Post Street, Suite 445, Spokane, WA 99201, email scott.kuhta@commerce.wa.gov, by 5 p.m. on August 23, 2017.

Assistance for Persons with Disabilities: Contact Scott Kuhta by August 10, 2017, TTY (360) 586-0772 or (509) 795-6884.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend existing rules to reflect recent growth management hearings board (GMHB) cases and supreme court decisions pertaining to development regulations and the adequate protection of critical areas functions and values where agricultural activities take place. The proposal also adopts amendments to reflect

legislative changes to the Growth Management Act (GMA), which was amended in 2011 to include a chapter on the voluntary stewardship program (RCW 36.70A.700). This includes amending rules to add the statutory definition for "agricultural activities," to describe the responsibility of counties enrolled in the voluntary stewardship program when conducting a periodic review and update of comprehensive plans and development regulations, to clarify the relationship between the shoreline management program and the voluntary stewardship program, and to provide direction on the exemption of agricultural activities in critical areas. Additionally, a housekeeping amendment is proposed to comply with updated definitions in RCW 82.02.090. The rule update also includes a new section (WAC 365-196-832) within chapter 365-196 WAC, to provide specific guidance for implementing the voluntary stewardship program. The proposal amends five rules and creates one new rule. The following five rules were created and amended to reflect new or amended statutes and GMHB cases: WAC 365-196-200, 365-196-580, 365-196-610, 365-196-830, 365-196-832 (new), and 365-196-850.

Reasons Supporting Proposal: To bring the rules into conformance with legislative changes to GMA, RCW 36.70A.700, 82.02.090, and to reflect recent GMHB cases and supreme court decisions.

Statutory Authority for Adoption: RCW 36.70A.050 and 36.70A.190.

Statute Being Implemented: Chapter 36.70A RCW and RCW 82.02.090.

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

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

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Kuhta, 10 North Post Street, Suite 445, Spokane, WA 99201, (509) 795-6884; and Enforcement: No enforcement authority.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposed changes reflect direct statutory requirements that impose no direct obligations. Chapter 365-196 WAC provides guidance to counties and cities regarding implementation of the GMA. Counties and cities consider these rules, but they are not binding on counties and cities. In choosing how to implement the GMA, using the guidance in the rules, counties and cities may or may not choose to revise their comprehensive plans, development regulations, and other local land use ordinances. The rules are not substantive and if the local government does not follow the rules, they are not subject to any penalty or sanction nor do the rules establish standards for the issuance of a license.

Although the choices made by local governments may result in some impacts to many types and sizes of businesses, these rules do not directly regulate any businesses. Instead, they provide guidance to local governments in developing their plans and regulations. Thus, it can be determined that the rules do not impose more than minor costs on businesses in an industry, and a small business economic impact statement is not required.

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

July 17, 2017
Jaime Rossman
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-196-200 Statutory definitions. The following definitions are contained in chapter 36.70A RCW and provided under this section for convenience. Most statutory definitions included in this section are located in RCW 36.70A.030. Other relevant statutory terms defined elsewhere in chapter 36.70A RCW are also included in this section.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.

(3) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock and that has long-term commercial significance for agricultural production.

~~((3))~~ (4) "City" means any city or town, including a code city.

~~((4))~~ (5) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

~~((5))~~ (6) "Critical areas" include the following areas and ecosystems:

- (a) Wetlands;
- (b) Areas with a critical recharging effect on aquifers used for potable water;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.

"Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

~~((6))~~ (7) "Department" means the department of commerce.

~~((7))~~ (8) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning

ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

~~((8))~~ (9) "Essential public facilities" includes those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

~~((9))~~ (10) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.110, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered:

- (a) The proximity of the land to urban, suburban, and rural settlements;
- (b) Surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses;
- (c) Long-term local economic conditions that affect the ability to manage for timber production; and
- (d) The availability of public facilities and services conducive to conversion of forest land to other uses.

~~((10))~~ (11) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

~~((11))~~ (12) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

~~((12))~~ (13) "Master planned resort" means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

~~((13))~~ (14) "Minerals" include gravel, sand, and valuable metallic substances.

~~((14))~~ (15) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

~~((15))~~ (16) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

~~((16))~~ (17) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

~~((17))~~ (18) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

~~((18))~~ (19) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

~~((19))~~ (20) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

~~((20))~~ (21) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.170 (1)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

~~((21))~~ (22) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

~~((22))~~ (23) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

* RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-580 Integration with the Shoreline Management Act. (1) For shorelines of the state, the goals and policies of the Shoreline Management Act as set forth under RCW 90.58.020 are added as one of the goals of this chapter as set forth under RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted pursuant to the procedures under chapter 90.58 RCW rather than the goals, policies, and procedures set forth in chapter 36.70A RCW for the adoption of a comprehensive plan or development regulations.

(3)(a) The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with chapter 36.70A RCW except as the shoreline master program is required to comply with the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105.

(b) Except as otherwise provided in (c) of this subsection, development regulations adopted under chapter 36.70A RCW to protect critical areas within shorelines of the state apply within shorelines of the state until the department of ecology approves one of the following: A comprehensive master program update, as defined under RCW 90.58.030; a segment of a master program relating to critical areas, as provided under RCW 90.58.090; or a new or amended master program approved by the department of ecology on or after March 1, 2002, as provided under RCW 90.58.080. The

adoption or update of development regulations to protect critical areas under chapter 36.70A RCW prior to department of ecology approval of a master program update as provided in this subsection is not a comprehensive or segment update to the master program.

(c)(i) Until the department of ecology approves a master program or segment of a master program as provided in (b) of this subsection, a use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the local government's development regulations to protect critical areas may continue as a conforming use and may be redeveloped or modified if:

(A) The redevelopment or modification is consistent with the local government's master program; and

(B) The local government determines that the proposed redevelopment or modification will result in no net loss of shoreline ecological functions. The local government may waive this requirement if the redevelopment or modification is consistent with the master program and the local government's development regulations to protect critical areas.

(ii) For purposes of (c) of this subsection, an agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification. "Agricultural activity," as used in (c) of this subsection, has the same meaning as defined under RCW 90.58.065.

(d) Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of chapter 36.70A RCW, except as provided in subsection (6) of this section. Nothing in chapter 321, Laws of 2003 or the act is intended to affect whether or to what extent agricultural activities, as defined under RCW 90.58.065, are subject to chapter 36.70A RCW.

(e) The provisions under RCW 36.70A.172 shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter 90.58 RCW and applicable guidelines. Nothing in this section; however, is intended to limit or change the quality of information to be applied in protecting critical areas within shorelines of the state, as required under chapter 90.58 RCW and applicable guidelines.

(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW 90.58.060.

(5) Shorelines of the state shall not be considered critical areas under chapter 36.70A RCW except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided under RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur

within shorelines of the state, as authorized under RCW 90.58.030 (2)(f), then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW 36.70A.060(2).

(7) County participation in the voluntary stewardship program does not change applicability of the Shoreline Management Act, or requirements of local shoreline master programs.

(a) As required by RCW 90.58.065, shoreline master programs shall not limit or modify existing and ongoing agricultural activities occurring on agricultural lands.

(b) Master programs shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities.

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. (1) Requirements.

(a) Counties and cities must periodically take legislative action to review and, if necessary, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the act. This review and revision, required under RCW 36.70A.130(1), is referred to in this section as the periodic update.

(b) Deadlines for periodic update. Comprehensive plans and development regulations are subject to periodic update on a schedule established in RCW 36.70A.130(5).

(i) Deadlines for completion of periodic review are as follows:

Table WAC 365-196-610.1

Deadlines for Completion of Periodic Review 2015 - 2018

Update must be complete by June 30 of:	Affected counties and the cities within:
2015/2023	King, Pierce, Snohomish
2016/2024	Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, Whatcom
2017/2025	Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, Yakima
2018/2026	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, Whitman

(ii) Certain smaller, slower-growing counties and cities may take up to an additional two years to complete the update.

(A) The eligibility of a county for the two-year extension does not affect the eligibility of the cities within the county.

(B) A county is eligible if it has a population of less than fifty thousand and a growth rate of less than seventeen percent.

(C) A city is eligible if it has a population of less than five thousand, and either a growth rate of less than seventeen percent or a total population growth of less than one hundred persons.

(D) Growth rates are measured using the ten-year period preceding the due date listed in RCW 36.70A.130(5).

(E) If a city or county qualifies for the extension on the statutory due date, they remain eligible for the entire extension period, even if they no longer meet the criteria due to population growth.

(c) Taking legislative action.

(i) The periodic update must be accomplished through legislative action. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing including, at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.

(ii) Legislative action includes two components. It includes a review of the comprehensive plan and development regulations and it includes the adoption of any amendments necessary to bring the comprehensive plan and development regulations into compliance with the requirements of the act.

(d) What must be reviewed.

(i) Counties and cities that plan under RCW 36.70A.040 must review and, if needed, revise their comprehensive plans and development regulations for compliance with the act. This includes the critical areas ordinance.

(ii) Counties and cities that do not plan under RCW 36.70A.040 must review and, if needed, revise their resource lands designations and their development regulations designating and protecting critical areas.

(iii) Counties participating in the voluntary stewardship program must review and, if needed, revise their development regulations not governed by the voluntary stewardship program, except as provided in RCW 36.70A.130(8).

(e) The required scope of review. The purpose of the review is to determine if revisions are needed to bring the comprehensive plan and development regulation into compliance with the requirements of the act. The update process provides the method for bringing plans into compliance with the requirements of the act that have been added or changed since the last update and for responding to changes in land use and in population growth. This review is necessary so that comprehensive plans are not allowed to fall out of compliance with the act over time through inaction. This review must include at least the following:

(i) Consideration of the critical areas ordinance;

(ii) Analysis of urban growth area review required by RCW 36.70A.130(3) (see WAC 365-196-310);

(iii) Review of mineral resource lands designations and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060; and

(iv) Changes to the act or other applicable laws since the last review that have not been addressed in the comprehensive plan and development regulations.

(2) Recommendations for meeting requirements.

(a) Public participation program.

(i) Counties and cities should establish a public participation program that includes a schedule for the periodic update and identifies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan and clearly identify the scope of the review. Notice of the update process should be broadly disseminated as required by RCW 36.70A.035.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. For example, if an established public participation program included one public hearing on all actions having to do with the periodic update process, the public participation program could be adjusted later to provide additional public hearings to accommodate strong public interest.

(b) Review of relevant statutes and local information and analysis of whether there is a need for revisions.

(i) Amendments to the act. Counties and cities should first review amendments to the act that have occurred since the initial adoption or previous periodic update, and determine if local amendments are needed to maintain compliance with the act. The department will maintain a comprehensive list of legislative amendments and a checklist to assist counties and cities with this review.

(ii) Review and analysis of relevant plans, regulations and information. Although existing comprehensive plans and development regulations are considered compliant, counties and cities should consider reviewing development and other activities that have occurred since adoption to determine if the comprehensive plans and development regulations remain consistent with, and implement, the act. This should include at least the following:

(A) Analysis of the population allocated to a city or county during the most recent urban growth area review (see WAC 365-196-310);

(B) Consideration of critical areas and resource lands ordinances;

(C) Review of mineral resource lands designations and development regulations adopted pursuant to RCW 36.70A.-040 and 36.70A.060;

(D) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the ten-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

(E) Land use element;

(F) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

(G) Basic assumptions underlying key calculations and conclusions in the existing comprehensive plan. If recent data demonstrates that key existing assumptions are no longer

appropriate for the remainder of the twenty-year plan, counties and cities should consider updating them as part of the periodic update (see WAC 365-196-310). Counties and cities required to establish a review and evaluation program under RCW 36.70A.215, should use that information in this review (see WAC 365-196-315); and

(H) Inventories. Counties and cities should review required inventories and to determine if new data or analysis is needed. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2
Inventories Required by the Act

Requirement	RCW Location	WAC Location
Housing Inventory	36.70A.070(2)	365-196-430
Inventory and analyze existing and projected housing needs, identifying the number of housing units necessary to manage project growth.		
Capital Facilities	36.70A.070(3)	365-196-445
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.		
Transportation	36.70A.070(6)	365-196-455
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries.		

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. Cities and counties may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a city or county conducts a comprehensive plan docket cycle in the year in which the review of the comprehensive plan is completed, it must be combined with the periodic review process. Cities and counties may not conduct the periodic review and a docket of amendments as separate processes in the same year.

(b) Urban growth area (UGA) review. As part of the periodic review, cities and counties must review the areas and densities contained in the urban growth area and, if necessary, revise their comprehensive plan to accommodate the growth projected to occur in the county for the succeeding twenty-year period, as required in RCW 36.70A.130(3) (see WAC 365-196-310).

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-830 Protection of critical areas. (1)

The act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities, including those that do not plan under RCW 36.70A.040. The department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

(2) Critical areas that must be protected include the following areas and ecosystems:

- (a) Wetlands;
- (b) Areas of critical recharging effect on aquifers used for potable water;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.

(3) "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.

(4) Although counties and cities may protect critical areas in different ways or may allow some localized impacts to critical areas, or even the potential loss of some critical areas, development regulations must preserve the existing functions and values of critical areas. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm. Development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas.

(5) Counties and cities must include the best available science in developing policies and development regulations to protect functions and values of critical areas. See chapter 365-195 WAC.

(6) Functions and values must be evaluated at a scale appropriate to the function being evaluated. Functions are the conditions and processes that support the ecosystem. Conditions and processes operate on varying geographic scales ranging from site-specific to watershed and even regional scales. Some critical areas, such as wetlands and fish and

wildlife habitat conservation areas, may constitute ecosystems or parts of ecosystems that transcend the boundaries of individual parcels and jurisdictions, so that protection of their function, and values should be considered on a larger scale.

(7) Protecting some critical areas may require using both regulatory and nonregulatory measures. When impacts to critical areas are from development beyond jurisdictional control, counties and cities are encouraged to use regional approaches to protect functions and values. It is especially important to use a regional approach when giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Conservation and protection measures may address land uses on any lands within a jurisdiction, and not only lands with designated critical areas.

(8) Local government may develop and implement alternative means of protecting critical areas from some activities using best management practices or a combination of regulatory and nonregulatory programs.

(a) When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science.

(b) Local governments must review and evaluate their development regulations to assure the protection of critical areas where agricultural activities take place.

(c) Local governments shall not broadly exempt agricultural activities from their critical areas regulations.

(d) Counties participating in the voluntary stewardship program must review and, if needed, revise their development regulations not governed by the voluntary stewardship program, except as provided in RCW 36.70A.130(8).

(9) In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

NEW SECTION

WAC 365-196-832 Protection of critical areas and voluntary stewardship program. (1) Upon approval of a watershed work plan, counties participating in the voluntary stewardship program pursuant to RCW 36.70A.710 are encouraged to reference and describe their participation in the program within their critical areas development regulations. Counties should ensure their development regulations are consistent with the approved watershed work plan.

(2) Prior to the approval of a work plan by the state conservation commission director, agricultural activities located in participating watersheds as defined in RCW 36.70A.703(5) are subject to existing development regulations that protect critical areas.

(3) After watershed work plan approval, protection of functions and values of critical areas from agricultural activities located in participating watersheds as defined in RCW 36.70A.703(5) is provided by the watershed work plan and any applicable development regulations. Agricultural activi-

ties located in nonparticipating watersheds are subject to applicable development regulations that protect critical areas.

(4) **County responsibilities when withdrawing from the voluntary stewardship program.** Counties that elect to protect critical areas through the voluntary stewardship program under RCW 36.70A.710 (1)(a) may withdraw a participating watershed from the program by adopting an ordinance or resolution withdrawing the watershed from the program. A county may withdraw a watershed from the program at the end of three years, five years or eight years after receipt of funding, or any time after ten years of funding. Watersheds withdrawn from the program are subject to RCW 36.70A.710 (7)(b).

Within eighteen months after withdrawing a participating watershed from the program, counties must review and, if necessary, revise their development regulations that protect critical areas in that watershed as they specifically apply to agricultural activities. The development regulations must protect the critical area functions and values as they existed on July 22, 2011. During this interim period, counties must continue to protect critical areas in watersheds withdrawn from the program. The adopted ordinance or resolution used to withdraw participating watersheds must state how counties will continue to protect critical areas in watersheds withdrawn from the program. Counties have two options during the interim period:

(a) Adopt interim development regulations or revert to development regulations that were in place at the time of the watershed work plan approval; or

(b) Continue to implement the watershed work plan.

(5) **County responsibilities when exiting the voluntary stewardship program.** Watershed work plans that are not approved, fail, or are not funded are subject to RCW 36.70A.735(1).

Within eighteen months, counties must adopt one of the four options pursuant to RCW 36.70A.735(1). During this interim period, counties must continue to protect critical areas in areas used for agricultural activities. The four options include:

(a) Pursuant to RCW 36.70A.735 (1)(a) develop, adopt, and implement a watershed work plan approved by the state department of commerce that protects critical areas in areas used for agricultural activities while maintaining the viability of agriculture in the watershed.

(b) Pursuant to RCW 36.70A.735 (1)(b) adopt development regulations previously adopted by another local government to protect critical areas in areas used for agricultural activities. Counties may adopt another county's critical area development regulations, provided such regulations are from a region with similar agricultural activities, geography, and geology, and are from Clallam, Clark, King, or Whatcom counties at the time the voluntary stewardship program legislation was enacted, and have not been invalidated, or are from any county (including Clallam, Clark, King, or Whatcom) and have been upheld as adequately protective of critical areas functions and values in areas used for agricultural activities by the growth management hearings board or court after July 1, 2011.

(c) Pursuant to RCW 36.70A.735 (1)(c) adopt development regulations certified by the state department of com-

merce as protective of critical areas in areas used for agricultural activities.

(d) Pursuant to RCW 36.70A.735 (1)(d) review, and if necessary, revise development regulations adopted to protect critical areas as they relate to agricultural activities.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-850 Impact fees. (1) Counties and cities planning under the act are authorized to impose impact fees on development activities as part of public facilities financing. However, the financing for system improvements to serve new development must provide a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(2) The decision to use impact fees should be specifically implemented through development regulations. The regulations should call for a specific finding on all three of the following limitations whenever an impact fee is imposed. The impact fees:

(a) Must only be imposed for system improvements that are reasonably related to the new development. "System improvements" (in contrast to "project improvements") are public facilities included in the capital facilities plan that are designed to provide service to service areas within the community at large;

(b) Must not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Must be used for system improvements that will reasonably benefit the new development.

(3) Impact fees may be collected and spent only for the following capital facilities owned or operated by government entities:

(a) Public streets and roads;

(b) Publicly owned parks;

(c) Open space and recreation facilities;

(d) School facilities; and

(e) Fire protection facilities (~~in jurisdictions that are not part of a fire district~~).

(4) Capital facilities for which impact fees will be imposed must have been addressed in a capital facilities plan element which identifies:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

(5) The local ordinance by which impact fees are imposed must conform to the provisions of RCW 82.02.060. The department recommends that jurisdictions include the authorized exemption for low-income housing.

WSR 17-15-090

PROPOSED RULES

DEPARTMENT OF

EARLY LEARNING

[Filed July 18, 2017, 9:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-22-080.

Title of Rule and Other Identifying Information: WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care.

Hearing Location(s): Department of Early Learning (DEL), State Office, 110 Jefferson Street S.E., Room 113, Olympia, WA, on August 22, 2017, at 10:30 a.m.

Date of Intended Adoption: August 23, 2017.

Submit Written Comments to: Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, email rules@del.wa.gov, fax (360) 725-4925, by August 22, 2017.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by August 18, 2017, (360) 725-4670.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establish units of care thresholds for working connections child care that require DSHS supervisor approval. Also, limit family, friends and neighbor child care providers' authorizations under the one hundred ten hour rule where the child needs less than five hours of care per day.

Reasons Supporting Proposal: Ensure that authorizations for full-time care are right-sized to fit families' care needs and prevent provider billing errors.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Statute Being Implemented: Chapter 43.215 RCW.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Matt Judge, Child Care Administrator and Subsidy Policy Supervisor, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-4665; Implementation and Enforcement: DEL and DSHS, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DEL does not voluntarily make that section applicable to the adoption of this rule.

July 18, 2017

Ross Hunter

Director

AMENDATORY SECTION (Amending WSR 16-19-107, filed 9/21/16, effective 10/22/16)

WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care. (1) DSHS ~~((may))~~ will authorize ~~((and pay for))~~ the following:

(a) Full-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care between five and ten hours per day;

(b) Half-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day;

(c) Hourly child care for in-home/relative child care;

(d) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full-time care means the following:

(i) For licensed care or certified facilities, twenty-three full-day units if the child needs five or more hours of care per day, or thirty half-day units if the child needs fewer than five hours of care per day; and

(ii) Two hundred thirty hours for in-home/relative child care if the child needs five or more hours of care per day or one hundred fifteen hours for in-home/relative child care if the child needs fewer than five hours of care per day. Supervisor approval is required for DSHS to authorize more than two hundred thirty hours of in-home/relative child care in a calendar month for a single child.

(e) A registration fee (under WAC 170-290-0245);

(f) A field trip fee (under WAC 170-290-0247);

(g) Special needs care when the child has a documented need for a higher level of care (under WAC 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and

(h) A nonstandard hours bonus under WAC 170-290-0249.

(2) Beginning September 1, 2016, and applicable to school-age children, DSHS will authorize and pay for child care as follows:

(a) DSHS will automatically increase half-day authorizations to full-day authorizations beginning the month of June when the child needs full-day care; ~~((and))~~

(b) DSHS will automatically decrease full-day authorizations to half-day authorizations beginning the month of September unless the child continues to need full-day care during the school year until the following June. If the consumer's schedule has changed and more care is needed, the consumer must request an increase, and DSHS will verify the need for increased care. DSHS will send the consumer notification of the decrease as stated in WAC 170-290-0025; and

(c) Beginning September 1, 2017, DSHS will authorize one hundred fifteen hours of child care for the in-home/relative provider and DSHS will authorize additional contingency hours of care needed for the school-aged child by the in-home/relative provider when the child needs full-time care. Contingency hours will have a variable monthly limit and be available for each month of the calendar year. Supervisor approval is required when a school-aged child needs more than two hundred thirty hours of in-home/relative child care a month.

(3) DSHS may authorize up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site.

"Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.

"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

(4) DSHS authorizes overtime care if:

(a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and

(b) The provider's written policy is to charge all families for these hours of care in excess of ten hours per day.

(5) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits cannot receive those benefits for their own children during the hours in which they provide subsidized child care.

WSR 17-15-091

PROPOSED RULES

DEPARTMENT OF

EARLY LEARNING

[Filed July 18, 2017, 9:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-22-080.

Title of Rule and Other Identifying Information: WAC 170-290-0220 Special needs rates—Qualification and required documentation.

Hearing Location(s): Department of Early Learning (DEL), State Office, 110 Jefferson Street S.E., Room 113, Olympia, WA, on August 22, 2017, at 10:30 a.m.

Date of Intended Adoption: August 23, 2017.

Submit Written Comments to: Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, email rules@del.wa.gov, fax (360) 725-4925, by August 22, 2017.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by August 18, 2017, (360) 725-4670.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The revision impacts families who are authorized to participate in the working connections child care subsidy program. The revision will relieve families who have qualified for a special needs rate of the requirement to submit a new verification for review or when changing providers, if the child's condition has been verified to be life-long and not improving.

Reasons Supporting Proposal: Improve program delivery for families who qualify for special needs subsidy rates by removing duplicative requirements to produce verifying documents.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Matt Judge, Child Care Administrator and Subsidy Policy Supervisor, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-4665; Implementation and Enforcement: DEL and DSHS, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DEL does not voluntarily make that section applicable to the adoption of this rule.

July 18, 2017
Ross Hunter
Director

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0220 Special needs rates—Qualification and required documentation. (1) **Qualification.** To qualify for a special needs rate in addition to the base rate, the consumer must request a special needs review for the child. The child must either:

(a) Be thirteen up to nineteen years of age and be under court supervision; or

(b) Be less than nineteen years of age and have a verified physical, mental, emotional, or behavioral condition that requires a higher level of care needed in the child care setting.

(2) **Required documentation.** The documentation must:

(a) Support the severity of the condition and level of care required to meet that child's need;

(b) Describe the child's additional needs above the daily routine care required under chapter 170-295, 170-296A, or 170-297 WAC, for child care providers who are licensed or certified, or WAC 170-290-0130 and 170-290-0138 for child care providers who provide in-home/relative care;

(c) Address relevant areas, such as ambulatory assistance, feeding, hygiene assistance, communication, or behavior as applicable and as needed by the child;

(d) Include the DEL special needs request form, one completed separately by the consumer and the provider; and

(e) Have the child's condition and need for higher level of care verified by an individual who is not employed by the child care facility nor a relative of the provider or the child's family, and is either a:

(i) Health, mental health, education or social service professional with at least a master's degree; or

(ii) Registered nurse.

New verification is not required at review or provider change, if the child's condition has been verified to be life-long and not improving;

(f) Include one or more of the following completed forms from a person listed in (e) of this subsection:

(i) Medical or psychological reports from a mental health professional;

(ii) Medical reports or statements from a medical health profession;

(iii) Individualized education plan (IEP);

(iv) Individual health plan (IHP);

(v) Individual family service plan (IFSP);

(vi) Basic health records from the health care provider;

or

(vii) Comprehensive assessments from a mental health professional.

(g) For one-on-one care, the name of the person providing the care.

(3) **Special needs review.**

(a) DSHS processes all Level 1 special needs cases.

(b) DEL and DSHS jointly review Level 2 special needs cases.

(c) DEL and DSHS jointly review special needs requests for children thirteen years of age through nineteen years of age.

(d) All requests for Levels 1 and 2 special needs additional rates are decided within fifteen consecutive days of the initial request. The fifteen-day time limit begins on the day after the date that the consumer and provider provide all of the required verification for that case as provided in this section.

(e) The provider will be notified of the approval or denial of a Level 2 special needs additional rate request within fourteen calendar days of the decision.

(4) **Purpose of special needs rate.** WCCC does not pay for the provider's training needs to care for a specific child or for the child's equipment needs while in the child care setting. The special needs rate is for care provided in addition to the daily routine care required under chapter 170-295, 170-296A, or 170-297 WAC, for child care providers who are licensed or certified, or WAC 170-290-0130 and 170-290-0138 for child care providers who provide in-home/relative care.

WSR 17-15-092
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 18, 2017, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-096.

Title of Rule and Other Identifying Information: Chapter 296-19A WAC, Vocational rehabilitation (Option 2).

Hearing Location(s): Department of Labor and Industries (L&I), Auditorium, 7273 Linderson Way S.W., Tumwater, WA 98501, on August 22, 2017, at 1:00 p.m.

Date of Intended Adoption: September 19, 2017.

Submit Written Comments to: Laurinda Grytness, P.O. Box 44329, Olympia, WA 98504-4329, email laurinda.grytness@lni.wa.gov, fax (360) 902-6706 by August 23, 2017, 5:00 p.m.

Assistance for Persons with Disabilities: Contact L&I's return to work partnerships program by August 8, 2017, TTY (360) 902-5797 or (360) 902-6741.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules provide further clarification about Option 2 benefits. After a worker's vocational retraining plan is approved by the department, the worker can elect Option 2, which allows the worker access to training funds for a self-directed training plan. The worker can use up to ten percent of the Option 2 training funds for vocational counseling and job placement services if the worker's vocational retraining plan was approved on or after July 31, 2015.

Amended WAC 296-19A-010 Definitions, 296-19A-040 What vocational rehabilitation services require authorization?, 296-19A-120 What reports are required when vocational rehabilitation plan implementation and monitoring services are completed?, 296-19A-320 What other requirements are providers required to follow?, 296-19A-350 What are the requirements for case notes? and 296-19A-400 What records are vocational rehabilitation providers required to maintain?; new WAC 296-19A-627 If the worker has more than one open claim and is approved for vocational retraining, can the worker pick Option 1 on one claim and Option 2 on the other?, 296-19A-629 After the worker has elected Option 2, can the worker elect Option 1?, 296-19A-631 What are Option 2 vocational counseling and job placement services?, 296-19A-633 Who can deliver Option 2 vocational counseling and job placement services?, 296-19A-635 Who pays the vocational provider for Option 2 vocational counseling and job placement services?, and 296-19A-637 How are vocational counseling and job placement services delivered?

If adopted, the proposed rules will:

- Revise wording to make the rules easier to understand.
- Explain the worker's option election limits.
- Define Option 2 vocational counseling and job placement services.
- Specify who can provide Option 2 vocational counseling and job placement services.
- Describe how Option 2 vocational counseling and job placement services are delivered.
- List the vocational provider's Option 2 reporting requirements.
- Outline how Option 2 vocational bills are charged and paid.

The proposed rules were developed in consultation with the vocational subcommittee.

Reasons Supporting Proposal: Rule making is needed to implement chapter 137, Laws of 2015 (SHB 1496).

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030; chapter 137, Laws of 2015 (SHB 1496).

Statute Being Implemented: Chapter 137, Laws of 2015 (SHB 1496).

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Laurinda Grytness, Tumwater, Washington, (360) 902-6362; Implementation: Mike Ratko, Tumwater, Washington, (360)

902-6369; and Enforcement: Victoria Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The small business economic impact statement is not needed because the proposed rules do not impose more than minor costs.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Laurinda Grytness, P.O. Box 44329, Olympia, WA 98504-4329, phone (360) 902-6362, fax (360) 902-6706, email laurinda.grytness@LNI.WA.GOV.

July 18, 2017

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-010 Definitions. (1) What does it mean to say an injured worker is employable?

(a) "Employable" means having the skills and training that are commonly and currently necessary in the labor market to be capable of performing and obtaining gainful employment on a reasonably continuous basis when considering the worker's:

- (i) Age, education, and experience;
- (ii) Preexisting physical and mental limitations; and
- (iii) Physical and mental limitations caused, at least in part, by the worker's industrial injury or occupational disease.

(b) Physical and/or mental conditions that arose after the industrial injury/occupational disease that were not caused or aggravated by the industrial injury/occupational disease are not considered in determining whether the worker is employable under the Industrial Insurance Act.

(c) If there are no physical or mental restrictions caused by the worker's industrial injury/occupational disease, the worker must be found employable under the Industrial Insurance Act.

(2) What are vocational rehabilitation services?

Vocational rehabilitation services are those provided by a vocational rehabilitation provider and include, but are not limited to, the following:

- (a) Gathering industrially injured or ill workers' work and/or education histories and physical capacities information;
- (b) Assessing industrially injured or ill workers' employability;
- (c) Developing, documenting, and writing vocational rehabilitation plans;
- (d) Monitoring injured workers' progress during training;
- (e) Writing progress reports;
- (f) Analyzing and documenting the transferable skills of the injured worker and writing transferable skills analyses;
- (g) Performing occupational research;
- (h) Conducting labor market surveys and writing labor market survey reports;
- (i) Conducting and writing job analyses;
- (j) Communicating with industrially injured or ill workers, employers, physicians and others;

(k) Developing job modifications and work site modifications, as well as prejob accommodations, and writing reports for this work; ~~((and))~~

(l) All work done to obtain any job with any employer for injured workers referred for vocational rehabilitation services; ~~and~~

(m) Providing the Option 2 vocational services listed in WAC 296-19A-631.

(3) What is a vocational rehabilitation provider (provider)? A provider is any person, firm, partnership, corporation, or other legal entity that provides vocational rehabilitation services to industrially injured or ill workers, pursuant to Title 51 RCW ((51.32.095)). A provider must meet the qualifications listed in WAC 296-19A-210.

(4) What is an injured worker's labor market? Generally, the worker's relevant labor market is the geographic area where the worker was last gainfully employed. The labor market must be within a reasonable commuting distance and be consistent with the industrially injured or ill worker's physical and mental capacities. The exceptions to this rule are listed in the table below:

When a worker:	Then the department:
<ul style="list-style-type: none"> Relocates to a labor market other than at the time of injury and Returns to work and Suffers an aggravation of the work-related condition. 	Uses the labor market where the industrially injured or ill worker worked at the time of the aggravation. This applies whether the department closed and reopened the claim or whether the claim remained open during the period of aggravation.
<ul style="list-style-type: none"> Relocates after the industrial injury/illness or aggravation and Now lives in a labor market with more employment opportunities than where the industrially injured or ill worker worked at the time of injury. 	Uses the industrially injured or ill worker's current labor market. For example, an industrially injured or ill worker was injured in Forks but after the injury, moves to Tacoma. Provider would use Tacoma as the industrially injured or ill worker's labor market.
<ul style="list-style-type: none"> Relocates to a labor market other than at the time of injury or onset of illness and The move was proximately caused by the medical condition arising from the occupational injury or disease. 	Uses the injured or ill worker's current labor market. For example, an industrially injured or ill worker moves to a drier climate due to an accepted asthma condition. Provider would use the labor market in the drier climate.

(5) What is a labor market survey (LMS)? It is a survey of employers in an industrially injured or ill worker's

labor market to obtain specific information (such as physical demands and qualifications) related to job possibilities.

(6) What is a job analysis (JA)? It is the gathering, evaluating, and recording of accurate, objective data about the characteristics of a particular job.

(7) What is a transferable skill? Transferable skills are any combination of learned or demonstrated behavior, education, training, work traits, and work-related skills that can be readily applied by the worker. They are skills that are interchangeable among different jobs and workplaces. Nonwork-related talents or skills that are both demonstrated and applicable may also be considered.

(8) What is a transferable skills analysis? It is a systematic study of the transferable skill or skills a worker has demonstrated to see if that skill set makes him/her employable.

(9) What are job modifications? Job modifications are adjustments or alterations made to the way a job is performed to accommodate the restrictions imposed by an industrial injury or occupational disease. The purpose of job modification benefits is to encourage employers to modify jobs to retain or hire injured workers. Job modifications are used when an employer-employee relationship exists, and they may include worksite adjustment; job restructuring; and/or tools, equipment or appliances.

(10) What are prejob accommodations? Prejob accommodations are adjustments or alterations made to the way a job is performed to accommodate the restrictions imposed by an industrial injury or occupational disease. The purpose of prejob accommodation benefits is to make it possible for the worker to perform the essential functions of a job. Accommodations are used when an industrially injured or ill worker is engaged in a vocational rehabilitation plan or in a job search, and they may include tools, equipment or appliances.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-040 What vocational rehabilitation services require authorization? All vocational rehabilitation services must be preauthorized. For state fund claims, the department may make one or more of the following type of referrals: Early intervention; ability to work assessment ("AWA" or "assessment"); plan development; plan implementation; forensic services; or stand alone job analysis. Each referral is a separate authorization for vocational rehabilitation services. Option 2 vocational services are considered authorized for state fund and self-insured claims once the department accepts the worker's election of Option 2. However, the services can only be provided upon request from the worker to the vocational provider.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-120 What reports are required when vocational rehabilitation plan implementation and monitoring services are completed? When plan implementation and monitoring services are completed, the vocational reha-

bilitation provider must submit a closing report with one of the following recommendations:

(1) **Plan successfully completed.** If the worker successfully completes the vocational rehabilitation plan, the closing report, at a minimum, must contain the following information:

(a) An assessment of the worker's employability status at the time of closure;

(b) A list of courses the worker completed and an assessment of the work-related skills acquired by the worker during the training plan;

(c) Whether the worker has returned to gainful employment. If so, list the job title, employer, return to work date, and monthly salary;

(d) A description of the barriers, if any, to the worker's ability to return to gainful employment; and

(e) A description of the job search assistance provided.

(2) **Plan not completed, Option 2 not elected.** If the worker does not successfully complete the vocational rehabilitation plan, the closing report, at a minimum, must contain the following information:

(a) An explanation of why the vocational rehabilitation plan cannot be modified or completed;

(b) An assessment of the worker's employability status at the time the plan stopped;

(c) A list of the courses completed and an assessment of the work-related skills the worker acquired during the training plan;

(d) Whether the worker has returned to work. If so, list the job title, employer, return to work date, and monthly salary; and

(e) A description of any remaining barriers that may keep the worker from returning to work.

(3) **Plan not completed, Option 2 elected.** When the vocational rehabilitation provider is notified that the worker elected Option 2 before completing the vocational rehabilitation plan, the closing report must contain:

(a) The approved retraining goal.

(b) The date the worker started the retraining.

(c) An outline of work-related skills the worker acquired during the training plan, if any.

(d) An outline of discussion with the worker about Option 2.

(e) Whether the worker has withdrawn from courses.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-320 What other requirements are providers required to follow? By rendering vocational rehabilitation services to industrially injured or ill workers under Title 51 RCW ((51.32.095)), the vocational rehabilitation provider agrees to comply with Title 51 RCW, chapters 296-19A and 296-15 WAC, and the department's fee schedule.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-350 What are the requirements for case notes? Vocational rehabilitation providers must maintain case notes. Case notes must:

(1) Include the first and last name of the industrially injured or ill worker being served and the worker's claim number at the top of each page;

(2) Include the first and last name of the vocational rehabilitation provider providing each service documented on each page;

(3) Be kept in a claimant file corresponding to the reports, medical information, correspondence, and other materials that they provide documentation for;

(4) Testing and other records with special confidentiality requirements may be kept in separate files;

(5) Be legible;

(6) Be in chronological order;

(7) Record the date each service was provided month/month/day/year year;

(8) For providers who bill for vocational services, include the amount of time, recorded in tenths of an hour, required to provide each service;

(9) Describe each service sufficiently to allow the ~~((referral source))~~ department or self-insured employer to verify the purpose, level, type, and outcome of each service provided and substantiate the charges billed for them.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-400 What records are vocational rehabilitation providers required to maintain? (1) A vocational rehabilitation provider must maintain adequate documentation in claimant-specific files to verify the level, type, and extent of the vocational rehabilitation services provided to and on behalf of industrially injured or ill workers.

(2) A vocational rehabilitation provider who requests payment from the ~~((referral source))~~ department or self-insured employer for vocational rehabilitation services must maintain all records necessary for the director's authorized auditors to audit the provision of services. Providers need to keep all records necessary to disclose the specific nature and extent of all services provided for an industrially injured or ill worker, along with the amounts billed to the department, for those services. Records must be maintained for audit purposes for a minimum of five years from the date of closure by the provider, or, in the case of Option 2 vocational services, for a minimum of five years from the last date of service.

(2) A vocational rehabilitation provider who requests payment from the ~~((referral source))~~ department or self-insured employer for vocational rehabilitation services must maintain all records necessary for the director's authorized auditors to audit the provision of services. Providers need to keep all records necessary to disclose the specific nature and extent of all services provided for an industrially injured or ill worker, along with the amounts billed to the department, for those services. Records must be maintained for audit purposes for a minimum of five years from the date of closure by the provider, or, in the case of Option 2 vocational services, for a minimum of five years from the last date of service.

NEW SECTION

WAC 296-19A-627 If the worker has more than one open claim and is approved for vocational retraining, can the worker pick Option 1 on one claim and Option 2 on the other? No. If a worker has more than one open claim and is found to be eligible for plan development services based on the effects of all injuries or illnesses related to the claim(s), the assigned vocational provider will develop one plan for the worker that takes into account the restrictions caused by all of

the worker's accepted conditions. Once the department approves that plan, the worker will be given an option election form that allows the worker to choose to perform the plan that was developed for the worker (Option 1) or to choose Option 2. The worker's election of an option on that form will apply to all the claims under which the retraining plan was developed, regardless of whether the claim(s) are state fund or covered under a self-insured employer.

NEW SECTION

WAC 296-19A-629 After the worker has elected Option 2, can the worker elect Option 1? No. The worker cannot elect Option 1 after the department has issued the order confirming the worker's Option 2 election. Exception: A worker may elect Option 1 when the Option 2 election has been rescinded as provided by RCW 51.32.096 (4)(b).

NEW SECTION

WAC 296-19A-631 What are Option 2 vocational counseling and job placement services? (1) Option 2 allows workers access to training funds for self-directed training plans. Up to ten percent of the worker's available training funds may be used for vocational counseling and job placement services if both the following are true:

(a) The worker's plan was approved on or after July 31, 2015; and

(b) The department has granted Option 2 benefits to the worker.

(2) For the purposes of this section, Option 2 vocational counseling services may include, but are not limited to:

(a) Help in accessing available community services to assist the worker with reentering the workforce.

(b) Assistance in developing a training plan.

(c) Coaching and guidance as requested by the worker.

(d) Interests and skills assessment, if the worker requests or agrees such is needed to reach the worker's training or employment goals.

(e) Other services directly related to vocational counseling, such as job readiness and interview practice.

(3) For the purposes of this section, Option 2 job placement services may include, but are not limited to:

(a) Help in developing an action plan for return to work.

(b) Job development, including contacting potential employers on the worker's behalf.

(c) Job search assistance.

(d) Job application assistance.

(e) Help in obtaining employment as a preferred worker, if certified, up to and including educating the employer on preferred worker incentives.

(f) Other services directly related to job placement, such as targeted resume development and referral to community resources such as WorkSource.

NEW SECTION

WAC 296-19A-633 Who can deliver Option 2 vocational counseling and job placement services? (1) A vocational rehabilitation counselor who meets the qualifications in WAC 296-19A-210(1) and obtains a provider number

issued by the department can deliver Option 2 vocational counseling and job placement services. Interns cannot deliver Option 2 vocational counseling and job placement services.

(2) A public sector organization that provides such services, such as WorkSource.

NEW SECTION

WAC 296-19A-635 Who pays the vocational provider for Option 2 vocational counseling and job placement services? (1) The department or self-insured employer will pay for appropriately submitted billings from the worker's Option 2 training fund, within the following limits:

(a) The payment for all Option 2 vocational counseling and job placement services will not exceed ten percent of the worker's maximum Option 2 training fund; and

(b) Vocational services must be provided within five years following the date of the department's order confirming the worker's Option 2 election.

(2) The training fund is expended in the order of bills received by the department or self-insured employer. For example, if the worker's total Option 2 training fund was seventeen thousand five hundred dollars, ten percent for vocational counseling and job placement services would be one thousand seven hundred fifty dollars. However, if the department or self-insured employer received training bills of fifteen thousand nine hundred dollars before receiving any bills for vocational counseling or job placement services, the remaining amount for vocational counseling and job placement services would be only one thousand six hundred dollars.

(3) The vocational provider must charge for services in billable hour increments according to the department's current vocational services medical aid rules and fee schedules.

(4) In addition to the services listed in WAC 296-19A-340, the department or self-insured employer will not pay for vocational travel or wait time.

(5) Under no circumstance may the vocational provider bill the worker directly for services.

NEW SECTION

WAC 296-19A-637 How are vocational counseling and job placement services delivered? (1) Beginning the date Option 2 benefits are granted, the worker can enlist the services of a qualified vocational rehabilitation provider.

(a) The worker and vocational provider must create a service agreement focused on the worker's goals. The agreement must clearly state:

(i) The worker's vocational goals.

(ii) The list of planned vocational services.

(iii) The worker's and vocational provider's responsibilities in fulfilling the agreement.

(iv) The total estimated hours and cost of planned services.

(b) Both the worker and the vocational provider must sign the agreement.

(2) At the end of each meeting with the worker the vocational provider must complete the department's Option 2 vocational services report form, listing updates since the previous report including:

(a) Names and provider numbers of all providers rendering services;

(b) Services delivered;

(c) Progress, including goals reached;

(d) Next steps; and

(e) Service hours and costs.

(3) Both the vocational provider and worker must sign each report form to verify it is correct and acceptable, and then the vocational provider must give a copy to the worker and send a copy to the department or self-insured employer.

(4) The vocational provider may not bill the department or the self-insured employer for the completion of the Option 2 vocational services report form.

(5) The worker may switch to a different qualified vocational provider any time during the five-year Option 2 training period if there are enough training funds left of the ten percent allowed to spend on Option 2 vocational services.

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Ave S.W., (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

July 18, 2017

Roselyn Marcus

Assistant Director

Legal and Legislative Affairs

WSR 17-15-096
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed July 18, 2017, 10:23 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-28-090 Can an employer adjust an employee's base salary within the employee's current salary range for recruitment, retention, or other business related reasons?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 23, 2017, at 8:30 a.m.

Date of Intended Adoption: August 23, 2017.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, email Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by August 16, 2017. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 16, 2017, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed amendment corresponds with the recent change made for Washington Federation of State Employees represented employees, which allows an employee to be placed at step M to address issues that are related to recruitment, retention or other business related reasons.

Reasons Supporting Proposal: To allow employers the ability to adjust an employee's base salary up to step M for purposes of recruitment, retention or other business related reasons.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-090 Can an employer adjust an employee's base salary within the employee's current salary range for recruitment, retention, or other business related reasons? The employer may adjust an employee's base salary up to step ((~~E~~) M) within the salary range to address issues that are related to recruitment, retention or other business related reason, such as equity, alignment, or competitive market conditions.

WSR 17-15-097
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed July 18, 2017, 10:26 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-170 At what rate do part-time employees accrue vacation leave?, 357-31-190 When can an employee start to use accrued vacation leave?, 357-31-210 What is the maximum number of hours of vacation leave that an employee can accumulate?, 357-31-215 When may vacation leave be accumulated above the maximum two hundred forty hours?, and 357-58-175 Can an employer authorize lump sum vacation leave or accelerate vacation leave accrual rates to support the recruitment and/or retention of an incumbent or candidate for a WMS position?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 23, 2017, at 8:30 a.m.

Date of Intended Adoption: August 23, 2017.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, email Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by August 16, 2017. For OFM tracking pur-

poses, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 16, 2017, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHB 1521 went into effect July 1, 2017. SHB 1521 removes the requirement that an employee must work at least six months before using accrued vacation leave. This bill also changes "thirty working days" to "two hundred forty hours" for the maximum vacation leave accrual.

Reasons Supporting Proposal: To align Title 357 WAC with the changes in SHB 1521, which was effective on July 1, 2017.

Statutory Authority for Adoption: Chapter 43.01 RCW.

Statute Being Implemented: RCW 43.01.040 and 43.01.-044.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

July 18, 2017

Roselyn Marcus

Assistant Director

Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 10-23-120, filed 11/17/10, effective 12/18/10)

WAC 357-31-170 At what rate do part-time employees accrue vacation leave? (1) Part-time general government employees accrue vacation leave (~~((credits))~~ hours) on a pro rata basis in accordance with WAC 357-31-125.

(2) Part-time higher education employees accrue on the same pro rata basis that their appointment bears to a full-time appointment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-210 What is the maximum number of hours of vacation leave that an employee can accumulate? Vacation leave may be accumulated to a maximum of (~~((thirty working days (240))~~) two hundred forty hours((+))). Exceptions to this maximum are described in WAC 357-31-215.

AMENDATORY SECTION (Amending WSR 09-23-057, filed 11/12/09, effective 12/15/09)

WAC 357-31-215 When may vacation leave be accumulated above the maximum two hundred forty hours? There are two circumstances in which vacation leave may be accumulated above the maximum of (~~((thirty working days~~ (+))two hundred forty hours((+))).

(1) If an employee's request for vacation leave is denied by the employer, and the employee is close to the maximum vacation leave (two hundred forty hours), the employer must grant an extension for each month that the employer defers the employee's request for vacation leave. The employer must maintain a statement of necessity justifying the extension.

(2) As an alternative to subsection (1) of this section, employees may also accumulate vacation leave in excess of two hundred forty hours as follows:

(a) An employee may accumulate the vacation leave (~~((days))~~ hours) between the time (~~((thirty days))~~ the two hundred forty hours) is accrued and his/her next anniversary date of state employment.

(b) Leave accumulated above two hundred forty hours must be used by the next anniversary date and in accordance with the employer's leave policy. If such leave is not used before the employee's anniversary date, the excess leave is automatically lost and considered to have never existed.

(c) A statement of necessity, as described in subsection (1) of this section, can only defer leave that the employee has not accrued as of the date of the statement of necessity. Any accrued leave in excess of two hundred forty hours as of the date of the statement of necessity cannot be deferred regardless of circumstances. For example:

On June 15th, an employee is assigned to work on a special project. It is expected that the assignment will last six months. Due to an ambitious timeline and strict deadlines, the employee will not be able to take any vacation leave during that time.

- On June 15th, the employee's vacation leave balance is two hundred sixty hours.
- The employee accrues ten hours monthly.
- The employee's anniversary date is October 16th.

Because the employee will not be able to use leave from June 15th through December 15th the employee files a statement of necessity asking to defer the leave accrued during this time. This deferred leave will not be lost as long as the employee uses the deferred hours by their next anniversary date (October 16th of the following year).

The twenty hours of excess vacation leave the employee had on June 15th are not covered by the statement of necessity.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-31-190 When can an employee start to use accrued vacation leave?

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-175 Can an employer authorize lump sum vacation leave or accelerate vacation leave accrual rates to support the recruitment and/or retention of an incumbent or candidate for a WMS position? In addition to the vacation leave accruals as provided in WAC 357-31-165, an employer may authorize additional vacation leave as follows to support the recruitment and/or retention of an incumbent or candidate for a specific WMS position:

(1) Employers may authorize an accelerated accrual rate for an incumbent or candidate; and/or

(2) Employers may authorize a lump sum accrual of up to eighty hours of vacation leave for the incumbent or candidate.

Vacation leave accrued under this section must be used in accordance with the leave provisions of chapter 357-31 WAC (~~and cannot be used until the employee has completed six continuous months of service~~).

Statutory Authority for Adoption: Chapter 41.06 RCW.
Statute Being Implemented: RCW 41.06.150.
Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

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July 18, 2017

Roselyn Marcus
Assistant Director
Legal and Legislative Affairs

WSR 17-15-098
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed July 18, 2017, 10:29 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-28-295 Who may provide performance recognition pay to employees?, 357-28-300 Is there a limit to the amount an employee can receive for performance recognition pay?, 357-58-135 Who can provide lump sum performance recognition payment to employees?, and 357-58-140 Is there a limit to the amount an employee can receive for performance recognition pay?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 23, 2017, at 8:30 a.m.

Date of Intended Adoption: August 23, 2017.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, email Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by August 16, 2017. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 16, 2017, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing to repeal the above-cited rules, as the director does not plan to approve requests for performance recognition pay due to the state's current economic situation.

Reasons Supporting Proposal: In June 2016, state human resources revised the performance management confirmation and amended the corresponding WAC to discontinue performance recognition pay based on current research.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 357-28-295 Who may provide performance recognition pay to employees?

WAC 357-28-300 Is there a limit to the amount an employee can receive for performance recognition pay?

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 357-58-135 Who can provide lump sum performance recognition payment to employees?

WAC 357-58-140 Is there a limit to the amount an employee can receive for performance recognition pay?

WSR 17-15-099
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed July 18, 2017, 10:33 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-58-136 Can an employer authorize a lump sum payment to support recruitment and/or retention of a WMS position? and 357-58-137 For what reasons may a WMS employee be

required to pay back the recruitment and/or retention lump sum payment?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 23, 2017, at 8:30 a.m.

Date of Intended Adoption: August 23, 2017.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, email Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by August 16, 2017. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 16, 2017, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing to create these rules to allow employers, with director approval, to offer additional pay to Washington management service (WMS) employees to support recruitment and retention.

Reasons Supporting Proposal: Currently, WMS employees may only receive performance recognition leave where Washington general service employees may receive additional pay to support recruitment and retention. This will allow OFM state human resources to accurately report pay used for this reason rather than the use of performance recognition payments.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

July 18, 2017

Roselyn Marcus

Assistant Director

Legal and Legislative Affairs

NEW SECTION

WAC 357-58-136 Can an employer authorize a lump sum payment to support recruitment and/or retention of a WMS position? (1) With director approval, employers may authorize up to a fifteen percent lump sum payment in addition to the employee's base salary to support the recruitment and/or retention of the incumbent or candidate for a specific WMS position.

(2) An employee may not receive more than fifteen percent of their annual base salary over a twelve-month period.

(3) In advance of authorizing a lump sum payment for recruitment and/or retention, employers must establish express conditions in writing for the payment. The conditions must include a specified period of employment or continued employment. Any lump sum payment under this section must only be made after services have been rendered in accordance with conditions established by the employer.

NEW SECTION

WAC 357-58-137 For what reasons may a WMS employee be required to pay back the recruitment and/or retention lump sum payment? If the employee receiving the recruitment and/or retention lump sum payment terminates or causes termination with the state within one year of the date of appointment or transfer, that employee may be required to pay back the lump sum payment. If the termination is a result of layoff, disability separation, or other good cause as determined by the agency director, the employee will not have to pay back the lump sum payment.

WSR 17-15-108

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed July 18, 2017, 12:50 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-326 When may an employer grant leave with pay?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 23, 2017, at 8:30 a.m.

Date of Intended Adoption: August 23, 2017.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, email Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by August 16, 2017. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 16, 2017, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2017-2019 operating budget that was passed by the senate and the house, and signed by the governor, went into effect July 1, 2017. The budget provided funding for an additional day of leave with pay for rest and recuperation after twenty-one consecutive days of performing emergency work under an incident command system as defined in RCW 38.52.010 for department of natural resource[s] employees. This benefit is provided in the 2017-2019 collective bargaining agreement.

Reasons Supporting Proposal: To align Title 357 WAC with the changes funded in the 2017-2019 operating budget, which was effective on July 1, 2017.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.133.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

July 18, 2017
Roselyn Marcus
Assistant Director
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 17-11-049, filed 5/15/17, effective 6/19/17)

WAC 357-31-326 When may an employer grant leave with pay? (1) An employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including but not limited to firefighting, search and rescue efforts, or donating blood. Leave granted to participate in life-giving procedures must not exceed five days in a two-year period.

(2) In the department of natural resources, leave with pay equivalent to one regular workshift **may** be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010. The employer may grant one additional day of leave with pay for rest and recuperation after twenty-one consecutive calendar days performing emergency work under an incident command system.

WSR 17-15-109
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed July 18, 2017, 12:53 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-165 At what rate do employees accrue vacation leave? and 357-31-166 At what rate do higher education employees accrue vacation leave?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 23, 2017, at 8:30 a.m.

Date of Intended Adoption: August 23, 2017.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, email Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by August 16, 2017. For OFM tracking pur-

poses, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 16, 2017, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2017-2019 operating budget that was passed by the senate and the house, and signed by the governor, went into effect July 1, 2017. The budget provided funding for an increased vacation leave accrual for general government state employees. A new section is created for higher education employers so they may establish accrual rates that exceed the current rates prior to July 1, 2017.

Reasons Supporting Proposal: To align Title 357 WAC with the changes funded in the 2017-2019 operating budget, which was effective on July 1, 2017.

Statutory Authority for Adoption: Chapter 43.01 RCW.

Statute Being Implemented: RCW 43.01.040 and 43.01.-044.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

July 18, 2017
Roselyn Marcus
Assistant Director
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 09-03-012, filed 1/9/09, effective 2/13/09)

WAC 357-31-165 At what rate do employees accrue vacation leave? (1) Full-time general government employees accrue vacation leave at the following rates:

(a) During the first and second years of current continuous state employment - (~~Twelve days (eight)~~) Nine hours, twenty minutes per month(~~(+)~~);

(b) During the (~~second~~) third year of current continuous state employment - (~~Thirteen days (eight)~~) Ten hours(~~(; forty minutes)~~) per month(~~(+)~~);

(c) During the (~~third and~~) fourth year(~~s~~) of current continuous state employment - (~~Fourteen days (nine)~~) Ten hours, (~~twenty~~) forty minutes per month(~~(+)~~);

(d) During the fifth(~~(; and seventh)~~) years of total state employment - (~~Fifteen days (ten)~~) Eleven hours, twenty minutes per month(~~(+)~~);

(e) During the seventh, eighth(~~(; and tenth)~~) and ninth(~~(; and tenth)~~) years of total state employment - (~~Sixteen days (ten)~~) Twelve hours(~~(; forty minutes)~~) per month(~~(+)~~);

(f) During the ~~tenth, eleventh, twelfth, thirteenth and fourteenth~~ years of total state employment - ~~((Seventeen days (eleven)))~~ Thirteen hours, twenty minutes per month~~((-))~~;

(g) During the ~~((twelfth))~~ fifteenth, sixteenth, seventeenth, eighteenth and nineteenth years of total state employment - ~~((Eighteen days (twelve)))~~ Fourteen hours, forty minutes per month~~((-))~~;

(h) During the ~~((thirteenth))~~ twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth years of total state employment - ~~((Nineteen days (twelve)))~~ Sixteen hours~~((, forty minutes))~~ per month~~((-))~~; and

(i) During the ~~((fourteenth year of total state employment - Twenty days (thirteen hours, twenty minutes per month))~~.

~~((j) During the fifteenth year of total state employment - Twenty-one days (fourteen hours per month))~~.

~~((k) During the sixteenth))~~ twenty-fifth and succeeding years of total state employment - ~~((Twenty two days (fourteen)))~~ Sixteen hours, forty minutes per month~~((-))~~.

(2) ~~((Higher education employers may establish accrual rates that exceed the rates listed in subsection (1) of this section. This does not apply to individual positions.~~

~~((3))~~ As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or incumbent for a WMS position. Vacation leave accrual rates may only be accelerated using the rates established in subsection (1) of this section and must not exceed the maximum listed in subsection (1)(k) of this section.

~~((4))~~ (3) The following applies for purposes of computing the rate of vacation leave accrual:

(a) Employment in the legislative and/or the judicial branch except for time spent as an elected official or in a judicial appointment is credited.

(b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, 357-04-055 is not credited.

~~((c) ((Each contract year, or equivalent, of full-time faculty and/or administrative exempt employment with a higher education employer is credited as one year of qualifying service.~~

~~((d))~~ Exempt employment with a general government employer is credited, other than that specified in WAC 357-04-055 which is excluded.

NEW SECTION

WAC 357-31-166 At what rate do higher education employees accrue vacation leave? (1) Full-time higher education employees accrue vacation leave at the following rates:

(a) During the first year of continuous state employment - Twelve days (eight hours per month);

(b) During the second year of continuous state employment - Thirteen days (eight hours, forty minutes per month);

(c) During the third and fourth years of continuous state employment - Fourteen days (nine hours, twenty minutes per month);

(d) During the fifth, sixth, and seventh years of total state employment - Fifteen days (ten hours per month);

(e) During the eighth, ninth, and tenth years of total state employment - Sixteen days (ten hours, forty minutes per month);

(f) During the eleventh year of total state employment - Seventeen days (eleven hours, twenty minutes per month);

(g) During the twelfth year of total state employment - Eighteen days (twelve hours per month);

(h) During the thirteenth year of total state employment - Nineteen days (twelve hours, forty minutes per month);

(i) During the fourteenth year of total state employment - Twenty days (thirteen hours, twenty minutes per month);

(j) During the fifteenth year of total state employment - Twenty-one days (fourteen hours per month);

(k) During the sixteenth and succeeding years of total state employment - Twenty-two days (fourteen hours, forty minutes per month).

(2) Higher education employers may establish accrual rates that exceed the rates listed in subsection (1) of this section. This does not apply to individual positions.

(3) The following applies for purposes of computing the rate of vacation leave accrual: Each contract year, or equivalent, of full-time faculty and/or administrative exempt employment with a higher education employer is credited as one year of qualifying service.

WSR 17-15-111

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed July 18, 2017, 12:57 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave?, 357-31-447 When must an employer approve a shared leave request for an employee?, 357-31-750 What is the purpose of the veterans' in-state service shared leave pool?, 357-31-755 Who shall administer the veterans' in-state service shared leave pool?, 357-31-760 What definitions apply to the veterans' in-state service shared leave pool?, 357-31-765 Must employers have a written policy regarding the veterans' in-state service shared leave pool?, 357-31-770 Is participation in the veterans' in-state service shared leave pool voluntary?, 357-31-775 What criteria does an employee have to meet to be eligible to request leave from the veterans' in-state service shared leave pool?, 357-31-780 How must employees who are receiving leave from the veterans' in-state service shared leave pool be treated during their absence?, 357-31-785 Is shared leave received under the veterans' in-state service shared leave pool included in the shared leave limits specified in RCW 41.04-665?, 357-31-790 May employees donating leave direct the donation to a specific individual?, 357-31-795 What types of leave can an employee donate for the purposes of the veterans' in-state service shared leave pool?, 357-31-800 How much leave may an employee withdraw from the veterans' in-

state service shared leave pool?, 357-31-805 What documentation may an employee seeking shared leave under the veterans' in-state service shared leave pool be required to submit?, 357-31-810 What rate of pay is paid to the employee receiving leave under the veterans' in-state service shared leave pool?, 357-31-815 What happens if the veterans' in-state service shared leave pool does not have sufficient balance to cover all leave requests?, 357-31-820 May employers establish restrictions on the amount of leave an employee may receive under this section?, 357-31-825 May an employer establish restrictions on the amount of leave an employee may donate under this section?, and 357-31-830 When an employer and/or the department of veterans' affairs has determined that abuse of the veterans' in-state service shared leave pool has occurred will the employee have to repay the shared leave drawn from the pool?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on August 23, 2017, at 8:30 a.m.

Date of Intended Adoption: August 23, 2017.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, email Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by August 16, 2017. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by August 16, 2017, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESSHB [E2SHB] 1802 creates the veterans' in-state service shared leave pool to allow state employees the ability to donate their leave to a pool so that employees that are veterans as defined under RCW 41.04.005 or employees who are spouses of veterans as defined under RCW 41.04.005 that require assistance can use leave from the pool to attend medical appointments or treatments for a service connected injury or disability.

Reasons Supporting Proposal: To align Title 357 WAC with the changes in ESSHB [E2SHB] 1802, which will be effective on July 23, 2017.

Statutory Authority for Adoption: Chapter 41.04 RCW.

Statute Being Implemented: Chapter 173, Laws of 2017.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

July 18, 2017
Roselyn Marcus
Assistant Director
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 15-11-102, filed 5/20/15, effective 6/22/15)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(b) The employee has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a non-profit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; ((☞))

(d) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655;

(e) The employee is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability; or

(f) The employee is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments.

(2) The illness, injury, impairment, condition, call to service, emergency volunteer service, consequence of domestic violence, sexual assault, or stalking, or is likely to cause, the employee to:

(a) Go on leave without pay status; or

(b) Terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete their:

(a) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

(b) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or

(c) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and accrued vacation leave if the employee qualifies under (1)(c) of this section.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 16-17-092, filed 8/18/16, effective 9/20/16)

WAC 357-31-447 When must an employer approve a shared leave request for an employee? An employer must approve a (~~new~~) shared leave request for an employee:

(1) If a shared leave account is closed and an employee later has a need to use shared leave due to the same condition listed in the closed account; or

(2) To allow employees that are veterans as defined under RCW 41.04.005, and employees that are spouses of veterans who are required to provide assistance for their spouses to attend medical appointments or treatments for a service connected injury or disability, to access shared leave from the veterans' in-state service shared leave pool.

NEW SECTION

WAC 357-31-750 What is the purpose of the veterans' in-state service shared leave pool? The veterans' in-state service shared leave pool was created to allow general government and higher education employees to voluntarily donate their leave to be used for:

(1) An employee who is a veteran as defined in RCW 41.04.005 to attend medical appointments or treatments for a service connected injury or disability; or

(2) An employee who is a spouse of a veteran as defined in RCW 41.04.005 that requires assistance while attending medical appointments or treatments for a service connected injury or disability.

NEW SECTION

WAC 357-31-755 Who shall administer the veterans' in-state service shared leave pool? The department of veterans' affairs shall administer the veterans' in-state service shared leave pool.

NEW SECTION

WAC 357-31-760 What definitions apply to the veterans' in-state service shared leave pool? The following definitions apply to the veterans' in-state service shared leave pool:

(1) "Employee" means any employee who is entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained. This does not include employees of school districts and educational service districts or those employees called to service in the uniformed services.

(2) "Monthly salary" means the monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. Monthly salary does not include overtime pay, callback pay, standby pay or performance bonuses.

(3) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(4) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

(5) "Veteran" has the meaning provided in RCW 41.04.-005.

NEW SECTION

WAC 357-31-765 Must employers have a written policy regarding the veterans' in-state service shared leave pool? Each employer must have a written policy which at a minimum must address:

(1) Eligibility requirements for use of the veterans' in-state service shared leave pool;

(2) Donation of leave;

(3) Use of pool leave; and

(4) Abuse of pool.

NEW SECTION

WAC 357-31-770 Is participation in the veterans' in-state service shared leave pool voluntary? Participation in the veterans' in-state service shared leave pool, must at all times, be voluntary on the part of the donating and receiving employee.

NEW SECTION

WAC 357-31-775 What criteria does an employee have to meet to be eligible to request leave from the veterans' in-state service shared leave pool? Employees are eligible to request leave from the veterans' in-state service shared leave pool if:

(1) The employee is a veteran and is attending medical appointments or treatments for a service connected injury or disability; or

(2) The employee is a spouse of a veteran who requires assistance while attending medical appointments or treatments for a service connected injury or disability.

NEW SECTION

WAC 357-31-780 How must employees who are receiving leave from the veterans' in-state service shared leave pool be treated during their absence? An employee using shared leave under the veterans' in-state services shared leave pool receives the same treatment in respect to salary,

wages, and employee benefits as the employee would normally receive if using accrued vacation leave or sick leave.

NEW SECTION

WAC 357-31-785 Is shared leave received under the veterans' in-state service shared leave pool included in the shared leave limits specified in RCW 41.04.665? Shared leave received under the veterans' in-state service shared leave pool is not included in the five hundred twenty-two day total specified in RCW 41.04.665.

NEW SECTION

WAC 357-31-790 May employees donating leave direct the donation to a specific individual? Leave donated under this section is "pooled" and is withdrawn from the pool by eligible employees according to priorities established by the department of veterans' affairs. Leave donated cannot be directed to a specific individual. All employees who donate must specify their intent to donate to the veterans' in-state service shared leave pool.

NEW SECTION

WAC 357-31-795 What types of leave can an employee donate for the purposes of the veterans' in-state service shared leave pool? An employee may donate vacation leave, sick leave, or all or part of a personal holiday for purposes of the veterans' in-state service shared leave pool under the following conditions:

(1) Vacation leave: The donating employee's employer approves the employee's request to donate a specified amount of vacation leave to the veterans' in-state service shared leave pool and the full-time employee's request to donate leave will not cause their vacation leave balance to fall below eighty hours after the transfer. For part-time employees, requirements for vacation leave balances are prorated.

(2) Sick leave: The donating employee's employer approves the employee's request to donate a specified amount of sick leave to the veterans' in-state service shared leave pool and the employee's request to donate leave will not cause their sick leave balance to fall below one hundred seventy-six hours after the transfer.

(3) Personal holiday: The donating employee's employer approves the employee's request to donate all or part of their personal holiday to an employee authorized to receive leave under the veterans' in-state service shared leave pool.

NEW SECTION

WAC 357-31-800 How much leave may an employee withdraw from the veterans' in-state service shared leave pool? Shared leave paid under this section, in combination with an employee's salary will not exceed the level of the employee's state monthly salary as defined in WAC 357-31-760(2).

NEW SECTION

WAC 357-31-805 What documentation may an employee seeking shared leave under the veterans' in-state service shared leave pool be required to submit? Employees seeking shared leave under the veterans' in-state service shared leave pool must provide a veterans affairs benefits summary letter from the U.S. Department of Veterans Affairs and a copy of "DD Form 214" verifying that:

(1) The employee has a service connected injury or disability; or

(2) The employee is a spouse of a veteran who requires assistance while attending medical appointments or treatments for a service connected injury or disability.

NEW SECTION

WAC 357-31-810 What rate of pay is paid to the employee receiving leave under the veterans' in-state service shared leave pool? The receiving employee is paid their regular rate of pay.

NEW SECTION

WAC 357-31-815 What happens if the veterans' in-state service shared leave pool does not have sufficient balance to cover all leave requests? The veterans' in-state service shared leave pool cannot grant more leave than the leave balance available at the time a request is received by the department of veterans' affairs.

NEW SECTION

WAC 357-31-820 May employers establish restrictions on the amount of leave an employee may receive under this section? Except in the event of a violation of rule or statute, an employer is required to permit an eligible employee to receive leave from the veterans' in-state service shared leave pool.

NEW SECTION

WAC 357-31-825 May an employer establish restrictions on the amount of leave an employee may donate under this section? An employer may limit the amount of leave an employee may donate under this section, if authorization of such donation would be in violation of rule or statute.

NEW SECTION

WAC 357-31-830 When an employer and/or the department of veterans' affairs has determined that abuse of the veterans' in-state service shared leave pool has occurred will the employee have to repay the shared leave drawn from the pool? Employers and/or the department of veterans' affairs shall investigate any alleged abuse of the veterans' in-state service shared leave pool and on a finding of wrongdoing the employee may be required to repay all of the shared leave received from the veterans' in-state service shared leave pool. The only time an employee

will have to repay leave credits is when there is a finding of wrongdoing.

WSR 17-15-118
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed July 19, 2017, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-09-065.

Title of Rule and Other Identifying Information: Chapter 16-240 WAC, WSDA grain program—Definitions, standards, and fees.

Hearing Location(s): Spokane County Extension, 222 North Havana, Conference Room C, Spokane, WA 99202-4776, on August 29, 2017, at 11:00 a.m.; or Department of Agriculture, 1111 Washington Street S.E., Conference Room 259, Olympia, WA 98504-2560, on August 30, 2017, at 11:00 a.m.

Date of Intended Adoption: September 13, 2017 (contingent upon Federal Grain Inspection Service approval).

Submit Written Comments to: Henri Gonzales, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax (360) 902-2094, by August 30, 2017, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact agency receptionist by August 15, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 16-240 WAC to add a lower third tier tonnage fee rate that will help maintain the six month operating fund balance. A second proposal adds inspection-only fee rates for barges under USGSA Table 2 and AMA Table 2, this will create a mechanism for the program to charge for requested service. A third proposal adds language for the program to charge an hourly rate for any service requested outside of the established fees. In addition, one term is added and another term is expanded on in the definitions.

Reasons Supporting Proposal: Despite the implementation of the alternate (lower) fee rate beginning July 1, 2016, the program's fund balance continues to grow and this proposed rule will help maintain fund balance stability. To comply with federal regulations the grain program needs to establish a billing mechanism for inspection only requests on barges and to have the ability to charge an hourly rate for services that are not specified under chapter 16-240 WAC.

Statutory Authority for Adoption: RCW 22.09.020, chapter 34.05 RCW.

Statute Being Implemented: RCW 22.09.790, 7 C.F.R. § 800.70.

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

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Philip Garcia, 1111

Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1921.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required on the proposed rule component changes listed below for the reasons stated: The proposed amendments potentially reduce costs to businesses by: (1) Adding an additional lower fee rate as a mechanism to reduce what customers pay in order to decrease the program's fund balance when it's too high; (2) suspending, when a lower fee rate is in effect, the additional charges imposed by the program in order to make up revenue minimum shortages; and (3) adding an inspection-only reduced fee related to unloading barges. Other amendments to the rule simply clarify language and impose no additional costs on regulated businesses. All businesses impacted by the proposed rule amendments are considered large businesses under the Regulatory Fairness Act.

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

July 19, 2017

Jason Ferrante

Assistant Director

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-010 Definitions. "Business day" means Monday through Friday, excluding state holidays.

"Department" means the Washington state department of agriculture.

"Federal fiscal year" means October 1st through September 30th for GIPSA, FGIS.

"Fee" means any charge made by the department for:

- (1) Inspecting and handling any commodity; or
- (2) Any service related to weighing or storing grains or commodities.

"Fiscal year" means July 1st through June 30th for the state of Washington.

"GIPSA, FGIS" means the United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service.

"Metric ton" means two thousand two hundred four and six-tenths pounds.

"Minimum operating fund balance" or "MOFB" means six months of grain inspection program operating expenses to ensure stable service delivery, meet future needs, and protect against financial instability. The factors that the department considers when setting the annual MOFB under WAC 16-240-043 include the projected program staff salary and benefits; costs of the program's goods and services, including transportation; costs associated with the department's administrative support of the program; and any additional costs associated with program oversight by USDA/FGIS.

"Official commercial inspection services" means a contractual agreement between the applicant and the department for services specified by the applicant that will be provided at an applicant's facility.

"Revenue minimum" means the amount of revenue that must be collected by the department to offset expenses. In order to act as an official inspection agency under the United States Grain Standards Act and the Agricultural Marketing Act of 1946, the program must collect revenue to offset expenses. The grain inspection program is supported entirely by the fees it generates from the services it provides as required by RCW 22.09.790. The circumstances under which charges occur to collect the revenue minimum are stated in WAC 16-240-038.

"Service point" means the Washington state department of agriculture offices and surrounding service areas authorized by the Federal Grain Inspection Service to provide sampling, inspecting, weighing, and certification services.

"Shift" means an established period of staffing for up to twelve hours at transloading facilities or up to eight hours at export port or domestic service point locations. Service requests in excess of the established period would require requesting an additional shift. Any work beyond the established shift period constitutes an additional shift.

"Unstaffed export locations" means a facility that does not have a permanent staffing request in place for day, night, swing, or graveyard shifts.

"USDA" means the United States Department of Agriculture.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-020 Washington state grain and commodity service points. The offices located in the following cities are service points for providing sampling, inspecting, weighing, and certification services.

- (1) Service points:
 - (a) Colfax.
 - (b) Kalama (North).
 - (c) Kalama (South).
 - (d) Longview.
 - (e) Olympia.
 - (f) Othello.
 - (g) Pasco.
 - ~~((g))~~ (h) Quincy.
 - (i) Seattle.
 - ~~((h))~~ (j) Spokane.
 - ~~((i))~~ (k) Tacoma.
 - ~~((j))~~ (l) Vancouver.

(2) Aberdeen has been delegated to Washington state as a service point by the Federal Grain Inspection Service. Services for Aberdeen are as follows:

(a) Services for Aberdeen may be requested through the Tacoma grain inspection office.

(b) Travel time and mileage will be ~~((assessed))~~ charged from Tacoma to Aberdeen for all services requested at Aberdeen until a permanent staff is established.

(3) Inspection points may be added or deleted within the department's delegated and designated service area.

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-036 Permanent staffing requests. An applicant may request the department to establish permanent staffing on shifts as shown below:

(1) Requests for permanent staffing of day, night, swing, or graveyard shifts must be made in writing at least seven business days prior to the shift(s) that are requested.

(a) Requests for permanent staffing of any night, swing or graveyard shift will be deemed to include a request for permanent staffing of the day shift.

(b) The requested shift(s) will be established if the department has an adequate number of trained personnel.

(c) Confirmation of staffing requirements must be received by the inspection office by 2:00 p.m. each business day (~~((Monday through Friday,))~~) for the next service day, (~~((and))~~) including requests for weekend days, for Mondays, or for holidays, which must be requested by 2:00 p.m. ((of)) on the last business day ((before a Saturday, Sunday, or holiday)) of the week (see WAC 16-240-034).

(d) Failure to meet the notification requirement may result in denial of service.

(2) When the department is able to staff the permanent night, swing, or graveyard shift(s) requested by the applicant, the overtime rate established under WAC 16-240-048 will be waived for the requested shift(s).

(3) Once established, permanent shifts will continue until canceled by the requesting party or canceled by the department for good cause.

(a) Cancellation requests must be received, in writing, giving at least fifteen business days' notice.

(b) Applicants will be ~~((assessed))~~ charged for any shifts established at their request until the cancellation notice period has expired.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-038 Revenue minimum determination. The circumstances under which the department ~~((assesses additional charges))~~ adjusts rates to meet the revenue minimum are as follows:

(1) When the daily volume of work at a service location at the established fees does not generate revenue at least equal to the straight time hourly rate per hour, per employee, a sufficient additional amount, calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum, except as provided in subsection (2) of this section.

(2) The daily revenue minimum ~~((assessment))~~ charge applies only to the ~~((regular))~~ Tier 1 metric tonnage rate shown in WAC 16-240-070 (2)(b) at USGSA Table 1 ((of this schedule)) and in WAC 16-240-080 (2)(b) at AMA Table 1. When ~~((the alternate))~~ either a Tier 2 or Tier 3 rate is in effect (WAC 16-240-043 ((and)), 16-240-070, and 16-240-080), export locations will not be subject to daily revenue minimum ~~((assessments for the balance of the alternate))~~ charges during the Tier 2 or Tier 3 rate period allowed under WAC 16-240-043.

(3) Work volume daily averaging at export locations will be determined as follows:

(a) When the daily volume of work at a service location at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, according to the staffing needs at the facility, the department will charge ~~((s))~~ an additional fee, except as ~~((described))~~ provided in subsection ~~((4))~~ (2) of this section.

(b) The straight time hourly rate will be ~~((assessed))~~ charged per hour, per employee.

(c) Service cancellation fees, WAC 16-240-054, are not considered to be revenue under daily averaging.

(4) Work volume monthly averaging at export locations will be determined as follows:

(a) When the applicant has requested the department to establish one or more permanent shifts, the applicant may request, in writing, that the revenue minimum required for staffing at the location be determined based on the completed invoices for the calendar month, instead of paying the fees for daily volume of work.

(b) Under this subsection (4), and except for when the work volume monthly averaging for the revenue minimum is determined under (a) of this subsection, when the monthly volume of work at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, ~~((the department charges an additional fee, as described in subsection (1) of this section))~~ according to the staffing needs at the facility, a sufficient additional amount, calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum for each month during which work volume monthly averaging applies. As provided under (f) of this subsection, this revenue minimum adjustment applies only during any month when Tier 1 rates are in effect.

(c) At export locations, the request for monthly averaging stays in effect until canceled.

(d) An applicant's written request to establish or cancel monthly averaging for the coming month must be received by 2:00 p.m. of the last business day in the month.

(e) Service cancellation fees under WAC 16-240-054 are not considered to be revenue under monthly averaging.

(f) The monthly revenue minimum ~~((assessment))~~ charge applies only to the ~~((standard monthly tonnage))~~ Tier 1 rate shown in USGSA Table 1 under WAC 16-240-070 and AMA Table 1 under WAC 16-240-080 of this schedule. When either the ~~((alternate))~~ Tier 2 or Tier 3 rate is in effect, export locations will not be subject to daily revenue minimum ~~((assessments))~~ charges during the ~~((alternate))~~ Tier 2 or Tier 3 rate period allowed under WAC 16-240-043.

(i) Upon the applicant's written notification to the department, the monthly revenue minimum will not be applied to the month in which an export facility resumes operations after an extended downtime. This exception for maintenance or repair is available once per fiscal year.

(ii) When the department provides services at a nonexport location or a transloading facility, and the hourly, unit, and applicable travel fees do not cover the cost of providing

the service, an amount at least equal to the straight time hourly rate per hour, per employee, calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-039 USDA, GIPSA, FGIS administrative fee. The United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service ~~((assesses))~~ charges a per metric ton administrative fee for export and other grain handled by facilities in the Washington state department of agriculture service area.

(1) Washington state department of agriculture will invoice and collect GIPSA's administrative fee at the current GIPSA tonnage calculation or charge on behalf of GIPSA and will pass through the ~~((assessment))~~ fee to GIPSA, FGIS.

(2) Washington state department of agriculture will ~~((assess))~~ charge the federal fiscal year administrative rate established by GIPSA, FGIS under the guidelines established by GIPSA for collecting the fee.

~~((3) The fee assessments under this chapter do not include the GIPSA assessment.))~~

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-040 Official commercial inspection services. The department may provide on-site official commercial inspection services, at the applicant's request, when all of the following conditions are met:

(1) As applicable under 7 C.F.R. § 800.46, appropriate space and security must be provided by the applicant.

(2) The applicant must provide a written document fully describing the services requested ~~((The applicant must fully describe the requested services in writing))~~ so the department can determine appropriate staffing levels and develop a guarantee of expenses proposal.

(3) The department must be able to provide appropriate licensed personnel to accomplish the service requested.

(4) An adequate provision for fees is negotiated.

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-042 Payment of fees and charges. (1) All department fees and charges for services rendered are due within thirty days of the statement date. Interest at the rate of one percent per month, or fraction thereof, shall accrue on any balance owed after thirty days of the statement date.

(2) If the department does not receive payment within thirty days:

(a) ~~((Services may be withheld))~~ The department may withhold services until the delinquent account is paid; ~~((or))~~ and

(b) ~~((Cash payment))~~ The department may require the customer to prepay for subsequent services ~~((may be required)).~~

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-043 Minimum operating fund balance fee adjustment. The department shall establish the minimum operating fund balance amount on the first business day of July each year.

(1) At that time, if the fund balance is above the new minimum operating fund balance amount by at least ten percent, the metric ton vessel rate and the approved automated weighing system rate per metric ton under WAC 16-240-070 ~~(2)(b)~~ at USGSA Table 1 shall be the ~~((alternate fee))~~ next lower tier rate beginning August 1st of that year, and the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-080 ~~(2)(b)~~ at AMA Table 1 shall be the ~~((alternate fee))~~ next lower tier rate beginning August 1st of that year.

(2) At that time, if the minimum fund balance is below the new minimum operating fund balance by at least ten percent, the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-070 ~~(2)(b)~~ at USGSA Table 1 shall be the ~~((standard fee))~~ next higher tier rate beginning August 1st of that year, and the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-080 ~~(2)(b)~~ at AMA Table 1 shall be the ~~((standard fee))~~ next higher tier rate beginning August 1st of that year.

(3) If after three months at the Tier 2 rate the fund balance is not reduced to or projected by the department to achieve reduction to the minimum operating fund balance within the following six months, the metric ton vessel rate and approved automated weighing system rate per metric ton under WAC 16-240-070 (2)(b) at USGSA Table 1 shall be the Tier 3 rate beginning the first day of the following month, and the metric ton vessel rate and the approved automated weighing systems rate per metric ton under WAC 16-240-080 (2)(b) at AMA Table 1 shall be the Tier 3 rate beginning the first day of the following month.

(4) The department may review the status of the minimum operating fund balance any month during each fiscal year. On the first business day of the month following such review, if the fund balance is above the minimum operating balance by at least ten percent, the ~~((alternate fee rate established or to be established under subsection (1) of))~~ next lower tier rate under this section shall apply. If the fund balance is below the minimum operating fund balance by at least ten percent, the ~~((standard fee rate established or to be established under subsection (2) of))~~ next higher tier rate under this section shall apply. Any change in the ~~((fee))~~ rates required under this subsection shall take effect beginning the first day of the following month. The department shall give notice of any rate change as provided under subsection (5) of this section.

~~((4))~~ (5) The department shall post notice of each year's current minimum operating fund balance amount on the department's WSDAgrades.com web site within three business days of the date in July when that amount is established under this section.

~~((5))~~ (6) The department shall post notice of the ~~((fee))~~ rates established under subsection (1) ~~((, (2), or (3)))~~ through (4) of this section on the department's WSDAgrades.com

web site within three business days of the date the department determines the ~~((fee))~~ rates. The posted notice shall identify the ~~((fee))~~ rate for each affected category of service and the date each ~~((fee))~~ rate takes effect. Notice is not required to be posted when an established ~~((fee))~~ rate does not change following review under ~~((subsection (3) of))~~ this section.

~~((6))~~ (7) By email or other means, the department may provide optional additional notice to current customers and to any other interested persons of the minimum operating fund balance established under this section and notice of any ~~((fee))~~ rates established or changed under subsections (1) through ~~((3))~~ (4) of this section. Such optional additional notice should be given within the same times as the required notices under subsections ~~((4) and)~~ (5) and (6) of this section. This subsection ~~((6))~~ (7) shall not affect the validity of any ~~((fee))~~ rates established or changed under this section.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-044 GIPSA, FGIS scale authorization. The United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service (USDA, GIPSA, FGIS) has delegated official scale testing and scale authorization authority to the department.

(1) The GIPSA, FGIS scale authorization fee established in WAC 16-240-060, per hour, per employee is ~~((assessed))~~ charged when GIPSA, FGIS scale authorization services are performed.

(2) In addition to the hourly GIPSA, FGIS scale authorization fee; the department may ~~((assess))~~ charge travel time at the scale authorization hourly rate, mileage beyond ten miles from the scale specialist's assigned office location, per diem, or overtime, if applicable.

(3) All scales in Washington state under USDA, GIPSA, FGIS jurisdiction must comply with the following testing requirements:

(a) Scales must be tested and certified for accuracy at least twice each year by an authorized Washington state department of agriculture scale specialist or a USDA, GIPSA, FGIS scale specialist.

(b) When tested by the department or by USDA, GIPSA, FGIS, a seal must be placed on the scales. This seal must be dated and must indicate approval or rejection.

(c) When scales are tested, copies of the test report must be:

- (i) Forwarded to USDA, GIPSA, FGIS;
- (ii) Maintained by the department; and
- (iii) Maintained at the facility where the scale is located.

(4) The scale authorization fee is ~~((assessed))~~ charged in one-half hour increments.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-046 Straight time rate. The department will charge the straight time hourly rate ~~((is assessed))~~ per hour, per employee, including applicable supervisory and clerical employee hours, as cited below.

(1) An hourly ~~((fee))~~ rate is specified in the schedule of fees adopted under this chapter.

(2) No other straight time hourly rate is established in the schedule of fees under this chapter.

(3) The revenue minimum under WAC 16-240-038 ~~((applies))~~ may apply.

~~((3))~~ (4) No contractual agreement supersedes the straight time rate other than for official commercial inspection services provided under WAC 16-240-040.

~~((4) Straight))~~ (5) The straight time hourly rate is ~~((assessed))~~ charged in one-half hour increments.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-048 Rates for working outside established business hours (overtime). In addition to regular inspection and weighing fees and any applicable hourly ~~((fees))~~ rate, the department will charge the overtime rate per hour, per employee, including applicable supervisory and clerical employee hours, when a service is requested:

(1) Anytime on Saturdays, Sundays, or holidays.

(2) Before or after regularly scheduled office hours, Monday through Friday, except as provided in WAC 16-240-036 for an established permanent staffing request.

(3) During established meal periods on any shift.

(4) For services requested at unstaffed export locations.

(5) Overtime is ~~((assessed))~~ charged in one-half hour increments.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-050 Calculating travel time, mileage and per diem. The rules for ~~((assessing))~~ charging travel time, mileage, and per diem are as follows:

(1) Travel time: When department personnel perform services at locations other than service points, the applicant, in addition to the fee for the service performed, must pay the department for travel time as follows:

(a) Travel time for each department employee from the established service location to the inspection point and return at the hourly rates in effect at the time the service is performed; except

(b) Travel time for scale authorization is charged from the scale specialist's location to the scale location and return at the hourly scale authorization rate shown in WAC 16-240-060, USGSA—AMA—WSDA Table 1.

(2) Mileage: Mileage will be ~~((assessed))~~ charged to inspection locations beyond ten miles from a service point location. Mileage will be ~~((assessed))~~ charged from the service point location to the inspection point and return.

(a) For scale authorization services on scales located beyond ten miles from the scale specialist's location, mileage will be ~~((assessed))~~ charged from the scale specialist's location to the scale location and return.

(b) Mileage will be prorated among applicants when multiple service stops can be scheduled during a single service trip.

(c) The mileage rate is ~~((assessed))~~ charged according to the state of Washington office of financial management pri-

vate vehicle mileage reimbursement rate in effect at the time the service is performed.

(3) Per diem: Per diem may be ~~((assessed))~~ charged when an employee is required to travel to provide services. The charge will be at the rate established by the state of Washington office of financial management that is in effect at the time the service is performed.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-052 Fees for stowage examination. (1) The following rules apply for fees for stowage examination services on vessels or ocean-going barges.

(a) At anchor stowage examination services will be conducted at the convenience of the designated grain inspection office during daylight hours under safe working and weather conditions.

(b) The applicant is responsible for securing licensed tug or water taxi to provide safe transportation to and from the anchor point.

(c) Two vessel or ship's agent representatives will accompany each WSDA inspector performing stowage examination services.

(d) In addition to the fee in USGSA Table 7, the department may ~~((assess))~~ charge, as applicable, the following fees:

■ WAC 16-240-048 (rates outside of established business hours);

■ WAC 16-240-050 (travel, mileage beyond ten miles, per diem);

■ WAC 16-240-054 (service cancellation fee).

(2) The following rules apply for fees for other stowage examination services:

(a) Fees for stowage examination services will not be ~~((assessed))~~ charged when official sampling and inspection occurs at the time of loading or when official check loading is performed, unless the applicant requests an official stowage examination certificate.

(b) The stowage examination requirement associated with service at the time of loading may be waived in accordance with GIPSA, FGIS Directive 9020.1, available from United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service.

(c) The applicant is responsible for assuring stowage space is readily accessible to inspection personnel.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-054 Service cancellation fee. A service cancellation fee applies when service is requested and then canceled.

(1) When an applicant requests a shift to provide service before or after the inspection office's established hours, a cancellation fee applies as follows:

(a) When a service is requested before or after an office's standard Monday through Friday shifts, or anytime on Saturdays, Sundays, or holidays; and

(b) The requested service is canceled after 2:00 p.m. of the last business day before the requested service; then

(c) A service cancellation fee according to WAC 16-240-060, Table 1, will be ~~((assessed))~~ charged per employee scheduled.

(2) When service is requested for a vessel inspection, a cancellation fee applies as follows:

(a) When a vessel inspection is requested and then canceled after 2:00 p.m. of the last business day before the requested service; and

(b) The service cancellation fee will be ~~((assessed))~~ charged per employee scheduled to inspect the vessel.

(3) When a facility has an approved permanent staffing request letter in place for the day, night, swing, or graveyard shift, the department waives the cancellation fee for the permanently staffed shift.

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-060 WSDA grain program hourly rates, fees and cancellation fees. USGSA—AMA—WSDA Table 1 contains fees for GIPSA, FGIS scale authorization, straight-time hourly rate, overtime hourly rate, and service cancellation fees for services performed under the United States Grain Standards Act, the Agricultural Marketing Act of 1946, and Washington state rule.

**USGSA—AMA—WSDA Table 1
WSDA Grain Program Hourly Rates, Fees and Cancellation Fees**

1. Scale authorization fee, per hour, per employee	\$56.00
2. Straight-time rate, ((rate)) per hour, per employee	\$56.00
3. Overtime rate established under WAC 16-240-048, per hour, per employee	\$28.00
4. Service cancellation fee, per employee	\$200.00

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-070 Fees for services under the United States Grain Standards Act. (1) USGSA Tables 1 through 7 in this section contain fees for official sampling, inspection, weighing services, and fees for other associated services under the United States Grain Standards Act (USGSA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not otherwise provided for in this chapter for services under the United States Grain Standards Act are described below.

(a) Fees for other services under the United States Grain Standards Act not specifically cited in WAC 16-240-070 are provided at the rates contained in WAC 16-240-080 or 16-240-090 or at the published rates of the laboratory or organization providing the official service or analysis. The program will require the applicant for service to provide advance consent to the rate for any service necessary to be performed at an external laboratory or organization.

(b) An applicant may be required to provide the necessary supplies and equipment when requesting a new or special type of analysis.

**USGSA Table 1
Fees for Combination Inspection and Weighing Services**

1. In, out, or local, ((standard)) rate for all tiers, per metric ton	\$0.250
2. Vessels (export and domestic ocean-going), ((standard)) Tier 1 rate, per metric ton	\$0.250
3. Vessels and local (export and domestic ocean-going) with approved automated weighing systems, ((standard)) Tier 1 rate, per metric ton	\$0.230
Note: For automated weighing systems:	
<ul style="list-style-type: none"> When approved automated weighing systems are not functioning properly, dedicated staff time may be required at the rates established in WAC 16-240-060. 	
4. Vessels and local (export and domestic ocean-going), ((alternate)) Tier 2 rate, per metric ton	\$0.200
5. Vessels and local (export and domestic ocean-going), Tier 3 rate, per metric ton	\$0.100
Note: For vessels (export and domestic ocean-going):	
<ul style="list-style-type: none"> The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in USGSA Table 1 are charged at the per factor fee. The metric ton vessel rate includes all official ship samples required by the load order. Stress crack analysis in corn is included in the fees in USGSA Table 1. During vessel loading, ((assessments)) <u>fees</u> for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be ((assessed)) <u>charged</u> at the per unit rates included under this chapter <u>or as amended</u>. 	
((5-)) <u>6.</u> Trucks or containers, per truck or container	\$25.00
((6-)) <u>7.</u> Additional nongrade determining factor analysis, per factor	\$3.00

USGSA Table 2

Fees for Official Sampling and Inspection Without Weighing Services

1.	Original or new sample reinspection trucks or containers sampled by approved grain probe, including factor only or sampling only services, per truck or container	\$20.00
2.	<u>Barge sampled by USDA approved mechanical sampler, including factor only or sampling only services, per metric ton</u>	\$0.10
3.	Railcars sampled by USDA approved mechanical sampler, including factor only or sampling only services, per railcar	\$20.00
((3-)) 4.	Original or new sample reinspection railcars sampled by USDA approved grain probe, applicant assisted, including factor only or sampling only services, per railcar	\$20.00
((4-)) 5.	Original or new sample reinspection railcars sampled by USDA approved grain probe, including factor only or sampling only services, per railcar	\$30.00
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 2. ■ Stress crack analysis in corn is included in the fees in USGSA Table 2. ■ Analysis that requires additional equipment or personnel will be provided at the applicable hourly rate under this chapter. ■ The per railcar rate applies to each railcar included in a batch grade. A batch grade is two or more cars that are combined, at the applicant's request, for a single grade. 		
((5-)) 6.	Inspection of bagged grain, including tote bags, per hundredweight (cwt)	\$0.100
((6-)) 7.	Additional nongrade determining factor analysis, per factor	\$3.00

USGSA Table 3

Fees for Official Class X Weighing Services Without an Inspection of Bulk Grain

1.	In, out, or local, per metric ton	\$0.200
2.	Vessels (export and domestic ocean-going), per metric ton	\$0.200
3.	Trucks or containers, per weight lot	\$20.00

USGSA Table 4

Fees for Inspection of Submitted Samples, Fees for Reinspections Based on Official File Samples and Fees for Additional Factors

1.	Submitted samples, including factor-only inspections, per inspection	\$12.00
2.	Reinspections based on official file sample, including factor-only reinspections, per inspection	\$12.00
3.	Additional, nongrade determining factor analysis, per factor	\$3.00
4.	Stress crack only analysis on corn, per sample	\$9.00
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ When submitted samples are not of sufficient size to allow for official grade analysis, obtainable factors may be provided, upon request of the applicant, at the submitted sample rates shown above. ■ For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 4. ■ Stress crack analysis in corn is included in the fees in USGSA Table 4. ■ Analysis that requires additional equipment or personnel will be provided at the applicable hourly rate under this chapter. 		

USGSA Table 5

Fees for Miscellaneous Services

1.	<u>Sampling and handling of processed commodities, per hour, per employee</u>	\$56.00
2.	<u>Laboratory analysis, at cost</u>	At cost
3.	<u>All other USGSA services not listed in this section, per hour, per employee</u>	\$56.00
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ <u>On request, shipping arrangements billed directly by shipper to the customer's shipping account may be coordinated by the department.</u> 		

USGSA Table 6

Fees for Official Analysis for Protein, Oil, or Other Official Constituents

Original or reinspection based on file sample, per test	\$9.00
<p>Note: The following applies to the fee in USGSA Table 5:</p> <ul style="list-style-type: none"> ■ When a reinspection service includes a request for a new sample, the appropriate sampling fee will also be ((assessed)) <u>charged</u>. 	

- Results for multiple criteria achieved in a single testing operation are provided at the single test rate unless certificated separately.

USGSA Table ((6)) 7

Fees for Testing for the Presence of Mycotoxins Using USDA Approved Methods

Original, reinspection based on official file sample, or submitted sample, per test	\$40.00
Note: The following applies to this table:	
<ul style="list-style-type: none"> When a reinspection service includes a request for a new sample, the appropriate sampling fee to obtain the sample will be ((assessed)) <u>charged</u> in addition to the per test fee shown earlier (see WAC 16-240-070, USGSA Table 2). 	

USGSA Table ((7)) 8

Fees for Stowage Examination Services on Vessels or Ocean-Going Barges and Fees for Other Stowage Examination Services

1. Vessels or ocean-going barges stowage examination, original or reinspection, per request	\$500.00
2. Other stowage examinations of rail-cars, trucks, trailers, or containers, original or reinspection, per inspection	\$9.00

AMENDATORY SECTION (Amending WSR 16-12-076, filed 5/27/16, effective 7/1/16)

WAC 16-240-080 Fees for services under the Agricultural Marketing Act of 1946. (1) AMA Tables 1 through 5 in this section contain official sampling and/or inspection and/or weighing services and fees for other services under the Agricultural Marketing Act of 1946 (AMA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not otherwise provided for in this chapter for services under the Agricultural Marketing Act of 1946 are described below.

(a) Fees for other services under the Agricultural Marketing Act of 1946 not contained in WAC 16-240-080 are contained in WAC 16-240-070 or 16-240-090 and/or at the published rates of the laboratory or organization providing the official service or analysis.

(b) An applicant may be required to provide the necessary supplies and/or equipment when requesting a new or special type of analysis.

AMA Table 1

Fees for Combination Sampling, Inspection and Weighing Services, and Additional Factors

1. In, out, or local, ((standard)) rate for all tiers, per metric ton	\$0.250
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2. Vessels (export or domestic), ((standard)) Tier 1 rate, per metric ton	\$0.250
3. Vessels and local (export and domestic ocean-going) with approved automated weighing systems, ((standard)) Tier 1 rate, per metric ton	\$0.230

Note: For automated weighing systems:

- When approved automated weighing systems are not functioning properly, dedicated staff time may be required at the rates established in WAC 16-240-060.

4. Vessels and local (export and domestic ocean-going), ((alternate)) Tier 2 rate, per metric ton	\$0.200
5. Vessels and local (export and domestic ocean-going), Tier 3 rate, per metric ton	\$0.100

Note: For vessels (export and domestic ocean-going):

- The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee.
- The metric ton vessel rate includes all official ship samples required by the load order.
- During vessel loading, ((~~assessments~~)) fees for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be ((~~assessed~~)) charged at the per unit rates included under this chapter.

((5)) <u>6</u> . Trucks or containers, per truck or container	\$30.00
((6)) <u>7</u> . Additional, nongrade determining factor analysis, per factor	\$3.00

Note: The following applies to all fees in this table:

- The rates in the above section also apply to services provided under federal criteria inspection instructions, state established standards, or other applicant requested criteria.
- Dockage breakdown is included in the basic inspection fee.
- The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee.
- ((~~Assessments~~)) Fees for other tests, such as mycotoxin analysis, provided during vessel loading will be ((~~assessed~~)) charged at the per unit rates included in this fee schedule.

AMA Table 2

Fees for Official Sampling and Inspection Without Weighing Services, and Additional Factors

1.	Trucks or containers sampled by USDA approved grain probe, including factor only or sampling only services, per truck or container	\$30.00
2.	<u>Barge sampled by USDA approved mechanical sampler, including factor only or sampling only services, per metric ton</u>	\$0.10
((2.)) 3.	Railcars sampled by USDA approved mechanical samplers, including factor only or sampling only services, per railcar	\$30.00
((3.)) 4.	Railcars sampled by USDA approved grain probe, including factor only or sampling only services, per railcar	\$30.00
((4.)) 5.	Inspection of bagged commodities or tote bags, including factor only or sampling only services, per hundredweight (cwt)	\$0.100
((5.)) 6.	Additional, nongrade determining factor analysis, per factor	\$3.00
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ Dockage breakdown is included in the basic inspection fee. ■ Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate. ■ The rates shown above also apply to services provided under federal criteria inspection instructions. 		

AMA Table 3

Fees for Official Weighing Services without Inspections

1.	In, out, or local, per metric ton	\$0.200
2.	Vessels (export and domestic ocean-going), per metric ton	\$0.200
3.	Trucks or containers, per weight lot	\$20.00

AMA Table 4

Fees for Inspecting Submitted Samples

1.	Submitted sample, thresher run or processed, including factor-only inspections, per sample	\$20.00
2.	Additional, nongrade determining factor analysis, per factor	\$3.00

Note: The following applies to all fees in this table:

- Dockage breakdown is included in the basic inspection fee.
- Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate.
- The rates shown above also apply to inspection services provided under federal criteria inspection instructions.
- When the size of a submitted sample is insufficient to perform official grade analysis, factor-only analysis is available on request of the applicant.

AMA Table 5

Fees for Miscellaneous Services

1.	Falling number determinations, including liquefaction number on request, per determination	\$20.00
2.	Sampling and handling of processed commodities, per hour, per employee	\$56.00
3.	Laboratory analysis, at cost	At cost
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ On request, shipping arrangements billed directly by shipper to the customer's shipping account may be coordinated by the department. 		

AMENDATORY SECTION (Amending WSR 12-21-064, filed 10/17/12, effective 11/17/12)

WAC 16-240-090 Fees for other services performed by WSDA. (1) WSDA Tables 1 through 3 in this section contain fees for other services performed at the request of the applicant when no USGSA or AMA standards exist. Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Applicant-defined analysis may be available from the department.

(a) Hourly fees for sampling and/or sample preparation may be ~~((assessed))~~ **charged**.

(b) The analysis will be provided at the established hourly rate or may be provided at the cost quoted by the laboratory or organization providing the service or analysis.

(c) Applicant may be required to provide supplies and equipment when requesting a new analysis or special service.

(3) Official samples, as defined under 7 C.F.R. 800.75, may be provided upon timely request by an interested party, specifying the number of samples requested. Samples are provided in up to five pound bags and are charged the fee stated in Table 3.

WSDA Table 1

Fees for Inspecting Miscellaneous Agricultural Commodities under Chapter 16-213 WAC

1.	Submitted sample, per sample	\$12.00
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2.	Railcars, sampled by USDA approved diverter-type mechanical samplers, per car	\$20.00
3.	Railcars, sampled by USDA approved grain probe, per car	\$30.00
4.	Trucks or containers, sampled by USDA approved grain probe, per truck or container	\$20.00
Note: The following applies to all fees in this table:		
■	These rates also apply to inspection services provided under applicant-specified criteria or standards other than USGSA, AMA or WSDA. For example: Millet may be inspected under state of Montana standards, upon applicant request.	

**WSDA Table 2
Fees for Phytosanitary Certification**

1.	In conjunction with official inspection, per certificate	\$30.00
2.	For phytosanitary certification only, without official inspection, add required sampling time, per hour, per employee	\$56.00

**WSDA Table 3
Fees for Miscellaneous Services**

1.	Unofficial constituent analysis, per test	\$9.00
2.	Sample pick-up fee, on department established routes, per sample	\$1.25
3.	Laboratory analysis, provided at other than WSDA grain inspection program offices, per analysis	At cost
4.	Official samples, per bag	\$5.00

**WSR 17-15-124
PROPOSED RULES
DEPARTMENT OF COMMERCE**

[Filed July 19, 2017, 9:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-012.

Title of Rule and Other Identifying Information: Washington small business retirement marketplace, chapter 365-65 WAC.

Description of Subject: The Washington small business retirement marketplace (marketplace) is a retirement savings program created to connect eligible employers and their employees with approved plans to increase retirement savings. RCW 43.330.750 requires the director of the department of commerce to adopt rules necessary to allow the marketplace to operate. The legislature recently passed SSB

5675, chapter 69, Laws of 2017, amending elements of the statutes. Commerce intends to update the rules in chapter 365-65 WAC in order to incorporate these amendments.

Hearing Location(s): Washington State Department of Commerce, 1011 Plum Street S.E., Room 407, Olympia, WA 98504, on Wednesday [Tuesday], August 22, 2017, at 1:30 p.m.

Date of Intended Adoption: August 23, 2017.

Submit Written Comments to: Carolyn C. McKinnon, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, email Carolyn.mckinnon@commerce.wa.gov, fax (360) 586-8440, by August 21, at 5:00 p.m. PDT.

Assistance for Persons with Disabilities: Contact Nicole Piccolomini by August 18, 2017, TTY (statewide, toll-free) 711 or (360) 725-2801.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to incorporate amendments made with the passage of SSB 5675, chapter 69, Laws of 2017, amending elements of the statutes authorizing the small business retirement marketplace. Commerce intends to update the rules in chapter 365-65 WAC in order to incorporate these amendments. The anticipated effects of the rule will be the effective operation of the marketplace.

Reasons Supporting Proposal: The proposal is necessary to implement recently amended statute.

Statutory Authority for Adoption: RCW 43.330.750.

Statute Being Implemented: RCW 43.330.730-[43.330].750; SSB 5675, chapter 69, Laws of 2017.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carolyn McKinnon, 1011 Plum Street S.E., Olympia, WA 98504-2525, (360) 725-3121.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Participation in the Washington small business retirement marketplace is entirely voluntary for small businesses (employers), employees, and private sector financial services firms (industry), and costs participants would incur to comply with these rules, if any, would be de minimis.

A cost-benefit analysis is not required under RCW 34.05.328. Subsection (5)(a)(i) of RCW 34.05.328 does not require commerce to provide a cost-benefit analysis. Not applicable.

July 18, 2017
Jaime Rossman
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-12-029, filed 5/23/16, effective 6/23/16)

WAC 365-65-060 Approval of verified plans. (1) The department will approve a diverse array of verified plan options to be offered in the marketplace, including but not limited to:

(a) Life insurance plans or annuities that are designed for retirement purposes;

(b) Plans for eligible employer participation such as a ((A)) SIMPLE-IRA type of plan that provides for employer contributions to participant accounts; and

(c) A payroll deduction individual retirement account or individual retirement annuity, or a workplace based individual retirement account open to all workers to which the employer does not contribute.

(2) The department will approve the myRA retirement program to be offered in the marketplace.

(3) A verified plan that is proposed to be offered in the marketplace must be submitted to the department for review and approval, including all documentation, in a form prescribed by the department.

(4) A verified plan that is proposed to be offered in the marketplace must comply with applicable laws and rules, (~~included~~) including but not limited to federal tax laws.

AMENDATORY SECTION (Amending WSR 16-12-029, filed 5/23/16, effective 6/23/16)

WAC 365-65-080 Limits on fees. (1) A verified financial services firm that offers approved plans in the marketplace may not charge participating employers an administrative fee, and may not charge enrollees more than one hundred basis points in total annual fees.

(2) As an exception to the aforementioned limit on fees, financial services firms may charge retirement plan enrollees a de minimis fee for new and/or low balance accounts in amounts, and for durations, negotiated and agreed upon by the department and the verified financial services firm, as follows:

(a) A financial services firm that intends to negotiate a de minimis fee for retirement plan enrollees with new and/or low balance accounts must contact the department with a request to enter into negotiations.

(b) A de minimis fee must be negotiated with the department and established as an agreement through a contractual instrument to be specified by the department. Once established, a de minimis fee must be evidenced in the plan agreement provided to enrollees.

(c) The director must limit plans to those with total fees the director considers reasonable based on all the facts and circumstances, including but not limited to:

(i) The primary mission to increase access to low-cost and low-barrier retirement savings plans for small businesses and their employees;

(ii) The goal of bringing new savers into retirement plans;

(iii) The market conditions faced by financial services firms to establish and service retirement savings plans for enrollees with new and/or low-balance accounts;

(iv) The goal of maintaining and improving fee transparency and simplicity; and/or

(v) Attempts on the part of the financial services firm to arrive at a low cost fee arrangement without charging a de minimis fee.

(d) Once a de minimis fee has been agreed upon by the department and the financial services firm, the financial ser-

vices firm must supply a copy of the executed agreement to the department of financial institutions.

(e) Any changes to an agreed upon de minimis fee must be negotiated and agreed upon with the department prior to submission of an amended application for verification with the department of financial institutions.

WSR 17-15-126
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed July 19, 2017, 9:32 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-812-990 Denturist fees and renewal cycle, proposing fee reductions to align licensing fee revenues with the actual costs of regulating the profession, and to attain an appropriate annual fund balance, as well as update terms consistent with other fee rules.

Hearing Location(s): Department of Health, Professional Plaza East, Room 153, 310 Israel Road S.E., Tumwater, WA 98501, on August 22, 2017, at 11:00 a.m.

Date of Intended Adoption: August 29, 2017.

Submit Written Comments to: Nancy Elliott, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-4626, by August 22, 2017.

Assistance for Persons with Disabilities: Contact Nancy Elliott by August 8, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The goal of the proposed fee decrease is to align licensing fee revenues with the actual costs of regulating this profession, while bringing year-end fund balances to the level needed to cover unanticipated expenses over a ten-year period. Current licensing revenues are greater than the annual cost of regulating the profession plus an amount needed for an appropriate annual fund balance. Reducing fees to proposed levels will allow reserves, which are used to cover unanticipated events such as increased disciplinary costs, to decrease to a more desirable level, while still bringing in sufficient revenue to cover the expense of administering the program. The department anticipates that the fee reductions could also result in increased credential growth in this profession.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on the licensing program's costs. Based on six-year projections of fee revenue and expenses for each profession, using best available data, revenue from the current denturist profession fees are anticipated to exceed expenditures. Without the proposed fee reductions, the year-end balance will continue to accumulate in excess of the desired level.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Statute Being Implemented: RCW 43.70.250 and 43.70.-280.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nancy Elliott, 111 Israel Road, Tumwater, WA 98501, (360) 236-4878.

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

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

July 19, 2017

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 15-07-004, filed 3/6/15, effective 4/6/15)

WAC 246-812-990 Denturist fees and renewal cycle.

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee <u>Amount</u>
Original application	
Application	\$ (1,500.00) <u>350.00</u>
Examination	1,500.00
Reexamination, written	500.00
Reexamination, practical	500.00
Active license renewal	
Renewal	(1,855.00) <u>1,700.00</u>
Late renewal penalty	300.00
Expired license reissuance	300.00
Inactive license renewal	
Renewal	750.00
Expired license reissuance	300.00
Retired active license renewal	
Renewal	(930.00) <u>850.00</u>
Late renewal penalty	150.00
Duplicate license	
	(15.00) <u>10.00</u>
(Certification) Verification of license	25.00
Multiple location licenses	50.00

WSR 17-15-128
PROPOSED RULES
BIG BEND
COMMUNITY COLLEGE
[Filed July 19, 2017, 9:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-10-009.

Title of Rule and Other Identifying Information: Amending chapter 132R-04 WAC, Student conduct code.

Hearing Location(s): Big Bend Community College (BBCC), ATEC Building, Hardin Community Room, 7662 Chanute Street N.E., Moses Lake, WA 98837, on August 29, 2017, at 9:30 a.m.

Date of Intended Adoption: August 30, 2017.

Submit Written Comments to: Melinda Dourte, BBCC, 7662 Chanute Street N.E., Moses Lake, WA 98837, email Melindad@bigbend.edu, fax (509) 766-6355, by August 28, 2017.

Assistance for Persons with Disabilities: Contact Loralyn Allen, (509) 793-2027, by August 22, 2017, TTY (509) 793-2325.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On December 1, 2016, the court of appeals of the state of Washington Division III filed an opinion regarding full adjudicative proceedings required by the Washington Administrative Procedure Act (APA), chapter 34.05 RCW, in the *Arishi v. Washington State University* case (No. 33306-0-III). BBCC currently provides a full adjudicative process in situations where a student is alleged to have violated the standards of conduct for students and suspension of more than ten instructional days or dismissal/expulsion might be a result and also for all allegations of student sexual misconduct; however, BBCC will provide additional clarification regarding the adjudicative process and incorporate language from the APA and model rules of procedure (chapter 10-08 WAC) in its student conduct code WAC to ensure compliance with the court of appeals decision. Further clarification regarding the equal rights of a complainant in sexually violent conduct complaints will also be added for compliance with Title IX guidance from the United States Department of Education's Office for Civil Rights. Finally, clarification will be provided to the language throughout this chapter to improve readability and organization in general.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: Not applicable.

Rule is necessary because of state court decision, *Arishi v. Washington State University* case (No. 33306-0-III).

Name of Proponent: Dawna Haynes, BBCC, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Dawna Haynes, 7662 Chanute Street N.E., Moses Lake, WA 98837, (509) 793-2077; and Implementation: Bryce Humpherys, 7662 Chanute Street N.E., Moses Lake, WA 98837, (509) 793-2055.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not needed.

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

July 19, 2017
Dawna Haynes
Dean of Students

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-010 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to maintain and to respect the general conditions necessary for a free and effective learning environment is ~~((shared by))~~ expected of all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-015 Definitions. For the purposes of this chapter, terms are defined as follows:

(1) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code. ~~((The student conduct officer is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary-))~~ The vice president of ~~((instruction and~~

~~student services))~~ learning and student success will serve as the student conduct officer or may appoint a designee.

(2) "Conduct review officer" is a college administrator designated by the president to be responsible for receiving and facilitating appeals from student disciplinary actions and for reviewing initial ~~((orders))~~ decisions issued in a brief adjudicative proceeding. The conduct review officer shall be designated by the president and shall be authorized to grant appropriate relief upon review. ~~((The conduct review officer is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary-))~~ The director of student programs will serve as the conduct review officer, unless otherwise designated by the president.

(3) "The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary and to reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "Disciplinary action" is the process by which discipline is imposed by the student conduct officer against a student for a violation of the student conduct code.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the disciplinary committee. Appeals of all other appealable disciplinary action may be reviewed through brief adjudicative proceedings.

(6) "Respondent" is the student against whom disciplinary action is being taken.

(7) "Service" is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document ~~((by))~~ to the college assigned email, once one has been generated, and by certified mail ((or first class mail)) to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed, if possible, and deposited into the mail.

(8) "Filing" is the process by which a document is officially delivered to a school official responsible for facilitating a disciplinary review ~~((or))~~ by a presiding officer. Unless expressly specified otherwise, filing shall be accomplished by:

(a) Hand delivery of the document to the school official or school official's assistant; or

(b) By sending the document by email and first class mail to the recipient's college email and office address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified official or presiding officer.

(9) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(10) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis,

and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students((-))" for the purposes of this chapter.

(11) "Business day" means a weekday, excluding weekends and college holidays. If a time period is not specifically stated in business days, then calendar days apply.

(12) "Complainant" means any person who files a complaint alleging that a student or student organization violated the standards of conduct for students. Complainant also refers to the college when the college files the complaint.

(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132R-04-057.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-017 Statement of jurisdiction. The conduct code adopted herein applies to student conduct that occurs on college premises, at or in connection with college-sponsored activities, and to off-campus student conduct that in the judgment of the college adversely affects the well-being of the college community and/or the pursuit of its objectives. Jurisdiction (~~(includes)~~) extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the code of student conduct will be applied to conduct occurring off campus.

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-04-019 Right to demand identification. For the purpose of determining identity of a person as a student any faculty member or other college personnel authorized by the college president may demand that any person on college facilities produce evidence of student enrollment at the college. Tender of the student identification card will satisfy this requirement.

Refusal by a student to produce identification as required (~~(shall)~~) may subject the student to disciplinary action.

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-04-040 Freedom of expression. (1) Fundamental to the democratic process are the rights of free speech and peaceful assembly. Students, other members of the college community, and nonstudents shall always be free to express their views or support causes by orderly means which do not disrupt the regular and essential operations of the college.

(2) Concomitantly, while supporting the rights of students and others, the college recognizes the responsibility to maintain an atmosphere conducive to a sound educational endeavor.

(3) To (~~(insure)~~) ensure the reconciliation of such rights and responsibilities, while respecting the private rights of all individuals, campus demonstrations may be conducted only in areas which are generally available to the public provided such demonstrations:

- (a) Are conducted in an orderly manner; and
- (b) Do not unreasonably interfere with classes, scheduled meetings or ceremonies, or with the general educational processes of the college; or
- (c) Do not unreasonably interfere with vehicular or pedestrian traffic; or
- (d) Do not unreasonably interfere with regular college functions.

(4) A student who conducts or participates in a demonstration which violates any provision of this rule shall be subject to disciplinary action. A nonstudent who violates any provision of the rule will be referred to civilian authorities for criminal prosecution.

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-04-047 Freedom of association and organization. Students bring to the campus a variety of previously acquired interests and develop many new interests as members of the college community. They are free to organize and join associations to promote any legal purpose, whether it be religious, political, educational, recreational or social.

Student organizations must be granted a charter by the college student government before they may be officially recognized. Prior to becoming chartered, a student organization must submit to the student government a statement of purpose, criteria for membership, a statement of operating rules or procedures, and the name of a (~~(faculty member)~~) college employee who has agreed to serve as an advisor. All student organizations must also submit to the student government a list of officers and keep that list updated when changes occur.

In order to qualify for issuance of a charter, a student organization must be open to all students without respect to race, sex, creed, national origin, or religion. Membership in all student organizations shall be open to any member of the college community who is willing to subscribe to the stated aims of the student organization. Affiliation with a non-campus organization shall not be grounds for denial of charter, provided that other conditions for charter issuance have been met.

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-04-056 Standards. Attendance at Big Bend Community College presupposes that ((~~the~~)) students will observe the laws and deport themselves according to accepted standards of personal and group conduct. It further presupposes that each student will comply with the rules, regulations and procedures as are, or may be, established by Big Bend Community College. Failure to observe such laws, standards, rules, regulations and procedures shall render a student subject to penalties, which may include dismissal from the college.

The provisions of this section on student conduct and discipline do not apply to probation or suspension arising solely from low scholarship.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-057 Student code of conduct violations. ~~((Student misconduct.))~~ The college may impose sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act of misconduct. Misconduct for which the college may impose sanctions includes, but is not limited to, any of the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating ~~((or))~~, plagiarism, or fabrication.

(a) Cheating includes, but is not limited to, ~~((using, or attempting to use, any material, assistance, or source which has not been authorized by the instructor to satisfy any expectation or requirement in an instructional course, or obtaining, without authorization, test questions or answers or other academic material that belong to another))~~ any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes, but is not limited to, ~~((presenting or submitting another person's ideas, words, or other work in an instructional course without properly crediting that person.~~

~~((c) Academic dishonesty includes, but is not limited to, presenting or submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).~~

~~((2) Any other acts of dishonesty. Such acts))~~ taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment, and also includes providing false or deceptive information in an instructional course concerning the completion of an assignment.

(2) Other dishonesty. Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

~~((3) ((Obstruction or disruption of:))~~ **Obstructive or disruptive conduct.** Conduct not otherwise protected by law that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college ~~((activity))~~ activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment, Unwanted touching,** physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, ~~((stalking))~~ or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this ~~((subsection:~~

~~((a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.~~

~~((b) Stalking is intentional and repeated harassment or repeated following of another person, which places that person in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or another person, and the stalker either intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is frightened, intimidated or harassed, even if the stalker lacks such an intent. The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances.))~~ code, bullying is repeated or aggressive unwanted behavior, not otherwise protected by law, that humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyber misconduct including, but not limited to: Cyberstalking, cyberbullying, or online harassment.

(a) Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

(b) Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third-parties using another's email identity, nonconsensual recording of

sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) ~~((Attempted or actual damage to, or theft or misuse of, real or personal property or money of:~~

~~(a) The college or state;~~

~~(b) Any student or college officer, employee, or organization; or~~

~~(c) Any other person or organization, or possession of such property or money after it has been stolen.)) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person.~~

Property for the purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) ~~Failure to comply with ((the direction)) **directive.** Failure to comply with the directive(s) of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.~~

(8) ~~((Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community, or leads or incites another person to engage in such an activity.~~

~~(9)) **Weapons**(~~(:)~~). Possession of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device or any other weapon apparently capable of producing bodily harm, unless previously authorized by the vice president of ~~((instruction and student services. See board policy 7800 for additional details.~~~~

~~(10)) learning and student success. This policy does not apply to the possession of a personal protection spray device, as authorized by RCW 9.91.160. This policy is subject to the following exceptions:~~

~~(a) Commissioned law enforcement personnel in the state of Washington, legally authorized military personnel while in performance of their duties, and other persons or entities authorized by contract to carry firearms in the course of their employment;~~

~~(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or~~

~~(c) The president or designee may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.~~

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

~~((11)) (10) **Alcohol, drug, and tobacco violations.**~~

(a) Alcohol. The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug (including anabolic steroids, androgens, or human grown hormones), narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, except in accordance with a lawful prescription for that student by a licensed health care professional.

(d) Tobacco, electronic cigarettes, and related products(~~(:)~~). The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college, or in any location where such use is prohibited, or in any location other than the parking lots, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas.

"Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

~~((12) Alcohol: The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.~~

~~(13) Marijuana: The use, possession, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.~~

~~(14) Being observably under the influence of any legend drug, narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional.~~

~~(15) Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.~~

~~(16)) (11) **Disorderly conduct.** Conduct which is disorderly, lewd, indecent, or obscene, that is not otherwise protected under the law.~~

~~((17) Breach of the peace.~~

~~(18)) (12) **Discriminatory conduct**((~~Discriminatory~~)). Conduct which harms or adversely affects any member of the college community because of ((her or his)) race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; ((genetic information;)) sexual orientation; gender identity; veteran's status; or any other legally protected classification.~~

~~((19))~~ (13) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender or sex-based stalking. The term further includes acts of dating or domestic violence and dating violence.

(a) **Domestic violence.** Includes (i) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (ii) sexual assault of one family or household member by another; or (iii) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member. Pursuant to chapter 10.99 RCW, domestic violence also includes, but is not limited to, the following crimes when committed by one family or household member against another: Assault; drive-by shooting; reckless endangerment; coercion; burglary; criminal trespass; malicious mischief; kidnapping; unlawful imprisonment; and violation of a restraining order, no-contact order or protection order.

(b) **Dating violence.** Violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(c) **Stalking.** Intentional and repeatedly harassing or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such intent. In addition to any other form of communication or conduct, the sending of an electronic communication may constitute stalking.

(d) **Consent.** At the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(20) **Sexual harassment.** Conduct includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, or other sexual conduct, including verbal, nonverbal, electronic or social media communication, or physical touching that would substantially interfere with a reasonable person's work or educational performance, or to create an intimidating, hostile, or offensive educational environment.

(21)) **misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcomed sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's programs or activ-

ities or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of sexual harassment and means threatening or emotionally distressing conduct based on sex. This includes, but is not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent: Clear knowing and voluntary permission to engage in mutually agreed upon activity. For consent to be valid, there must be actual words or conduct indicating freely given agreement to the act at the time of the act. Consent cannot be inferred from silence, passivity, or lack of active resistance. Consent can be withdrawn by either party at any point. Consent to engage in one activity, or past agreement to engage in a particular activity, cannot be presumed to constitute consent to engage in a different activity or to engage in the same activity again. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. A person cannot consent if they are unable to understand what is happening or are disoriented, or if they are asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapable of consent has engaged in nonconsensual conduct.

(14) Harassment~~((21))~~. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; ~~((genetic information;))~~ sexual orientation; gender identity; veteran's status; or any other legally protected classification. See supplemental definitions: "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic ~~((media))~~ **communications**.

~~((22))~~ **(15) Retaliation**. Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) Misuse of electronic resources. Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

~~((23))~~ **(17) Unauthorized access**. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

~~((24))~~ **(18) Safety violations**. Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation or other college rules or policies.

(20) Abuse of process. Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

- (a) Failure to obey a subpoena or order to appear at a hearing;
- (b) Falsification or misrepresentation of information;
- (c) Disruption, or interference with the orderly conduct, of a proceeding;
- (d) Interfering with someone else's proper participation in a proceeding;
- (e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;
- (f) Attempting to influence the impartiality of, or harassing or intimidating, a student disciplinary committee member; or
- (g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

~~((25))~~ **(21) Unsafe vehicle operation**. Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

~~((26))~~ **(22) Violation of other laws or policies**. Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

~~((27))~~ **(23) Ethical violation**~~((21))~~. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

~~((28))~~ **(24) Aiding or abetting**. Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-063 Disciplinary ~~((sanctions))~~ actions. ~~((Sanctions.))~~ Disciplinary actions include, but are not limited to, the following sanctions that may be imposed alone or in conjunction upon students ~~((according to the procedure outlined))~~ found to have committed the violations in WAC 132R-04-057. The college may impose additional sanctions on a student who fails to comply with any imposed sanctions including, but not limited to, preventing that student from registering for classes.

(1) Warning: A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) Reprimand: Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Disciplinary probation: Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college. Other conditions and restrictions may include, but not be limited to, restrictions from being present on certain parts of the campus or in certain college buildings; restriction from attending certain college activities or participation in extra-curricular activities; orders of no contact between the student under probation and other students, college employees, or other persons.

~~((4))~~ **Not in good standing.** A student ~~((who is on disciplinary probation))~~ may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

~~((4))~~ **(5) Education.** The college may require the student to complete an educational project or attend sessions, at the student's expense, which address the student's behavior such as anger management or counseling.

(6) Loss of privileges. Denial of specified privileges for a designated period of time.

(7) No contact order. An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(8) Restitution: Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

~~((5))~~ **(9) Suspension:** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

~~((6))~~ **(10) Professional evaluation:** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of func-

tioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

~~((7) Dismissal)~~ **(11) Expulsion:** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-064 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The ~~((vice president of instruction and student services))~~ **student conduct officer** (or designee) may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with written notice or oral notice of the summary suspension at the time of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension Proceedings" and shall include:

(a) The reasons for imposing the summary suspension, including reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the chair of the student disciplinary committee for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or designee, or to attend a disciplinary hearing.

(5)(a) The conduct review officer or designee shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. The hearing will be conducted as a brief adjudicative proceeding.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the notice of summary suspension proceedings has been served upon the respondent in accordance with these rules and the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision, which shall include a brief statement of findings of fact and conclusions of law, the policy reasons justifying imposition of the summary suspension. If summary suspension is upheld and/or other discipline imposed, the order shall inform the respondent of the duration of the summary suspension or the nature of the disciplinary action(s), conditions under which the summary suspension may be terminated or modified, and procedures by which the order may be appealed.

(f) The interim suspension shall not replace the regular discipline process, which shall proceed as quickly as feasible in light of the interim suspension.

(g) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices whom may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the complainant will be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-067 Appeal from disciplinary action.

(1) The respondent may appeal the results of a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty calendar days of service of the ~~((discipline order))~~ student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's order shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student disciplinary committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) In the event of a conflict between this student conduct code and the Administrative Procedure Act, chapter

34.05 RCW, ~~((governs committee proceedings and controls in the event of any conflict with these rules))~~ this student conduct code will govern.

(6) The college hereby adopts the Model rules of procedure, chapter 10-08 WAC, by reference. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(7) Imposition of discipline for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(8) The student disciplinary committee shall hear ~~((appeals from))~~ the following cases as fully adjudicated proceedings:

(a) Appeals from suspensions in excess of ten instructional days;

(b) Appeals from dismissals; ~~((and))~~

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president; and

(d) Cases in which students request to have their discipline case heard by the committee.

(9) Student conduct appeals involving the following disciplinary actions shall be ~~((heard))~~ reviewed as brief adjudicative proceedings:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-100 Authority. The Big Bend Community College (BBCC) board of trustees, acting according to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of ~~((instruction and student services))~~ learning and student success. The vice president of ~~((instruction and student services))~~ learning and student success will serve as the student conduct officer, or appoint a designee. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132R-04-105 Supplemental sexual misconduct procedures. (1) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial discipline action and to appeal the student conduct officer's disciplinary order. Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct. In such cases, these procedures shall supplement the student disciplinary procedures. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

(2) **Supplemental complaint process.** The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(a) The college's Title IX compliance officer shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(b) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(c) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(d) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-112 Initiation of disciplinary action.

(1) All disciplinary proceedings will be initiated by the ~~((vice president of instruction and student services)) student conduct officer~~ or a designee. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) ~~((A student accused of violating any provision of the conduct code (the respondent) shall be notified of an initial meeting with the vice president of instruction and student services.))~~ The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing the respondent to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is charged with violating, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to appear after proper notification, the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to initiating taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the com-

plainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the ~~((vice president of instruction and student services)) student conduct officer~~ shall serve the respondent with a written ~~((order)) decision~~ setting forth ~~((the facts and conclusions supporting his or her decision,))~~ the specific student conduct code provisions ~~((found))~~ alleged to have been violated, the ~~((discipline imposed (if any)))~~ action taken, and a notice of ~~((any))~~ appeal rights ~~((with an explanation of the consequences of failing to file a timely appeal))~~ (if any).

~~((4) The vice president of instruction and student services, acting in the role of student conduct officer,))~~ (5) The student conduct officer may take any of the following actions:

(a) Exonerate the respondent and terminate the proceeding~~((, exonerating the respondent))~~;

(b) Dismiss the case after providing appropriate counseling and advice to the respondent. Such action is final and is not subject to review on appeal;

(c) Issue a verbal warning to the respondent directly. Such action is final and is not subject to review on appeal;

(d) Impose ~~((additional sanctions of reprimand, disciplinary probation, suspension or dismissal))~~ a disciplinary action(s), as described in WAC 132R-04-063. Such actions are subject to review on appeal as provided in this chapter. Any decision imposing a disciplinary action(s) must state the facts and conclusions supporting the student conduct officer's decision, the specific student conduct code provision(s) found to have been violated, the details of the discipline imposed, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal;

(e) Refer the matter directly to the student disciplinary committee for such action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the disciplinary committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-115 Brief adjudicative proceedings—

General. (1) ~~((Brief adjudicative proceedings.))~~ This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

- (a) Parking violations.
- (b) Outstanding debts owed by students or employees.
- (c) Use of college facilities.
- (d) Residency determinations.
- (e) Use of library - Fines.
- (f) Challenges to contents of education records.
- (g) Loss of eligibility for participation in institution sponsored athletic events.
- (h) Student conduct appeals involving the following disciplinary actions:
 - (i) Suspensions of ten instructional days or less;
 - (ii) Disciplinary probation;
 - (iii) Written reprimands; and
 - (iv) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.
- (i) Appeals of decisions regarding mandatory tuition and fee waivers.

(2) Brief adjudicative proceedings are informal hearings ~~((and))~~ designed to resolve disputes and address concerns on the part of students, faculty, or other college personnel. Brief adjudicative proceedings shall be conducted in a manner which will bring about a prompt, fair resolution of the matter.

~~((2) Brief adjudicative proceedings—Initial hearing. The initial hearing (also known as a brief adjudicative proceeding) is an initial and less formal process designed to resolve disputes and address concerns on the part of students, faculty, or other college personnel.~~

~~(a) Brief adjudicative proceedings shall be conducted by the appropriate dean or the associate vice president of student services, acting as the presiding officer. The presiding officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.~~

~~(b) Before taking action, the presiding officer shall conduct an informal hearing and provide each party (i) an opportunity to be informed of the college's view of the matter and (ii) an opportunity to explain the party's view of the matter.~~

~~(c) The presiding officer shall serve an initial order upon both the parties within ten days of consideration of the initial hearing. The initial order shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial order. If no request for review is filed within twenty-one days of service of the initial order, the initial order shall be deemed the final order.~~

~~(d) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student disciplinary committee for a disciplinary hearing. The conduct~~

~~review officer may enter an interim order suspending the student until a hearing can be held by the student disciplinary committee. The interim order shall provide a brief explanation as to facts supporting the interim order of suspension and give the necessary notices that the case has been referred to the student disciplinary committee.))~~

NEW SECTION

WAC 132R-04-116 Brief adjudicative proceedings—

Initial hearing. (1) Brief adjudicative proceedings shall be conducted by the student conduct officer. The presiding officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (i) an opportunity to be informed of the college's view of the matter and (ii) an opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon all the parties within ten business days of consideration of the initial hearing. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one calendar days of service of the initial decision, the initial decision shall be deemed the final order.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student disciplinary committee for a disciplinary hearing. The conduct review officer may enter an interim order suspending the student until a hearing can be held by the student disciplinary committee. The interim order shall provide a brief explanation as to facts supporting the interim order of suspension and give the necessary notices that the case has been referred to the student disciplinary committee.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-117 Student disciplinary committee—

General. (1) The student disciplinary committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members recommended by the faculty association and appointed by the president;

(c) ~~((One))~~ The conduct review officer or other member of the administration appointed by the president at the beginning of the academic year. ((The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.))

(2) The ~~((member of the administration))~~ conduct review officer shall serve as the committee chair ~~((of the committee))~~ and may take action on preliminary hearing matters prior to the appointment of the committee. The committee chair shall

receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student disciplinary committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member (~~pur-~~ suant to RCW 34.05.425(4)).

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-130 Student disciplinary committee ~~(process)~~—Hearing. (1) (~~Student disciplinary committee process.~~

~~(a))~~ The student conduct administrative panel will conduct full adjudicative proceedings in accordance with the provisions of this standards of conduct for students code, the Administrative Procedure Act (chapter 34.05 RCW), and the model rules of procedure (chapter 10-08 WAC) including a hearing, determination of findings, conclusions, and sanctions. To the extent there is a conflict between the conduct code and the model rules, this student conduct code shall control.

~~(2)~~ The committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date (, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control). The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause.

~~((b))~~ (3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and forms of any discovery, issuance of protective orders, and similar procedural matters.

~~((c))~~ (4) Upon request filed at least five business days before the hearing by either party or at the direction of the committee chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present in their respective cases. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, unless the party can show good cause for such failure.

~~((d))~~ (5) The committee chair may provide to the committee members in advance of the hearing copies of (i) the student conduct officer's notification of imposition of discipline (or referral to the committee) and (ii) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that

these "pleadings" are not evidence of any facts they may allege.

~~((e))~~ (6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

~~((f) The vice president of instruction and student services (or designee))~~ (7) The student conduct officer shall provide reasonable assistance to the respondent, upon request, in obtaining relevant and admissible evidence that is within the college's control.

~~((g))~~ (8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate; any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

~~((h))~~ (9) Each party may be accompanied at the hearing by a nonattorney assistant of (his or her) their choice. A respondent or complainant in a case involving allegations of sexual misconduct may elect to be represented by an attorney at (his or her) their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent or complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

~~((2) Student disciplinary committee hearings—Presentation of evidence.~~

~~(a) Upon the failure of any party to attend or participate in a hearing, the committee may either (i) proceed with the hearing and issuance of its order or (ii) serve an order of default in accordance with RCW 34.05.440.~~

~~(b) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings should be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.~~

~~(c) The chair shall cause the hearing to be recorded by a method that he or she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to the respondent upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by the respondent. Other recording shall also be permitted, in accordance with WAC 10-08-190.~~

~~(d) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.~~

~~(e) The vice president of instruction and student services or a designee (unless represented by an assistant attorney general) shall present the case for disciplinary action. The~~

facts justifying any such action must be established by a preponderance of the evidence.

(f) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

~~(3) Supplemental sexual misconduct procedures.~~ Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial discipline action and to appeal the student conduct officer's disciplinary order.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct. In such cases, these procedures shall supplement the student disciplinary procedures. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

~~(4) Supplemental definitions.~~ For purposes of student conduct code proceedings involving sexual misconduct, the following definitions apply:

(a) The "complainant" is the alleged victim of sexual misconduct. Complainant also refers to the college when the college files the complaint.

(b) "Sexual misconduct" is a sexual or gender-based violation of the student conduct code including, but not limited to:

(i) Sexual activity for which clear and voluntary consent has not been given in advance;

(ii) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping or otherwise incapacitated due to alcohol or drugs;

(iii) Sexual harassment;

(iv) Sexual violence which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual or gender-based stalking;

(v) Nonphysical conduct such as sexual or gender-based digital media stalking, sexual or gender-based online harassment, sexual or gender-based cyberbullying, noneconsensual recording of a sexual activity, and noneconsensual distribution of a recording of a sexual activity.

~~(5) Supplemental complaint process.~~ The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student:

(a) The college's Title IX compliance officer shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(b) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(e) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

~~(d) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.~~

~~(e) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.)~~ (10) In circumstances involving more than one accused student, the student conduct officer may permit joint or separate hearings upon request by a party.

NEW SECTION

WAC 132R-04-131 Student disciplinary committee hearing—Presentation of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the committee may either (i) proceed with the hearing and issuance of its order or (ii) serve an order of default in accordance with RCW 34.05.440. If an accused student, with notice, does not appear before a student conduct administrative panel hearing, the information in support of the complaint is presented and considered in the absence of the accused student.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record or in writing that some or all of the proceedings should be open, the committee chair shall determine any extent to which the hearing will be open. For hearings involving sexual misconduct allegations, complainant, accused student, and their respective attorney representatives may attend portions of the hearing where argument, testimony, and/or evidence are presented to the student disciplinary committee. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The committee chair shall cause the hearing to be recorded by a method that the committee chair selects, in accordance with RCW 34.05.449. Panel deliberations are not recorded. The recording, or a copy, is property of the college, but will be made available to the respondent upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by the respondent. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The committee chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee, and make rulings on the admissibility of evidence, motions, objections, and on challenges to the impartiality of board members, unless a hearing examiner is appointed as provided below. These rulings shall be made on the record. The Washington rules of evidence shall serve as guidelines for those rulings on the admissibility of evidence, in conjunction with the Administrative Procedure Act, chapter 34.05 RCW. Questions related to the order of the proceedings are also determined by the committee chair.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for disciplinary action. The facts justifying any such action must be established by a preponderance of the evidence.

(6) All testimony shall be given under oath or affirmation. The panel chair determines which records, exhibits, and written statements may be accepted as information for consideration by the panel. These rulings shall be made on the record. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) The president of the college or designee, the chair of the student disciplinary committee, the administrators assigned to the student disciplinary committee, deans, and/or the student conduct officer have the authority to issue subpoenas.

(8) The accused student and the student conduct officer may arrange for witnesses to present pertinent information to the student disciplinary committee. Each party is responsible for informing their witnesses of the time and place of the hearing.

(9) The committee chair may accommodate concerns for the personal safety, well-being or fears of confrontation during the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means. In making such accommodations, the rights of the other parties must not be prejudiced and must have the opportunity to participate effectively in, to hear, and, if technically economically feasible, to see the entire proceeding while it is taking place.

(10) In cases involving allegations of sexual misconduct, neither party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be submitted in writing to the committee chair, who in his or her discretion shall pose the questions on the party's behalf.

(11) At the conclusion of the hearing, the committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee may also permit each party to propose findings, conclusions, and/or an order for its consideration.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-140 Student disciplinary committee—Initial ~~((order))~~ decision. (1) ~~((At the conclusion of the~~

~~hearing, the committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or an order for its consideration.~~

~~(2))~~ Within twenty calendar days following the conclusion of the hearing or the committee's receipt of closing arguments (whichever is later), the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

~~((3))~~ (2) The committee's initial decision shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall determine any disciplinary sanction or conditions authorized herein. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the discipline imposed by the student conduct officer and/or impose any other disciplinary sanction or conditions authorized herein.

~~((4))~~ (3) The committee chair shall provide copies of the initial ~~((order))~~ decision to the parties and any legal counsel who have appeared. The committee chair shall also promptly transmit a copy of the order and the record of the committee's proceedings to the college president and the vice president of ~~((instruction and student services))~~ learning and student success.

(4) In cases involving allegations of sexual misconduct, the committee chair, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of his or her appeal rights.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-150 Appeal from student disciplinary committee initial ~~((order))~~ decision. (1) ~~((Appeal from student disciplinary committee initial order.~~

~~((a))~~ A respondent who is aggrieved by the findings and conclusions issued by the student disciplinary committee may appeal the committee's initial ~~((order))~~ decision to the president by filing a notice of appeal with the president's office within twenty calendar days of service of the committee's initial ~~((order))~~ decision.

~~((b))~~ (2) The notice of appeal must assign error to specific findings of fact and/or conclusions of law in the initial ~~((order))~~ decision and must contain argument regarding why the appeal should be granted. The president's review on appeal shall be limited to a review of those issues and argu-

ments raised in the notice of appeal. Review shall be restricted to the record created below.

~~((e))~~ (3) The president shall provide a written order to all parties within forty-five calendar days after receipt of the notice of appeal. The president's decision shall be final.

~~((d))~~ (4) The president may ~~(, at his or her)~~ exercise discretion ~~(,)~~ to suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

~~((e))~~ (5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

~~((2))~~ **Supplemental appeal rights.**

~~(a))~~ (6) Respondents and complainants in a case involving allegations of sexual misconduct shall have the right to be accompanied by an attorney or nonattorney assistant of their choosing during the appeal process, but will be deemed to have waived that right unless they file with the president a written notice of the attorney's identity and participation within twenty calendar days of service of the committee's initial decision.

(7) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(a) In addition to the appeal rights provided to the respondent above, a complainant may also appeal the following actions by the student conduct officer ~~((may be appealed by the complainant))~~:

(i) The dismissal of a sexual misconduct complaint; or
(ii) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(b) ~~((A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty days of service of the notice of the discipline decision provided for in WAC 132R-04-140. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.~~

~~(e))~~ If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal, and provide the complainant an opportunity to intervene as a party to the appeal.

~~((d))~~ Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

~~(e)~~ Respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

~~(f)~~ During the proceedings, complainant and respondent shall not directly question or cross-examine one another. All

~~questions shall be directed to the chair, who will act as an intermediary and pose questions on the parties' behalf.~~

~~(g)~~ Hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

~~(h)~~ The student conduct committee will serve complainant a written notice indicating that an initial order has issued on the same date that the initial order is served on respondent. This notice shall inform the complainant whether the sexual misconduct allegations were found to have merit and describe any sanctions and/or conditions imposed upon the respondent for complainant's protection. The notice shall also provide directions on how the complainant can appeal the decision to the president.

~~(i)~~ Complainant may appeal the student conduct committee's initial order to the president subject to the same procedures and deadlines applicable to other parties.

~~((j))~~ (c) The president will serve complainant a written notice indicating that the appeal has been resolved on the same date that the final order is served upon the respondent. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-160 Brief ~~((adjudication))~~ adjudicative proceedings—Review of an initial ~~((order))~~ decision.

(1) An initial ~~((order))~~ decision is subject to review by the president or his or her designee, provided the respondent files a written request for review with the conduct review officer within twenty-one calendar days of service of the initial ~~((order))~~ decision.

(2) The president or designee shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president or designee shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the proceedings must be referred to the student disciplinary committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty ~~((business))~~ calendar days of the initial ~~((order))~~ decision or of the request for review, whichever is later. The order on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the review-

ing officer does not make a disposition of the matter within twenty calendar days after the request is submitted.

(5) If the president or designee upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student disciplinary committee for a disciplinary hearing. The president or designee may enter an interim order suspending the student until a hearing can be held by the student disciplinary committee. The interim order shall provide a brief explanation as to facts supporting the interim order of suspension and give the necessary notices that the case has been referred to the student disciplinary committee.

AMENDATORY SECTION (Amending WSR 16-15-011, filed 7/8/16, effective 8/8/16)

WAC 132R-04-165 Brief ((~~adjudication~~)) adjudicative proceedings—Agency record. The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
132R-04-067	132R-04-113
132R-04-100	132R-04-005
132R-04-117	132R-04-125
132R-04-160	132R-04-118
132R-04-165	132R-04-119

**WSR 17-15-129
PROPOSED RULES
BIG BEND
COMMUNITY COLLEGE**

[Filed July 19, 2017, 9:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-079.

Title of Rule and Other Identifying Information: Firearms and dangerous weapons (amendment to WAC 132R-117-010), of chapter 132R-117 WAC, General conduct code, relating to the possession of weapons on property owned or controlled by Big Bend Community College (BBCC).

Hearing Location(s): BBCC, ATEC Building, Hardin Community Room, 7662 Chanute Street N.E., Moses Lake, WA 98837, on August 29, 2017, at 9:30 a.m.

Date of Intended Adoption: August 30, 2017.

Submit Written Comments to: Melinda Dourte, BBCC, 7662 Chanute Street N.E., Moses Lake, WA 98837, email

Melindad@bigbend.edu, fax (509) 766-6355, by August 28, 2017.

Assistance for Persons with Disabilities: Contact Loralyn Allen, (509) 793-2027, by August 22, 2017, TTY (509) 793-2325.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These revisions are needed to update college standards and processes to better reflect current practices regarding the possession, use, and storage of weapons on college owned or controlled property.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Dawna Haynes, BBCC, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Dawna Haynes, 7662 Chanute Street N.E., Moses Lake, WA 98837, (509) 793-2077; and Implementation: Linda Schoonmaker, 7662 Chanute Street N.E., Moses Lake, WA 98837, (509) 793-2002.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not needed.

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

July 19, 2017
Melinda Dourte
Vice President of
Finance and Administration

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-117-010 Firearms and dangerous weapons. (1) Possession, carrying or discharge of any ~~((explosive, firearm, or other weapon))~~ firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device or any other weapon apparently capable of producing bodily harm (including shot guns, pistols, air guns, pellet guns, and paint-ball guns), whether loaded or unloaded, is prohibited on Big Bend Community College owned or controlled property, unless otherwise authorized in this provision.

(2) ~~((Only))~~ Such persons who are authorized to carry firearms or other weapons as duly appointed and commissioned law enforcement officers in the state of Washington, legally authorized military personnel while in the performance of their duties, and other persons or entities authorized by contract to carry firearms in the course of their employment, ((shall)) may possess firearms or other weapons issued for their possession by their respective law enforcement agencies while on campus or other college controlled property, including residence halls.

(3) ~~((Other than the persons referenced in subsection (2) of this section, members of the campus community and visitors who bring firearms or other weapons to campus must immediately place the firearms or weapons in the college-provided storage facility. The storage facility for students living at the residence halls is controlled by the residence halls coordinator. The storage facility for all other students is in the registration office and is controlled by the vice president of~~

student services. Both facilities are accessible during the hours of 8:00 a.m. through 4:30 p.m., Monday through Friday (excluding holidays.) An individual with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view.

(4) Anyone seeking to bring a firearm or other weapon onto campus for ~~((display or demonstration))~~ purposes directly related to a class or other educational activity must obtain prior written authorization from the vice president of ~~((instruction))~~ learning and student success or any other person designated by the president of the college. The vice president of ~~((instruction))~~ learning and student success or other designee shall review any such request and may establish conditions to the authorization. Any permission shall be in writing and subject to such terms or conditions incorporated into the written permission.

(5) ~~((Firearms owned by the institution for use by special interest groups such as ASB gun clubs, ROTC, or intercollegiate shooting teams, must be stored in a location approved by the vice president of student services or any other person designated by the president of the college. Said firearms must be checked out by the club advisor or coach and are to be used by legitimate members of the club or teams in the normal course of the club or team's activity.))~~ Any person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Big Bend Community College.

(6) Violators shall be subject to appropriate disciplinary or legal action.

WSR 17-15-131

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed July 19, 2017, 9:53 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-922-990 Podiatry fees and renewal cycle, the department is proposing fee increases to the substance abuse monitoring program surcharge to implement HB 1198 (chapter 22, Laws of 2017), correction of a credential title, and changes to standardize fees for late renewal, verification of credentials, duplicate credentials, and expired license reissuance.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on September 6, 2017, at 10:00 a.m.

Date of Intended Adoption: September 13, 2017.

Submit Written Comments to: Sherry Thomas, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2901, by September 6, 2017.

Assistance for Persons with Disabilities: Contact Sherry Thomas by August 25, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal

implements HB 1198 which increases the substance abuse monitoring program surcharge for podiatric physicians from \$25 to \$50 per year. The podiatric medical board contracts with the Washington physicians health program (WPHP) to administer the program. The surcharge is paid directly to WPHP and the revenue is not included in the profession's licensing budget. The proposed changes also standardize fees for late renewal, verification of credentials, duplicate credentials, and expired license reissuance, and correct the title of "limited license" to "postgraduate training license."

Reasons Supporting Proposal: WPHP protects patient safety by providing assistance to impaired health care professionals. The legislature determined the surcharge for this program should be increased to meet inflation and rising costs. HB 1198 sets the surcharge at \$50. The proposed changes to other fees meet department standards for consistency across health professions for functions that require similar staff time to complete, and standards for consistent rounding of fee amounts. Changing "limited license" to "postgraduate training license" is to align it with the title of the credential in RCW 18.22.045.

Statutory Authority for Adoption: Chapter 22, Laws of 2017, RCW 18.130.175, and 43.70.250.

Statute Being Implemented: Chapter 22, Laws of 2017 and RCW 43.70.250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sherry Thomas, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4612; and Enforcement: Sue Gragg, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4941.

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

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

July 19, 2017

John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending WSR 13-21-069, filed 10/16/13, effective 1/1/14)

WAC 246-922-990 Podiatry fees and renewal cycle.

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except for postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates.

(3) The following nonrefundable fees will be charged:

<u>(Title of Fee</u>	<u>Fee</u>	<u>Title of Fee</u>	<u>Fee</u>
Application	\$650.00	<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>
License renewal	650.00	<u>Substance abuse monitoring surcharge</u>	<u>50.00</u>
Inactive license renewal	175.00	<u>Temporary practice permit</u>	<u>50.00</u>
Inactive late renewal penalty	100.00	<u>Duplicate license</u>	<u>10.00</u>
Active late renewal penalty	300.00	<u>Verification of license</u>	<u>25.00</u>
Active expired license reissuance	300.00		
Expired inactive license reissuance	67.50		
Duplicate license	30.00		
Certification of license	50.00		
Retired active status	275.00		
Temporary practice permit	50.00		
Limited license application	400.00		
Limited license renewal	475.00		
Substance abuse monitoring surcharge	25.00		
UW online access fee (HEAL-WA)	16.00		
<u>Title of Fee</u>	<u>Fee</u>		
<u>Original application</u>			
<u>Application</u>	<u>\$650.00</u>		
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>		
<u>Substance abuse monitoring surcharge</u>	<u>50.00</u>		
<u>Active license renewal</u>			
<u>Renewal</u>	<u>650.00</u>		
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>		
<u>Substance abuse monitoring surcharge</u>	<u>50.00</u>		
<u>Late renewal penalty</u>	<u>325.00</u>		
<u>Expired license reissuance</u>	<u>300.00</u>		
<u>Inactive license renewal</u>			
<u>Renewal</u>	<u>175.00</u>		
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>		
<u>Substance abuse monitoring surcharge</u>	<u>50.00</u>		
<u>Late renewal penalty</u>	<u>90.00</u>		
<u>Expired license reissuance</u>	<u>70.00</u>		
<u>Retired active license renewal</u>			
<u>Renewal</u>	<u>275.00</u>		
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>		
<u>Substance abuse monitoring surcharge</u>	<u>50.00</u>		
<u>Late renewal penalty</u>	<u>140.00</u>		
<u>Postgraduate training license application</u>			
<u>Application</u>	<u>400.00</u>		
<u>UW online access fee (HEAL-WA)</u>	<u>16.00</u>		
<u>Postgraduate training license renewal</u>			
<u>Renewal</u>	<u>475.00</u>		