

WSR 17-17-002
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed August 2, 2017, 12:13 p.m., effective September 2, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending WAC 308-408A-110(2) to reflect the program it enforces; repealing WAC 308-408A-010 to remove a fingerprint requirement for which the program does not have legal authority; and repealing WAC 308-408B-130 to remove a rule that is no longer in effect.

Citation of Rules Affected by this Order: Repealing WAC 308-408A-010 and 308-408B-130; and amending WAC 308-408A-110(2).

Statutory Authority for Adoption: RCW 18.280.050.

Adopted under notice filed as WSR 17-11-103 on May 22, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 2; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 2.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 2, 2017.

Damon Monroe
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-408A-010 Application for a license—Fingerprinting.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

WAC 308-408A-110 Continuing education clock hour requirements. A licensee shall submit to the department evidence of satisfactory completion of clock hours, pursuant to RCW 18.280.110, in the manner and on forms prescribed by the department.

(1) A licensee applying for renewal of a license shall submit evidence of completion of twenty-four hours of instruction in a course(s) approved by the board and commenced within twenty-four months of a licensee's renewal date.

(2) The twenty-four clock hours shall be satisfied by evidence of completion of approved ((~~real estate~~)) home inspector courses as defined in WAC 308-408B-040.

(3) Courses for continuing education clock hour credit shall be commenced after issuance of a first license.

(4) Approved courses may be repeated for continuing education credit in subsequent renewal periods.

(5) Clock hour credit for continuing education shall not be accepted if: The course is not approved pursuant to chapters 308-408B WAC and 18.280 RCW.

(6) Instructors shall not receive clock hour credit for teaching or course development.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-408B-130 Fundamentals supplemental course.

WSR 17-17-012
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed August 4, 2017, 2:47 p.m., effective September 4, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends rules for commercial salmon fishing in Willapa Bay and includes WAC 220-354-250 Willapa Bay salmon fall fishery. The changes incorporate recommendations of the North of Falcon subgroup of the Pacific Fisheries [Fishery] Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Willapa Bay, while protecting species of fish listed as endangered.

Citation of Rules Affected by this Order: Amending WAC 220-354-250.

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

Adopted under notice filed as WSR 17-11-129 on May 23, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 3, 2017.

J. W. Unsworth
Director

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

WAC 220-354-250 Willapa Bay salmon fall fishery.

From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial

purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for coho salmon, chum salmon, and Chinook salmon:

Area	Time	Date(s)	Maximum Mesh Size
2M, (2N,) 2R	7:00 a.m. through 7:00 p.m.	(9/6, 9/7) <u>9/5</u>	4.25"
2M, <u>2N</u> , 2R	7:00 a.m. through 7:00 p.m.	(9/8) <u>9/11, 9/12</u>	4.25"
2T	6:00 a.m. through 6:00 p.m.	(9/16, 9/17) <u>9/18</u>	(6.5") <u>4.25"</u>
(2M, 2R) <u>2N</u>	6:00 a.m. through 6:00 p.m.	(9/11, 9/12, 9/13, 9/14, 9/16, 9/17) <u>9/18, 9/19, 9/20, 9/21, 9/22</u>	(6.5") <u>4.25"</u>
(2N	6:00 a.m. through 6:00 p.m.	9/11, 9/12, 9/13, 9/16, 9/17	6.5")
<u>2M</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>9/18, 9/19, 9/20</u>	<u>4.25"</u>
<u>2R</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>9/18, 9/19, 9/20, 9/21</u>	<u>4.25"</u>
2U	6:00 a.m. through 6:00 p.m.	(9/16) <u>9/18, 9/19, 9/20, 9/21</u>	4.25"
(2T	6:00 a.m. through 6:00 p.m.	9/19, 9/20, 9/21, 9/22	6.5"
<u>2U</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>9/19, 9/20, 9/21, 9/22, 9/23</u>	<u>4.25"</u>
<u>2N</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>9/20, 9/21, 9/22, 9/23, 9/24</u>	<u>6.5"</u>
<u>2M, 2R</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>9/18, 9/19, 9/20, 9/21, 9/22, 9/23</u>	<u>6.5"</u>
2M,) 2N, 2R(2T)	7:00 a.m. through 7:00 p.m.	(9/27, 9/28, 9/29, 9/30, 10/1) <u>9/25, 9/26, 9/27, 9/28, 9/29</u>	6.5"
<u>2M</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/25, 9/26, 9/27, 9/28</u>	<u>6.5"</u>
(2U) <u>2T</u>	7:00 a.m. through 7:00 p.m.	(9/27, 9/28, 9/29, 9/30, 10/1) <u>9/25, 9/26</u>	4.25"
2U	7:00 a.m. through 7:00 p.m.	(10/3, 10/4, 10/5, 10/6) <u>9/25, 9/26, 9/27, 9/28, 9/29</u>	4.25"
(2M, 2N,) 2R	(7:00) <u>6:00</u> a.m. through (7:00) <u>6:00</u> p.m.	<u>10/2, 10/3, 10/4, 10/5, 10/6</u>	6.5"
<u>2M, 2N</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>10/3, 10/4, 10/5, 10/6</u>	<u>6.5"</u>
<u>2T</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>10/2, 10/3, 10/4, 10/5, 10/6</u>	<u>6.5"</u>
2U	(7:00) <u>6:00</u> a.m. through (7:00) <u>6:00</u> p.m.	(10/9, 10/10, 10/11, 10/12, 10/13, 10/14) <u>10/2, 10/3, 10/4, 10/5, 10/6</u>	4.25"
<u>2N, 2R</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/9, 10/10, 10/11, 10/12, 10/13</u>	<u>6.5"</u>
<u>2M</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/9, 10/10, 10/11, 10/12</u>	<u>6.5"</u>
<u>2T</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/9, 10/10</u>	<u>6.5"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/9, 10/10, 10/11, 10/12, 10/13</u>	<u>4.25"</u>
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	(11/4) <u>10/31</u> through (11/4) <u>11/2</u>	6.5"
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	(11/7) <u>11/6</u> through (11/11) <u>11/10</u>	6.5"
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	(11/14) <u>11/13</u> through (11/18) <u>11/17</u>	6.5"
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	(11/21) <u>11/20</u> through (11/25) <u>11/24</u>	6.5"
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m. through 11:59 p.m.</u>	<u>11/27 through 12/1</u>	<u>6.5"</u>

Gear:

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear.

(b) It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

(c) 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.

(d) It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Willapa Bay, provided the net is properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

(e) From 12:01 a.m. September ~~((6))~~ 5 through ~~((November 30))~~ 11:59 p.m. December 1: Mesh size must not exceed six and one-half inches stretched, except mesh size must not exceed four and one-quarter inches stretched in Areas 2M~~((2N,))~~ and 2R on September ~~((6, 7, and 8 and))~~ 5, in Areas 2M on September 11, 12, 18, 19, and 20, 2N on September 11, 12, 18, 19, 20, 21, and 22, and 2R on September 11, 12, 18, 19, 20, and 21, in Area 2T on September 18, 25, and 26, and in Area 2U on September ~~((16))~~ 18, 19, 20, 21, ~~((22, 23, 27, 28, 29, 30,))~~ 25, 26, 27, 28, 29, October ~~((+))~~ 2, 3, 4, 5, 6, 9, 10, 11, 12, and 13~~((and 14))~~.

Other:

(3) Recovery boxes and soak time limits described in this section are required from 12:01 a.m. September ~~((6))~~ 5 through 11:59 p.m. October ~~((14))~~ 13:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request,

that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(b) All steelhead and wild (unmarked) Chinook must be placed in an operating recovery box, which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (c) of this subsection. From September ~~((6))~~ 5 through ~~((October 1))~~ December 1, 2017, all chum must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (c) of this subsection.

(c) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river/bay prior to landing or docking.

(d) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-352-180(14), reports must be made by 10:00 a.m. the day following landing.

(5) Retention prohibitions:

(a) All green and white sturgeon and all steelhead, except as provided in subsection (3) of this section, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay.

(b) Retention of any species other than coho salmon~~((or chum salmon,))~~ or Chinook is prohibited.

(c) From 12:01 a.m. September ~~((6))~~ 5 through 11:59 p.m. October ~~((+))~~ 13, retention of any species other than coho salmon or hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(d) From 12:01 a.m. October ~~((2))~~ 31 through 11:59 p.m. ~~((October 14))~~ December 1, retention of any species other than coho salmon, ~~((chum salmon, or))~~ hatchery Chinook marked by a healed scar at the site of the adipose fin, or wild (unmarked) Chinook is prohibited.

(6) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or email at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) Do NOT remove tags from white sturgeon. Please obtain available information from tags without removing tags. Submit tag information to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563.

(8) Those waters of Area 2T north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green), then northeasterly to the power transmission pole located at 46°43.1907'N, 123°50.83134'W are CLOSED from 6:00 a.m. September ~~((16, 2016))~~ 18, 2017 through 11:59 p.m., September 30, ~~((2016))~~ 2017.

(9) It is unlawful to fish with gillnet gear in Areas 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.

(10) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or email. Notice of intent must be given prior to ((+2:00)) 5:00 p.m. on ((September 1)) August 28, 2017.

WSR 17-17-016
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 15-06—Filed August 7, 2017, 2:58 p.m., effective September 7, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Ecology is adopting amendments to chapter 173-18 WAC, Shoreline Management Act—Streams and rivers constituting shorelines of the state; chapter 173-20 WAC, Shoreline Management Act—Lakes constituting shorelines of the state; chapter 173-22 WAC, Adoption of designations of shorelands and wetlands associated with shorelines of the state; chapter 173-26 WAC, Shoreline master program approval/amendments procedures and master program guidelines; and chapter 173-27 WAC, Shoreline management permit and enforcement procedures.

These rule changes include:

1. Clarifying the process to comply with the periodic review requirement per Shoreline Management Act, RCW 90.58.080 as the first round of shoreline master program (SMP) reviews will be due to ecology June 2019;

2. Simplify the process for approving minor updates to SMPs;

3. Housekeeping amendments to include the following:

- Update the list of shorelines of the state to be consistent with SMP updates;
- Ensure consistency with amendments to statute since the last rule revision;
- Capture any administrative updates since the last rule revision.

Citation of Rules Affected by this Order: Amending chapters 173-18, 173-20, 173-22, 173-26, and 173-27 WAC.

Statutory Authority for Adoption: Shoreline Management Act, chapter 90.58 RCW.

Adopted under notice filed as WSR 17-06-067 on February 28, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 173-26-090(1), in response to comments, deleted subsection (b);

WAC 173-26-090 (2)(d)(ii), in response to comments, clarified the description of the scope of periodic review;

WAC 173-26-090 (2)(d)(iii), in response to comments, clarified the description of the scope of periodic review;

WAC 173-26-090 (3)(b)(iii), in response to comments, clarified the distinction between the scope of the comprehensive update and the scope of the periodic review;

WAC 173-26-104 (1)(a), minor correction. Deleted the reference to providing checklists for "comprehensive updates" because the rule does not allow the optional joint review process for those major updates;

WAC 173-26-104 (3)(a)(iii), minor grammatical correction. Added the missing preposition "with";

WAC 173-26-130(1), in response to a comment, added back a reference to RCW 90.58.190. The citation had been inadvertently omitted in the proposed version;

WAC 173-27-030(18), in response to comments, ecology will not adopt any change to this section;

WAC 173-27-060(1), in response to comments, ecology will not adopt any change to this section.

A final cost-benefit analysis is available by contacting Fran Sant, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6004, TTY 711 or 1-800-833-6341, email smarulemaking@ecy.wa.gov, web site <http://www.ecy.wa.gov/programs/sea/rules/1506ov.html>.

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Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 7, 2017.

Maia Bellon
Director
by Polly Zehm

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-18-040 Streams and rivers. The following provisions of this chapter delimit the streams and rivers which constitute shorelines of the state as follows:

(1) Streams which constitute shorelines.

(a) Western Washington. Streams in Western Washington from the point at which the stream reaches a mean annual flow of twenty cubic feet per second down to the mouth of said stream or river: Provided, that the stream falls at said point, within the jurisdiction of chapter 90.58 RCW.

(b) Eastern Washington. Streams in Eastern Washington from the point at which the stream reaches a mean annual flow of twenty cubic feet per second down to the mouth of said stream or river: Provided, that the stream falls at said point, within the jurisdiction of chapter 90.58 RCW.

(2) Rivers which constitute shorelines of statewide significance.

(a) Western Washington. Any rivers west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more. Provided, that the river falls at said point within the jurisdiction of chapter 90.58 RCW.

(b) Eastern Washington. Either of the following points on rivers in Eastern Washington, whichever is farther upstream;

(i) The point at which the mean annual flow exceeds two hundred cubic feet per second; or

(ii) The lowest extremity of the first three hundred square miles of drainage area east of the crest of the Cascade Range; provided that either of said points which is utilized is within the jurisdiction of chapter 90.58 RCW.

(3) Until superseded as provided in WAC 173-18-044, rivers constituting shorelines of the state are listed in WAC 173-18-050 through 173-18-430. Other data related to these lists.

(a) Wherever a river of statewide significance falls within a county, it is followed by an asterisk.

(b) The following provisions set forth the name of the quadrangle maps where the stream or river is shown. The quadrangle in which the shoreline delimitation begins and the first quadrangle downstream from the county line is underlined. The quadrangle in which the shoreline of statewide significance begins is followed by an asterisk. The size, in minutes, of all quadrangle maps is designated.

(c) Where quadrangle maps are unavailable, photomaps have been used as indicated.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-18-044 Review and update of designations.

Each local government master program shall include a list of streams constituting shorelines of the state within the jurisdiction of the master program that complies with the requirements of RCW 90.58.030 (2)((4)). When such master program is approved by the department, subsequent to the effective date of this provision, the list within the master program shall be the official list for that jurisdiction and shall supersede the list contained herein.

AMENDATORY SECTION (Amending Order 73-14, filed 8/27/73)

WAC 173-18-050 Adams County. ((Streams

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(1) Cow Creek*	<u>Karakul Hills</u> * 7 1/2 Marengo 7 1/2 Benge 15 Ritzville S.E. 7 1/2	From mouth of Lugenbeal Creek (Sec.15, T19N, R37E) downstream thru Hallin and Cow lakes, thru Fimmel Lake to mouth on Palouse River (Sec.27, T15N, R37E). This stream has a 300 square mile drainage area ending at mouth of Lugenbeal Creek.
(2) Palouse River*	<u>La-Crosse</u> 15 Benge 15 Starbuck 15	From Whitman County line (Sec.24, T16N, R38E) along county line downstream to Franklin County line (Sec.5, T15N, R37E), right shore only. This stream has over 300 sq. miles of drainage area.

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(3) Reek Creek*	<u>Revera</u> 7 1/2	From Whitman County line (Sec.12, T18N, R38E) downstream back to Whitman County line (Sec.24 & 25, same township). This stream has over 300 square miles of drainage area.))

Streams and rivers and portions thereof which constitute shorelines of the state within Adams County are designated in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending Order 73-14, filed 8/27/73)

WAC 173-18-070 Benton County. ((Streams

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(1) Columbia River (Cont.)*	<u>Priest Rapids</u> 15 Richland 15 Eltopia 15	From the Yakima County line (Sec.7, T13N, R24E) downstream right bank only, to Hanford works boundary (Sec.9, same township), plus the right bank within Richland city limits (T10N, R28E; T9N, R28E; T9N, R29E). This stream has over 200 cfs MAF at Yakima County line.
(2) Glade Creek*	<u>Blalock Island</u> * 7 1/2	From mouth of East Fork Glade Creek (Sec.6, T5N, R25E) downstream to mouth on Columbia River (Sec.28, same township). This stream has a 300 square mile drainage area ending at East Branch Glade Creek.
(3) Yakima River (Cont.)*	<u>Prosser</u> 7 1/2 Whitstran 7 1/2 Corral Canyon 15 Richland 15 Badger Mtn. 7 1/2 Eltopia 7 1/2	From Benton-Yakima County line (Sec.7, T8N, R24E) downstream to mouth on Columbia River (Sec.19, T9N, R29E). The flow exceeds 200 cfs MAF at Benton-Yakima County line.))

Streams and rivers and portions thereof which constitute shorelines of the state within Benton County are designated in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-18-130 Douglas County. ((Streams-))

Streams and rivers and portions thereof which constitute shorelines of the state within Douglas County are designated

in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending Order 73-14, filed 8/27/73)

WAC 173-18-190 Island County. Streams

~~((Island County has no 20 cfs streams but has shorelines. Island County has no 1,000 cfs MAF rivers of statewide significance.))~~ None.

AMENDATORY SECTION (Amending WSR 90-06-068, filed 3/6/90, effective 4/6/90)

WAC 173-18-200 Jefferson County. ((Streams

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>	<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(1) Big Quileene River	<u>Mt. Walker 7 1/2</u> <u>Quileene 7 1/2</u>	From the Olympic National Forest boundary (Sec.27, T27N, R2W) downstream to mouth at Quileene Bay (Sec.19, T27N, R1W).	(7) Dosewallips River	<u>Brinnon 7 1/2</u>	T24N, R12W). The 1,000 cfs MAF point begins at mouth of Miller Creek (Sec.27, T25N, R12W). From the Olympic National Forest boundary between (Sec.25, T26N, R3W) and (Sec.30, T26N, R2W) downstream to mouth at Dabob Bay near Brinnon (Sec.2, T25N, R2W).
(2) Bogachiel River*	<u>Indian Pass* 7 1/2</u> <u>Anderson Creek 7 1/2</u> <u>Reade Hill 7 1/2</u>	From the Olympic National Forest boundary (Sec.4, T27N, R12W) downstream to the Clallam County line (Sec.2, T27N, R13W). The flow exceeds 1,000 cfs MAF at Olympic National Park boundary.	(8) Duckabush River	<u>Brinnon 7 1/2</u>	From the Olympic National Forest boundary between (Sec.17 & 18, T25N, R2W) downstream to mouth at Hood Canal (Sec.21, T25N, R2W).
(3) Cedar Creek	<u>Destruction</u> <u>Island 15</u>	From the confluence of Cedar Creek and the South Fork of Cedar Creek (Sec.34, T26N, R13W) downstream to the Olympic National Park boundary (Sec.33, T26N, R13W).	(9) Fulton Creek	<u>Brinnon 7 1/2</u> <u>Holly 7 1/2</u>	From the confluence of Fulton Creek and the South Fork of Fulton Creek (Sec.30, T25N, R2W) downstream to mouth at Hood Canal (Sec.31, T25N, R2W).
(4) Chimacum Creek	<u>Port Townsend S. 7 1/2</u>	From the confluence of Chimacum Creek and unnamed creek in Chimacum Valley (Sec.11, T29N, R1W) downstream to mouth at Bay of Port Townsend (Sec.35, T30N, R1W) near Irondale.	(10) Goodman Creek	<u>Forks 15</u> <u>LaPush 15</u>	From the confluence of Goodman Creek and unnamed creek (Sec.23, T27N, R13W) downstream to Olympic National Park boundary (Sec.23, T27N, R14W).
(5) Christmas Creek	<u>Salmon River 15</u>	From an approximate point near the center of (NE1/4 of Sec.2, T25N, R12W) downstream to mouth at Clearwater River (Sec.22, T25N, R12W).	(11) Hoh River*	<u>Spruce Mt.* 15</u> <u>Forks 15</u> <u>Destruction</u> <u>Island 15</u>	From the Olympic National Park boundary (Sec.29, T27N, R10W) downstream to Hoh Indian Reservation boundary (Sec.20, T26N, R13W). The 1,000 cfs MAF point starts at the Olympic National Park boundary.
(6) Clearwater River*	<u>Kloochman Rock 15</u> <u>Salmon River* 15</u> <u>Destruction</u> <u>Island 15</u>	From the confluence of Clearwater River and unnamed creek (Sec.25, T26N, R10W) downstream (excluding federal lands) to Quinault Indian Reservation (Sec.29,	(12) Hoh River (S. Fl.)	<u>Mt. Tom 15</u>	From the Olympic National Park boundary (Sec.2, T26N, R10W) downstream to the Olympic National Forest boundary (Sec.29, T27N, R10W).
			(13) Hurst Creek	<u>Destruction</u> <u>Island 15</u>	From an approximate point near the north line of (SE1/4 of NW1/4 of NE1/4 of Sec.17, T24N, R12W) downstream to mouth at the Clearwater River (Sec.19, T24N, R12W).
			(14) Kalaloch Creek	<u>Destruction</u> <u>Island 15</u>	From the confluence of Kalaloch Creek and West Fork Kalaloch Creek (Sec.17, T25N, R13W) downstream to the Olympic National Park boundary (Sec.3, T24N, R13W).

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>	<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(15) Little Quileene River	<u>Mt. Walker 7 1/2 Quileene 7 1/2</u>	From the Olympic National Forest boundary (Sec.33, T28N, R2W) downstream to mouth at Quileene Bay (Sec.18, T27N, R1W).	(24) Salmon River	<u>Salmon River 15</u>	From the Olympic National Forest boundary (Sec.36, T24N, R11W) downstream back to said boundary (Sec.35) coming out of Indian Reservation (Sec.36, T24N, R12W) returning to Indian Reservation and coming out again (Sec.35, T24N, R12W) downstream to Olympic National Forest boundary (same section).
(16) Maple Creek	<u>Spruce Mt. 15</u>	From the confluence of Maple Creek and Dry Creek (Sec.3, T26N, R11W) downstream to Hoh River (Sec.35, T27N, R11W).	(25) Shale Creek	<u>Salmon River 15 Destruction Island 15</u>	From an approximate point near the NE corner of the (SE1/4 of SW1/4 of Sec.26, T25N, R12W) downstream to mouth at Clearwater River (Sec.28, T25N, R12W).
(17) Matheny Creek	<u>Salmon River 15</u>	From the Olympic National Forest boundary (Sec.24, T24N, R11W) downstream to the Olympic National Park boundary (Sec.22, T24N, R11W).	(26) Snahapish River	<u>Salmon River 15</u>	From the intersection of Snahapish River and unimproved road (Sec.21, T26N, R11W) downstream to mouth at Clearwater River (Sec.19, T25N, R11W).
(18) Miller Creek	<u>Destruction Island 15 Salmon River 15</u>	From the confluence of Miller Creek and unnamed creek (Sec.17, T25N, R12W) downstream to mouth at Clearwater River (Sec.27, T25N, R12W).	(27) Snow Creek	<u>Unas 7 1/2</u>	From the confluence of Snow Creek and unnamed creek from Crocker Lake (Sec.2, T28N, R2W) downstream to mouth at Port Discovery (Sec.24, T29N, R2W).
(19) Miller Creek (E. Fk.)	<u>Salmon River 15</u>	From the confluence of the East Fork Miller Creek and unnamed creek (Sec.15, T25N, R12W) downstream to mouth at Miller Creek (Sec.27, T25N, R12W).	(28) Solleks River	<u>Kloochman Rock 15 Salmon River 15</u>	From the confluence of Solleks River and unnamed creek (Sec.2, T25N, R10W) downstream to mouth at Clearwater River (Sec.10, T25N, R11W).
(20) Minter Creek	<u>Forks 15</u>	From the intersection of the north line of (Sec.30, T27N, R13W) and Minter Creek, downstream to Goodman Creek (Sec.24, T27N, R14W).	(29) Stequaleho Creek	<u>Salmon River 15</u>	From the confluence of the Stequaleho Creek and unnamed creek (Sec.19, T25N, R10W) downstream to mouth at Clearwater River (Sec.16, T25N, R11W).
(21) Mosquito Creek	<u>Forks 15</u>	From the intersection of north line of (Sec.5, T26N, R13W) and Mosquito Creek, downstream to Olympic National Park boundary (Sec.36, T27N, R14W).	(30) Winfield Creek	<u>Spruce Mt. 15</u>	From the confluence of Winfield Creek and unnamed creek (Sec.1, T26N, R12W) downstream to mouth at the Hoh River (Sec.27, T27N, R12W).
(22) Nolan Creek	<u>Destruction Island 15 Forks 15</u>	From an approximate point on the north line of (NE1/4 of SW1/4 of Sec.21, T26N, R12W) downstream to mouth at Hoh River (Sec.23, T26N, R13W).			
(23) Owl Creek	<u>Spruce Mt. 15</u>	From an approximate point near the center of the north line of (SW1/4 of NE1/4 of Sec.8, T26N, R10W) downstream to mouth at Hoh River (Sec.35, T27N, R11W).			

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(31) Quinault River*	Mt. Christie* 15 Klooehman Rock 15	From east section line (Sec.33, T24N, R8W) downstream to Jefferson/Grays Harbor County line (Sec.1, T23N, R9W). Exclude federal land. The flow is over 1000 cfs MAF at east section line (Sec.33, T24N, R8W).))

Streams and rivers and portions thereof which constitute shorelines of the state within Jefferson County are designated in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending Order 73-14, filed 8/27/73)

WAC 173-18-220 Kitsap County. ((Streams

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(1) Big Beef Creek	<u>Wildcat Lake</u> 7 1/2 <u>Seabeek</u> 7 1/2	From the confluence of Big Beef Creek and unnamed creek (Sec.34, T25N, R1W) downstream to mouth at Big Beef Harbor (Sec.15, same township).
(2) Black Jack Creek	<u>Bremerton West</u> 7 1/2	From the confluence of Black Jack Creek and unnamed creek (Sec.11, T23N, R1E) downstream to mouth at Sinclair Inlet (Sec.25, T24N, R1E).
(3) Burley Creek	<u>Burley</u> 7 1/2	From the confluence of Burley Creek and unnamed creek (Sec.12, T22N, R1E) downstream to mouth at Burley Lagoon (same section).
(4) Chico Creek	<u>Bremerton West</u> 7 1/2	From the confluence of Chico Creek and Dickerson Creek (Sec.8, T24N, R1E) downstream to mouth in Chico Bay on Dyes Inlet (Sec.5, same township).
(5) Curley Creek	<u>Bremerton East</u> 7 1/2	From an approximate point (NE1/4 of NE1/4 of Sec.8, T23N, R2E) downstream to mouth at Yukon Harbor (Sec.33, T24N, R2E).
(6) Tahuya River	<u>Wildcat Lake</u> 7 1/2	From the confluence of the Tahuya River and unnamed creek (Sec.25, T24N, R2W) downstream to Mason County line (Sec.1, T23N, R2W).
(7) Union River	<u>Wildcat Lake</u> 7 1/2 <u>Belfair</u> 7 1/2	From the confluence of Union River and East Fork Union River (Sec.10, T23N, R1W) downstream to Mason Co. line (Sec.9, T23N, R1W).))

Streams and rivers and portions thereof which constitute shorelines of the state within Kitsap County are designated in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 77-15, filed 9/1/77)

WAC 173-18-230 Kittitas County. ((Streams

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(1) Big Creek	<u>Easton</u> 15	From the Wenatchee National Forest boundary (Sec.35, T20N, R13E) downstream (excluding federal lands) to mouth at Yakima River (Sec.21, T20N, R14E).
(2) Cabin Creek	<u>Lester</u> 15 <u>Easton</u> 15	From Wenatchee National Forest boundary (Sec.19, T20N, R13E) downstream to mouth on Yakima River (Sec.9, T20N, R13E).
(3) Cle Elum River*	<u>Kachess Lake</u> * 15 <u>Easton</u> 15 <u>Cle Elum</u> 15	From the Wenatchee National Forest boundary crossing Cle Elum Lake (Sec.33, 34 & 35, T21N, R14E) downstream to mouth at Yakima River (Sec.32, T20N, R15E). The stream flow exceeds 200 cfs MAF at Wenatchee National Forest boundary.
(5) Columbia River (Cont.)*	<u>Roek Island Dam</u> * 7 1/2 <u>West Bar</u> 7 1/2 <u>Babeock Ridge</u> 7 1/2 <u>Cape Horn - S.E.</u> 7 1/2 <u>Evergreen</u> 7 1/2 <u>Vantage</u> 7 1/2 <u>Beverly</u> 7 1/2 <u>Priest Rapids</u> 7 1/2	From the Chelan Co. line on the Columbia River (Sec.5, T20N, R22E) downstream along the Douglas and Kittitas Co. line to Yakima Co. (Sec.32, T15N, R23E). The stream flow exceeds 200 cfs MAF at Chelan Co. line.
(6) Kachess River*	<u>Kachess Lake</u> * 15	From the Wenatchee National Forest (Sec.3, T20N, R13E) downstream through Lake Easton State Park and to mouth at Yakima River (same section). The flow exceeds 200 cfs MAF at Wenatchee National Forest boundary.
(7) Little Creek	<u>Easton</u> 15	From the Wenatchee National Forest boundary (Sec.33, T20N, R14E) (excluding all federal lands) downstream to mouth at Yakima River (Sec.22, T20N, R14E).
(8) Log Creek	<u>Lester</u> 15	From confluence of Log Creek and unnamed creek (NW1/4, SW1/4 Sec.31, T20N, R13E) downstream to mouth on Cabin Creek (Sec.19, T20N, R13E).

<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>	<u>Stream Name</u>	<u>Quadrangle Name and Size</u>	<u>Legal Description</u>
(9) Manastash Creek	<u>Yakima (AMS) Ellensburg 15 Ellensburg S. 7 1/2</u>	From confluence of North and South Forks Manastash Creek (Sec.17, T17N, R17E) downstream to mouth on Yakima River (Sec.4, T17N, R18E).	(18) Yakima River*	<u>Snoqualmie Pass* 15 Kachess 15 Easton 15 Cle Elum 15 Thorp 7 1/2 Ellensburg North 7 1/2 Ellensburg South 7 1/2 Wymer 7 1/2 Pamona 7 1/2 Kittitas 7 1/2</u>	From the Wenatchee National Forest boundary (Sec.15, T21N, R12E) downstream (excluding all federal lands) to the Yakima Co. line (Sec.33, T15N, R19E). The stream flow exceeds 200 cfs MAF at Wenatchee National Forest boundary.
(10) Manastash Creek (South Fork)	<u>Cle Elum 15 Ellensburg 15 Manastash Lake 7 1/2</u>	From the Wenatchee National Forest boundary (Sec.31, T18N, R16E) downstream to mouth at Manastash Creek (Sec.17, T17N, R17E).	(19) Little Naches River*	<u>Lester 15 Easton 15* Cliffdell 7 1/2</u>	From confluence of North Fork & Middle Fork of Little Naches River (Sec.31, T19N, R12E) downstream left bank to mouth of Naches River (Sec.4, T17N, R14E). Exclude federal lands. The 200 cfs MAF point begins at confluence with Crow Creek (Sec.30, T18N, R14E).)
(11) Swauk Creek	<u>Thorp 15</u>	From the Wenatchee National Forest boundary (Sec.10, T20N, R17E) downstream (excluding all federal lands) to mouth at Yakima River (Sec.20, T19N, R17E).			
(12) Taneum Creek	<u>Cle Elum 15 Thorp 7 1/2</u>	From Wenatchee National Forest boundary (Sec.30, T19N, R16E) downstream (excluding all federal lands) to mouth on Yakima River (Sec.33, T19N, R17E).			
(13) Teanaway River*	<u>Mt. Stuart* 15 Cle Elum 15</u>	From the confluence of the Middle Fork and the West Fork Teanaway River (Sec.6, T20N, R16E) downstream to Yakima River (Sec.3, T19N, R16E). The 200 cfs MAF point begins at confluence of West Fork & North Fork Teanaway River (Sec.6, T20N, R16E).			
(14) Teanaway River (M. Fk.)	<u>Mt. Stuart 15</u>	From the Wenatchee National Forest boundary (Sec.15, T21N, R15E) downstream to mouth at Teanaway River (Sec.6, T20N, R16E).			
(15) Teanaway River (N. Fk.)	<u>Mt. Stuart 15</u>	From the Wenatchee National Forest boundary (Sec.4, T21N, R16E) downstream (excluding all federal lands) to the Teanaway River (Sec.6, T20N, R16E).			
(16) Teanaway River (W. Fk.)	<u>Kachess Lake 15 Mt. Stuart 15</u>	From the Wenatchee National Forest boundary (Sec.30, T21N, R15E) downstream (excluding all federal lands) to the Teanaway River (Sec.6, T20N, R16E).			
(17) Wilson Creek*	<u>Ellensburg So.* 7 1/2 Kittitas 7 1/2</u>	From mouth at Naneum Creek (Sec.30, T17N, R19E) downstream to mouth on Yakima River (Sec.31, T17N, R19E). This stream has over 300 sq. miles of drainage area ending at mouth of Cherry Creek (Sec.31, T17N, R19E).			

Streams and rivers and portions thereof which constitute shorelines of the state within Kittitas County are designated in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending Order 73-14, filed 8/27/73)

WAC 173-18-320 San Juan County. Streams. ((San Juan County has no 20 cfs streams but has shorelines. No rivers of statewide significance.)) None.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-18-430 Yakima County. ((Streams.)) Streams and rivers and portions thereof which constitute shorelines of the state within Yakima County are designated in the shoreline master programs of the county and the cities therein.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-20-044 Review and update of designations. Each local government master program shall include a list of lakes constituting shorelines of the state within the jurisdiction of the master program that complies with the requirements of RCW 90.58.030 (2)((4)). When such master program is approved by the department subsequent to the effective date of this provision, the list within the master program shall be the official list for that jurisdiction and shall supersede the list contained herein.

AMENDATORY SECTION (Amending Order DE 76-16, filed 5/3/76)

WAC 173-20-050 Lakes coming under purview of chapter 90.58 RCW—Adams County lakes.

	((Location	Section	Name	Area (Acres)	Use
(1)	T15N-R29E	4-SW1/4	Rodeo Lk.	60.0	R
(2)	T15N-R29E	32-B	Linda Lk.	99.2	R
(3)	T16N-R28E	3-A/B	Black Lks.-Upper	24.8	R
(4)	T16N-R29E	16-N	Thread Lk.	29.4	R
(5)	T16N-R29E	29-N	Unnamed Lk.	21.7	R
(6)	T16N-R29E	31-G	Owl Lk.	20.6	R
(7)	T17N-R38E	9-NE1/4	Twelve Mile Lk.	44.8	R
(8)	T17N-R38E	9/16	Twelve Mile-Slough	211.2	R
(9)	T19N-R36E	36	Finnel Lk.	30.9	R
(10)	T19N-R37E	15-SW1/4	Hallin Lk.	33.3	R
(11)	T19N-R37E	21-N1/2	Cow Lk.	226.0	R
(12)	T19N-R38E	3-W1/2	Green Lk.	79.7	R
(13)	T19N-R38E	10-M/Na	Unnamed Lk.	26.1	R
(14)	T20N-R37E	1-W1/2	Fourth of July Lk.	74.4 Adams Co. 35.9 Lincoln Co.	R
			110.3 Total		R
(15)	T20N-R38E	12	Pines Lk. (Alkali Lk.)	120.8	R
(16)	T20N-R38E	29	Palm Lk.	88.3	R))

Lakes which constitute shorelines of the state within Adams County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-14, filed 6/30/72)

WAC 173-20-060 Lakes coming under purview of chapter 90.58 RCW—Adams County lakes of statewide significance.

	((Location	Section	Name	Area (Acres)	Use
(1)	T20N-R37E	12	Sprague Lk.	1202.9 Adams Co. 637.7 Lincoln Co.	R
			1840.6 Total		R))

Lakes which constitute shorelines of statewide significance within Adams County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-14, filed 6/30/72)

WAC 173-20-090 Lakes coming under purview of chapter 90.58 RCW—Benton County lakes.

	((Location	Section	Name	Area (Acres)	Use
(1)	T6N-R31E	5-SW1/4	Mound Pond	34.8	R
(2)	T6N-R31E	7-NE1/4	Yellepit Pond	36.3	R))

Lakes which constitute shorelines of the state within Benton County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 76-16, filed 5/3/76)

WAC 173-20-320 Lakes coming under purview of chapter 90.58 RCW—Island County lakes.

	((Location	Section	Name	Area (Acres)	Use
(1)	T29N-R2E	24-N1/2	Unnamed Lk.	26.8	R
(2)	T29N-R3E	6-D	Goss Lk.	55.1	R
(3)	T29N-R3E	7-A	Lone Lk.	92.1	R
(4)	T29N-R3E	26	Deer Lk.	82.1	R
(5)	T31N-R1E	6-S1/2	Unnamed Lk.	25.0	R
(6)	T31N-R1E	22	Crockett Lake	500.0	R
(7)	T32N-R3E	30-N	Kristoferson Lk.	25.0	D,R
(8)	T33N-R2E	18-N1/2	Unnamed Lk.	50.0	R
(9)	T34N-R1E	35-NW1/4	Cranberry Lk.	128.1	R))

Lakes which constitute shorelines of the state within Island County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-14, filed 6/30/72)

WAC 173-20-340 Lakes coming under purview of chapter 90.58 RCW—Jefferson County lakes.

	((Location	Section	Name	Area (Acres)	Use
(1)	T27N-R1W	1-A/H	Wahl Lk.	22.0	R
(2)	T28N-R1W	6-K/L	Peterson Lk.	22.7	R
(3)	T28N-R1W	18-N1/2	Tarboo Lk.	21.6	R
(4)	T28N-R1W	26-K	Sandy Shore Lk.	36.2	R
(5)	T28N-R2W	12-NW1/4	Crocker Lk.	65.3	R
(6)	T28N-R2W	26-J	Leland Lk.	99.3	R
(7)	T28N-R2W	33-A/B	Lords Lk. (Res.)	56.0	PS,R
(8)	T29N-R1W	9-E1/2	Anderson Lk.	58.7	R
(9)	T29N-R1W	28-L/P	Gibbs Lk.	36.8	R
(10)	T30N-R1W	11-D/E	Kah-Tai Lagoon	62.0	R
(11)	T30N-R1W	16-H/J	Unnamed Lk.	21.6	R))

Lakes which constitute shorelines of the state within Jefferson County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending WSR 81-13-013, filed 6/11/81)

WAC 173-20-380 Lakes coming under purview of chapter 90.58 RCW—Kitsap County lakes.

	<u>Location</u>	<u>Section</u>	<u>Name</u>	<u>Area (Acres)</u>	<u>Use</u>
(1)	T22N-R1W	2-E1/2	Wye Lk.	37.9	R
(2)	T22N-R1W	2-E1/2	Carney Lake	18.7 Kitsap Co. 20.5 Pierce Co.	
				39.2 Total	R
(3)	T24N-R1E	8-N	Kitsap Lk.	238.4	R
(4)	T24N-R1W	2-H	Wildeat Lk.	111.6	R
(5)	T24N-R1W	26-M	Union River Res.	93.0	PS
(6)	T24N-R1W	31-L	Panther Lk.	74.1 Kitsap Co. 30.0 Mason Co.	
				104.1 Total	R
(7)	T24N-R1W	32-C	Mission Lk.	87.7	R
(8)	T24N-R1W	35-Q/R	Twin Lks. (Res.)	21.7	PS
(9)	T24N-R1W	35-Q/R	Tiger Lk.		
(10)	T22N-R1E	10-K/L	Horseshoe Lk.	40.3	R
(11)	T23N-R2E	8-E	Long Lk.	314.0	R
(12)	T25N-R1E	3-S1/2	Island Lk.	42.7	R
(13)	T27N-R2E	21-M	Miller Lk.	25.7	R
(14)	T24N-R1W	5	William Symington		R
(15)	T24N-R1W	17	Tahuya Lk.		R
(16)	T24N-R2W	23&26	Three Fingers Pond & Holland Ponds	30.8	R
(17)	T28N-R2E	21	Buck Lk.	22.0	R
(18)	T24N-R2W		Morgan Marsh	95.0	R))

Lakes which constitute shorelines of the state within Kitsap County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-14, filed 6/30/72)

WAC 173-20-400 Lakes coming under purview of chapter 90.58 RCW—Kittitas County lakes.

	<u>Location</u>	<u>Section</u>	<u>Name</u>	<u>Area (Acres)</u>	<u>Use</u>
(1)	T17N-R15E	3-A	Manastash Lk.	23.5	R
(2)	T20N-R13E	11-F	Easton Lk.	237.6	R,I
(3)	T21N-R11E	3-L	Lost Lk.	144.8	R
(4)	T21N-R12E	15-NW1/4	Unnamed Lks.	60.0	R
(5)	T22N-R13E	2	Cooper Lk.	119.7	R
(6)	T23N-R14E	3-NE1/4	Tuequala Lk.	63.0	R))

Lakes which constitute shorelines of the state within Kittitas County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-14, filed 6/30/72)

WAC 173-20-410 Lakes coming under purview of chapter 90.58 RCW—Kittitas County lakes of statewide significance.

	<u>Location</u>	<u>Section</u>	<u>Name</u>	<u>Area (Acres)</u>	<u>Use</u>
(1)	T15N-R23E	32	Priest Rapids Dam Res.	2080.0 Kittitas Co. 4540.0 Grant Co. 1080.0 Yakima Co.	
				7700.0 Total	P,R
(2)	T16N-R23E	17	Wanapum Dam Res.	6308.0 Kittitas Co. 6748.0 Grant Co. 1184.0 Douglas Co. 440.0 Chelan Co.	
				14680.0 Total	
(3)	T20N-R14E	10-A	Cle Elum Lk. (Res.)	4810.0	R,I
(4)	T21N-R11E	12-H	Keechelus Lk.	2560.0	R,I
(5)	T21N-R13E	34-N/P	Kaeheess Lk.	4540.0	R,I))

Lakes which constitute shorelines of statewide significance within Kittitas County are designated in the shoreline master programs for the county and the cities therein.

AMENDATORY SECTION (Amending Order DE 72-15, filed 6/30/72)

WAC 173-22-010 Purpose. Pursuant to RCW 90.58.-030 (2)((f)) (d), the department of ecology herein designates the ((~~wetland areas~~)) shorelands associated with the streams, lakes, and tidal waters which are subject to the provisions of chapter 90.58 RCW.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-22-040 Shoreland area designation criteria. The following criteria contain the standards for the department's designation of shoreland areas associated with shorelines of the state which are subject to the jurisdiction of chapter 90.58 RCW:

- (1) Tidal waters. The shoreland area shall include:
 - (a) Those lands which extend landward two hundred feet as measured on a horizontal plane from the ordinary high water mark; and
 - (b) Those wetlands which are in proximity to and either influence or are influenced by the tidal water. This influence includes but is not limited to one or more of the following: Periodic tidal inundation; hydraulic continuity; formation by tidally influenced geohydraulic processes; or a surface connection through a culvert or tide gate;
- (2) Lakes. The shoreland area shall include:
 - (a) Those lands which extend landward two hundred feet as measured on a horizontal plane from the ordinary high water mark; and
 - (b) Those wetlands which are in proximity to and either influence or are influenced by the lake. This influence

includes but is not limited to one or more of the following:
Periodic inundation or hydraulic continuity;

(3) Streams. The shoreland area shall include the greater of:

(a) Those lands which extend landward two hundred feet as measured on a horizontal plane from the ordinary high water mark;

(b) Those flood plains which extend landward two hundred feet as measured on a horizontal plane from the floodway: Provided, that local government may, at its discretion, include all or a larger portion of the one hundred-year flood plain within the associated shorelands. Designation of this shoreland area shall be in accordance with chapter 173-26 WAC, the state master program. If the applicable master program does not designate the shoreland area for a stream, it shall be designated under the rules which applied at the time of adoption by the department;

(c) Those wetlands which are in proximity to and either influence or are influenced by the stream. This influence includes but is not limited to one or more of the following: Periodic inundation; location within a flood plain; or hydraulic continuity; and

(d) Those lands within a river delta flood plain except for those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-22-050 Review and update of designations. Each local government master program shall include a map of shorelands constituting shorelines of the state within the jurisdiction of the master program that complies with the requirements of RCW 90.58.030 (2)(d). ~~((When such master program is approved by the department subsequent to the effective date of this provision, the list within the master program shall be the official list for that jurisdiction and shall supersede the list contained herein.))~~

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-22-055 Conflicts between designations and criteria. In the event that any of the shoreland designations ~~((shown on the maps adopted in WAC 173-22-060 or))~~ in a shoreline master program ~~((approved under WAC 173-22-050))~~ conflict with the criteria set forth in this chapter the criteria shall control. The boundary of the designated shoreland areas shall be governed by the criteria set forth in WAC 173-22-040 except that the local government must amend the local master program to reflect the new designation within three years of the discovery of the discrepancy.

AMENDATORY SECTION (Amending WSR 97-04-076, filed 2/5/97, effective 3/8/97)

WAC 173-22-070 Lands within federal boundaries. ~~((In addition to those designations contained in the appendix.))~~ Those nonfederal lands lying within the exterior

boundaries of federal lands and those federal lands leased ~~((by the federal government))~~ to other persons, which ~~((lands))~~ fall within the definition of shorelands ~~((contained herein))~~, shall ~~((also))~~ be subject to the jurisdiction of chapter 90.58 RCW. Areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of chapter 90.58 RCW.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 173-22-060 Shoreline designation maps until superseded.
- WAC 173-22-0602 Adams County.
- WAC 173-22-0604 Asotin County.
- WAC 173-22-0606 Benton County.
- WAC 173-22-0608 Chelan County.
- WAC 173-22-0610 Clallam County.
- WAC 173-22-0612 Clark County.
- WAC 173-22-0614 Columbia County.
- WAC 173-22-0616 Cowlitz County.
- WAC 173-22-0618 Douglas County.
- WAC 173-22-0620 Ferry County.
- WAC 173-22-0622 Franklin County.
- WAC 173-22-0624 Garfield County.
- WAC 173-22-0626 Grant County.
- WAC 173-22-0628 Grays Harbor County.
- WAC 173-22-0630 Island County.
- WAC 173-22-0632 Jefferson County.
- WAC 173-22-0634 King County.
- WAC 173-22-0636 Kitsap County.
- WAC 173-22-0638 Kittitas County.
- WAC 173-22-0640 Klickitat County.
- WAC 173-22-0642 Lewis County.
- WAC 173-22-0644 Lincoln County.
- WAC 173-22-0646 Mason County.
- WAC 173-22-0648 Okanogan County.
- WAC 173-22-0650 Pacific County.
- WAC 173-22-0652 Pend Oreille County.
- WAC 173-22-0654 Pierce County.
- WAC 173-22-0656 San Juan County.
- WAC 173-22-0658 Skagit County.
- WAC 173-22-0660 Skamania County.
- WAC 173-22-0662 Snohomish County.
- WAC 173-22-0664 Spokane County.
- WAC 173-22-0666 Stevens County.

WAC 173-22-0668 Thurston County.
 WAC 173-22-0670 Wahkiakum County.
 WAC 173-22-0672 Walla Walla County.
 WAC 173-22-0674 Whatcom County.
 WAC 173-22-0676 Whitman County.
 WAC 173-22-0678 Yakima County.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-020 Definitions. In addition to the definitions and concepts set forth in RCW 90.58.030, as amended, and the other implementing rules for the Washington State Shoreline Management Act, as used herein, the following words and phrases shall have the following meanings:

(1) "Act" means the Washington State Shoreline Management Act, chapter 90.58 RCW.

(2) "Adoption by rule" means an official action by the department to make a local government shoreline master program effective through rule consistent with the requirements of the Administrative Procedure Act, chapter 34.05 RCW, thereby incorporating the adopted shoreline master program or amendment into the state master program.

(3)(a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

(b) "Agricultural products" includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, upland finfish, poultry and poultry products, and dairy products;

(c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to:

(i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains;

(ii) Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;

(iii) Farm residences and associated equipment, lands, and facilities; and

(iv) Roadside stands and on-farm markets for marketing fruit or vegetables; and

(d) "Agricultural land" means those specific land areas on which agricultural activities are conducted ~~((as of the date of adoption of a local master program pursuant to these guidelines as evidenced by aerial photography or other documentation. After the effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program)).~~

(4) "Amendment" means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

(5) "Approval" means an official action by a local government legislative body agreeing to submit a proposed shoreline master program or amendments to the department for review and official action pursuant to this chapter; or an official action by the department to make a local government shoreline master program effective, thereby incorporating the approved shoreline master program or amendment into the state master program.

(6) "Aquaculture" means the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.

(7) "Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

(8) "Critical areas" as defined under chapter 36.70A RCW includes the following areas and ecosystems:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable waters;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(9) "Department" means the state department of ecology.

(10) "Development regulations" means the controls placed on development or land uses by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

(11) "Document of record" means the most current shoreline master program officially approved or adopted by rule by the department for a given local government jurisdiction, including any changes resulting from appeals filed pursuant to RCW 90.58.190.

(12) "Drift cell," "drift sector," or "littoral cell" means a particular reach of marine shore in which littoral drift may occur without significant interruption and which contains any

natural sources of such drift and also accretion shore forms created by such drift.

(13) "Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

(14) "Ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

(15) "Feasible" means, for the purpose of this chapter, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

(a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

(b) The action provides a reasonable likelihood of achieving its intended purpose; and

(c) The action does not physically preclude achieving the project's primary intended legal use.

In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.

In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

(16) "Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

(17) "Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.

(18) "Floating on-water residence" means any floating structure other than a floating home, as defined by this chapter:

(a) That is designed or used primarily as a residence on the water and has detachable utilities; and

(b) Whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.

(19) "Flood plain" is synonymous with one hundred-year flood plain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act.

~~((18))~~ (20) "Floodway" means the area, as identified in a master program, that either:

(a) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or

(b) Consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

~~((19))~~ (21) "Geotechnical report" or "geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

~~((20))~~ (22) "Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

~~((21))~~ (23) "Guidelines" means those standards adopted by the department to implement the policy of chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria for local governments and the department in developing and amending master programs.

~~((22))~~ (24) "Local government" means any county, incorporated city or town which contains within its boundaries shorelines of the state subject to chapter 90.58 RCW.

~~((23))~~ (25) "Marine" means pertaining to tidally influenced waters, including oceans, sounds, straits, marine channels, and estuaries, including the Pacific Ocean, Puget Sound, Straits of Georgia and Juan de Fuca, and the bays, estuaries and inlets associated therewith.

~~((24))~~ (26)(a) "Master program" or "shoreline master program" shall mean the comprehensive use plan for a described area, the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020 and the applicable guidelines. As provided in RCW 36.70A.480, 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.

(b) "Comprehensive master program update" means a master program adopted for compliance with RCW 90.58.080(2) that fully achieves the procedural and substantive requirements of the department's shoreline master program guidelines effective January 17, 2004, as now or hereafter amended;

(c) "~~(Limited)~~ Master program amendment" means ~~((a master program))~~ an amendment that ((addresses specific procedural and/or substantive topics and which)) is not intended to meet the complete requirements of a comprehensive master program update. Master program amendments include locally initiated amendments to address specific procedural and/or substantive topics as well as amendments adopted to meet the periodic review requirements of RCW 90.58.080(4).

~~((25))~~ (27) "May" means the action is acceptable, provided it conforms to the provisions of this chapter.

~~((26))~~ (28) "Must" means a mandate; the action is required.

~~((27))~~ (29) "Nonwater-oriented uses" means those uses that are not water-dependent, water-related, or water-enjoyment.

~~((28))~~ (30) "Priority habitat" means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes:

- Comparatively high fish or wildlife density;
- Comparatively high fish or wildlife species diversity;
- Fish spawning habitat;
- Important wildlife habitat;
- Important fish or wildlife seasonal range;
- Important fish or wildlife movement corridor;
- Rearing and foraging habitat;
- Important marine mammal haul-out;
- Refugia habitat;
- Limited availability;
- High vulnerability to habitat alteration;
- Unique or dependent species; or
- Shellfish bed.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as, old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife.

~~((29))~~ (31) "Priority species" means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.

(a) Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species

legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the department of fish and wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

(b) Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

(c) Criterion 3. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

(d) Criterion 4. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.

~~((30))~~ (32) "Provisions" means policies, regulations, standards, guideline criteria or environment designations.

~~((31))~~ (33) "Restore," "restoration" or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

~~((32))~~ (34) "Shall" means a mandate; the action must be done.

~~((33))~~ (35) "Shoreline areas" and "shoreline jurisdiction" means all "shoreslines of the state" and "shorelands" as defined in RCW 90.58.030.

~~((34))~~ (36) "Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

~~((35))~~ (37) "Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

~~((36))~~ (38) "Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

~~((37))~~ (39) "State master program" means the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by the department.

~~((38))~~ (40) "Substantially degrade" means to cause significant ecological impact.

~~((39))~~ (41) "Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

~~((40))~~ (42) "Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

~~((41))~~ (43) "Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

~~((42))~~ (44) "Water quality" means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

~~((43))~~ (45) "Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

(a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

(b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-030 Master programs required—State master program contents. ~~((1))~~ Chapter 90.58 RCW requires all local governments with shorelines of the state within their boundaries to develop and administer a shoreline master program. The state master program is the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by the department, together with any changes pursuant to WAC 173-26-040. Local governments which are required to develop and administer shoreline master programs are listed in WAC 173-26-080.

~~((2))~~ All shoreline master programs adopted by reference in chapter 173-19 WAC existing as of the effective date of

this chapter, remain in full force and effect and continue to be considered part of the state master program, as defined herein.)

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-060 State master program—Records maintained by department. The department shall maintain records for all master programs currently in effect and subsequent amendments thereto. Master program records shall be organized consistent with the state master program register and shall be available for public viewing and inspection during normal business hours at the headquarters of the department.

Records of master programs no longer in effect will be relocated in accordance with the records retention schedule approved by the state records committee.

Such records should be maintained in two groups of files as follows:

(1) Shoreline master program working files corresponding to each proposed master program or amendment containing, where applicable:

(a) Initial submittal from local government per WAC 173-26-110;

~~(b) ((Record of notice to the public, interested parties, agencies and tribes;~~

~~(c) Staff reports, analysis and recommendations;~~

~~(d) Pertinent correspondence between local government and the department;~~

~~(e))~~ The department's letter denying, approving as submitted or approving alternatives together with findings and conclusions and amended text and/or maps;

~~((f))~~ (c) Documents related to any appeal of the department's action on the amendment;

~~((g))~~ (d) Supplemental materials including:

(i) Interested party mailing list;

(ii) Comment letters and exhibits from federal, state, local, and tribal agencies;

(iii) Comment letters and exhibits from the general public;

(iv) ~~((Recorded tapes))~~ Recordings and/or a summary of hearing oral testimony;

(v) A concise explanatory statement, if adopted by rule.

(2) State master program files, containing the master program currently in effect, with all text and map amendments incorporated, constituting the official state master program approved document of record.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-080 Master programs required of local governments. The following local governments, listed alphabetically by county, are required to develop and administer a shoreline master program:

Adams County.

Asotin County.

Asotin, city of.

- Clarkston, city of.
- Benton County.
 Benton City, city of.
 Kennewick, city of.
 Prosser, city of.
 Richland, city of.
 West Richland, city of.
- Chelan County.
 Cashmere, city of.
 Chelan, city of.
 Entiat, town of.
 Leavenworth, city of.
 Wenatchee, city of.
- Clallam County.
 Forks, city of.
 Port Angeles, city of.
 Sequim, city of.
- Clark County.
Battle Ground, city of.
 Camas, city of.
 LaCenter, ((town)) city of.
 Ridgefield, ((town)) city of.
 Vancouver, city of.
 Washougal, city of.
 Woodland, city of.
- Columbia County.
 Dayton, city of.
 Starbuck, town of.
- Cowlitz County.
 Castle Rock, city of.
 Kalama, city of.
 Kelso, city of.
 Longview, city of.
 Woodland, city of.
- Douglas County.
 Bridgeport, town of.
 Coulee Dam, city of.
 East Wenatchee, city of.
 Rock Island, town of.
- Ferry County.
 Republic, town of.
- Franklin County.
 Mesa, town of.
 Pasco, city of.
- Garfield County.
 ((Pomeroy, city of.))
- Grant County.
 Coulee City, city of.
 Coulee Dam, city of.
 Electric City, city of.
 Grand Coulee, city of.
 Krupp, town of.
 Moses Lake, city of.
 Soap Lake, city of.
- Wilson Creek, town of.
- Grays Harbor County.
 Aberdeen, city of.
 Cosmopolis, city of.
 Elma, city of.
 Hoquiam, city of.
 McCleary, town of.
 Montesano, city of.
 Ocean Shores, city of.
 Westport, city of.
- Island County.
 Coupeville, town of.
 Langley, city of.
 Oak Harbor, city of.
- Jefferson County.
 Port Townsend, city of.
- King County.
 Auburn, city of.
 Beaux Arts Village, town of.
 Bellevue, city of.
 Black Diamond, city of.
 Bothell, city of.
 Burien, city of.
 Carnation, town of.
 Covington, city of.
 Des Moines, city of.
 Duvall, city of.
 Enumclaw, city of.
 Federal Way, city of.
 Hunts Point, town of.
 Issaquah, city of.
 Kenmore, city of.
 Kent, city of.
 Kirkland, city of.
 Lake Forest Park, city of.
 Maple Valley, city of.
 Medina, city of.
 Mercer Island, city of.
 Milton, city of.
 Normandy Park, city of.
 North Bend, city of.
 Pacific, city of.
 Redmond, city of.
 Renton, city of.
 Sammamish, city of.
 Sea-Tac, city of.
 Seattle, city of.
 Shoreline, city of.
 Skykomish, town of.
 Snoqualmie, city of.
 Tukwila, city of.
 Woodinville, city of.
 Yarrow Point, town of.
- Kitsap County.
 Bremerton, city of.
 Port Orchard, city of.
 Poulsbo, city of.

- Bainbridge Island, city of.
- Kittitas County.
 Cle Elum, city of.
 Ellensburg, city of.
 South Cle Elum, town of.
- Klickitat County.
 Bingen, town of.
 Goldendale, city of.
 White Salmon, town of.
- Lewis County.
 Centralia, city of.
 Chehalis, city of.
 Morton, city of.
 Napavine, city of.
 Pe Ell, town of.
 Toledo, city of.
 Vader, city of.
 Winlock, city of.
- Lincoln County.
 Odessa, town of.
 Reardan, town of.
 ((~~Sprague, city of.~~))
- Mason County.
 Shelton, city of.
- Okanogan County.
 Brewster, town of.
 Conconully, town of.
 Coulee Dam, city of.
 Elmer City, town of.
 Okanogan, city of.
 Omak, city of.
 Oroville, town of.
 Pateros, town of.
 Riverside, town of.
 Tonasket, town of.
 Twisp, town of.
 Winthrop, town of.
- Pacific County.
 Ilwaco, town of.
 Long Beach, town of.
 Raymond, city of.
 South Bend, city of.
- Pend Oreille County.
 Cusick, town of.
 Ione, town of.
 Metaline, town of.
 Metaline Falls, town of.
 Newport, city of.
- Pierce County.
 Bonney Lake, city of.
 Buckley, city of.
 Dupont, city of.
 Eatonville, town of.
 Fife, city of.
 Gig Harbor, city of.
- Lakewood, city of.
 Milton, city of.
 Orting, city of.
 Pacific, city of.
 Puyallup, city of.
 Roy, city of.
 Ruston, town of.
 South Prairie, town of.
 Steilacoom, town of.
 Sumner, city of.
 Tacoma, city of.
 University Place, city of.
 Wilkeson, town of.
- San Juan County.
 Friday Harbor, town of.
- Skagit County.
 Anacortes, city of.
 Burlington, city of.
 Concrete, town of.
 Hamilton, town of.
 La Conner, town of.
 Lyman, town of.
 Mount Vernon, city of.
 Sedro Woolley, city of.
- Skamania County.
 North Bonneville, city of.
 Stevenson, town of.
- Snohomish County.
 Arlington, city of.
 Bothell, city of.
 Brier, city of.
 Darrington, town of.
 Edmonds, city of.
 Everett, city of.
 Gold Bar, town of.
 Granite Falls, town of.
 Index, town of.
 Lake Stevens, city of.
 Lynnwood, city of.
 Marysville, city of.
 Monroe, city of.
 Mountlake Terrace, city of.
 Mukilteo, city of.
 Snohomish, city of.
 Stanwood, city of.
 Sultan, town of.
 Woodway, town of.
- Spokane County.
 Latah, town of.
 Liberty Lake, town of.
 Medical Lake, town of.
 Millwood, town of.
 Rockford, town of.
 Spokane, city of.
 Spokane Valley, city of.
 Waverly, town of.

- Stevens County.
 - Chewelah, city of.
 - Kettle Falls, city of.
 - Marcus, town of.
 - Northport, town of.
- Thurston County.
 - Bucoda, town of.
 - Lacey, city of.
 - Olympia, city of.
 - Tenino, town of.
 - Tumwater, city of.
- Wahkiakum County.
 - Cathlamet, town of.
- Walla Walla County.
 - Prescott, city of.
 - Waitsburg, town of.
 - Walla Walla, city of.
- Whatcom County.
 - Bellingham, city of.
 - Blaine, city of.
 - Everson, city of.
 - Ferndale, city of.
 - Lynden, city of.
 - Nooksack, city of.
 - Sumas, city of.
- Whitman County.
 - Albion, town of.
 - Colfax, city of.
 - Malden, town of.
 - Palouse, city of.
 - Pullman, city of.
 - Rosalia, town of.
 - Tekoa, city of.
- Yakima County.
 - Grandview, city of.
 - Granger, town of.
 - Mabton, city of.
 - Naches, town of.
 - Selah, city of.
 - Toppenish, city of.
 - Union Gap, city of.
 - Wapato, city of.
 - Yakima, city of.
 - Zillah, city of.

mation or improved data. (~~Each local government shall also review any master program under its jurisdiction and make amendments to the master program necessary to comply with the requirements of RCW 90.58.080 and any applicable guidelines issued by the department. When the amendment is consistent with chapter 90.58 RCW and its applicable guidelines, it may be approved by local government and the department or adopted by rule when appropriate by the department.~~)

~~In developing master programs and amendments thereto;))~~ Local governments are encouraged to consult department guidance for applicable new information on emerging topics such as sea level rise.

(2) Periodic review requirements.

(a) Following the comprehensive updates required by RCW 90.58.080(2), each local government shall conduct a review of their master program at least once every eight years on a schedule established in the act. Following the review, local governments shall, if necessary, revise their master programs. This review and revision is referred to in this section as the periodic review.

(b) Deadlines for periodic review. Local governments must take action to review, and if necessary, revise their master programs according to the schedule established in RCW 90.58.080 (4)(b). Deadlines for completion of periodic review are as follows:

Table WAC 173-26-090.1

Deadlines for Completion of Periodic Review

<u>Reviews must be completed on or before June 30th of:</u>	<u>Affected counties and the cities and towns within:</u>
<u>2019/2027*</u>	<u>King, Pierce, Snohomish.</u>
<u>2020/2028*</u>	<u>Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, Whatcom.</u>
<u>2021/2029*</u>	<u>Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, Yakima.</u>
<u>2022/2030*</u>	<u>Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, Whitman.</u>

**And every eight years thereafter.*

(c) Taking legislative action.

(i) The periodic review must be accomplished through legislative action. Legislative action means the adoption of a resolution, motion, or ordinance following notice and a public hearing including, at a minimum, findings that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons there-

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-090 Locally initiated review—Periodic review—Public involvement (~~encouraged—Amendment of comprehensive plans, development regulations and master programs~~) **and approval procedures.** (1) Locally initiated master program review.

Each local government should (~~periodically~~) review ((~~at~~) its shoreline master program (~~under its jurisdiction~~) and make amendments (~~to the master program~~) deemed necessary to reflect changing local circumstances, new infor-

fore. Legislative findings that no revisions are needed are referred to in this section as "findings of adequacy."

(ii) Legislative action includes two components. It includes a review of the shoreline master program and it includes the adoption of either findings of adequacy or any amendments necessary to bring the program into compliance with the requirements of the act.

(iii) Legislative actions concluding the periodic review must be followed by department approval.

(d) The required minimum scope of review.

(i) The purpose and scope of the periodic review as established by the act is:

(A) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(B) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(ii) The review process provides the method for bringing shoreline master programs into compliance with the requirements of the act that have been added or changed since the last review and for responding to changes in guidelines adopted by the department, together with a review for consistency with amended comprehensive plans and regulations. Local governments should also incorporate amendments to reflect changed circumstances, new information, or improved data. The review ensures that shoreline master programs do not fall out of compliance over time through inaction.

(iii) The periodic review is distinct from the comprehensive updates required by RCW 90.58.080(2). The presumption in the comprehensive update process was that all master programs needed to be revised to comply with the full suite of ecology guidelines. By contrast, the periodic review addresses changes in requirements of the act and guidelines requirements since the comprehensive update or the last periodic review, and changes for consistency with revised comprehensive plans and regulations, together with any changes deemed necessary to reflect changed circumstances, new information or improved data. There is no minimum requirement to comprehensively revise shoreline inventory and characterization reports or restoration plans.

(3) Procedures for conducting periodic reviews.

(a) Public participation program.

(i) In conducting the periodic review, the department and local governments, pursuant to RCW 90.58.130, shall make all reasonable efforts to inform, fully involve and encourage participation of all interested persons and private entities, tribes, and agencies of the federal, state or local government having interests and responsibilities relating to shorelines of the state and the local master program. Local governments may follow the public participation procedures under either the standard local process outlined in WAC 173-26-100, or the optional joint review process outlined in WAC 173-26-104.

(ii) Counties and cities (~~(planning under chapter 36.70A RCW,)~~) shall establish and broadly disseminate to the public a public participation program identifying procedures whereby (~~(proposed amendments)~~) review of the (~~(comprehensive plan and development regulations relating to shore-~~

~~lines of the state)~~) shoreline master program will be considered by the local governing body consistent with RCW ((36.70A-130)) 36.70A.140. Such procedures shall provide for early and continuous public participation through broad dissemination of informative materials, proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, and consideration of and response to public comments.

The public participation program should include a schedule for the periodic review and identify 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 the scope of the review and proposed changes to the master program. Counties and cities may adjust the public participation program to best meet the intent of the participation requirement.

(b) Review and analysis to determine need for revisions.

(i) Review amendments to the act and shoreline master program guidelines.

Local governments must review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments are needed to maintain compliance. The department will maintain a checklist of legislative and rule amendments to assist local governments with this review. The department will provide technical assistance to ensure local governments address applicable changes to the act and master program guidelines.

(ii) Review relevant comprehensive plans and regulations.

Local governments must review changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them.

WAC 173-26-191 (1)(e) and 173-26-211(3) provide guidance on determining internal consistency. It is the responsibility of the local government to assure consistency between the master program and other elements of the comprehensive plan and development regulations. Local governments should document the consistency analysis to support proposed changes.

(iii) Additional review and analysis. Local governments should consider during their periodic review whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data as described under subsection (1) of this section. Local governments should consider whether the significance of the changed circumstances, new information or improved data warrants amendments.

(c) Take legislative action.

(i) At the end of the review process, counties and cities must take legislative action declaring the review process complete.

(ii) The notice of hearing for legislative actions that are intended to address the periodic review process must state that the actions to be considered are part of the periodic review process under RCW 90.58.080(4).

(iii) The findings for any legislative action on the periodic review process must state that the action is intended to satisfy the requirements of RCW 90.58.080(4).

(iv) A local government that determines after review that amendments are not needed shall adopt a resolution, motion, or ordinance declaring findings of adequacy. Findings of adequacy are a local written determination that no revisions to a shoreline master program are needed to comply with the requirements of RCW 90.58.080(4).

(d) Submittal to the department.

(i) A local government that determines amendments are needed shall submit the amendments to the department consistent with WAC 173-26-110.

(ii) A local government that determines amendments are not needed shall submit the following in lieu of the requirements of WAC 173-26-110:

(A) A resolution or ordinance declaring findings of adequacy.

(B) Evidence of compliance with applicable public notice and consultation requirements.

(C) Copies of all public, agency and tribal comments received during any applicable public comment periods, or where no comments have been received, a statement to that effect.

(D) A completed checklist demonstrating review elements have been considered, and are either inapplicable or have already been addressed through previous locally initiated amendments prior to the scheduled periodic review.

(e) State process for approving periodic reviews.

(i) The department must issue a formal approval of any amendment or findings of adequacy. Department approval is necessary to affirmatively conclude the periodic review process, to confirm that state review of local action has occurred, and to establish a definitive appeal window consistent with RCW 90.58.190.

(ii) Where the local government final action includes master program amendments, local governments and the department shall follow applicable adoption procedures described in WAC 173-26-120.

(iii) Where the local government final action is to adopt findings of adequacy, the department shall follow applicable adoption procedures described in WAC 173-26-120. The department shall review the findings of adequacy solely for consistency with RCW 90.58.080(4) and this section.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-100 Standard local process for approving/amending shoreline master programs. This section establishes local procedures for approving new master programs and preparing comprehensive master program updates required by RCW 90.58.080(2). A local government that proposes master program amendments may follow these procedures or the optional joint review process outlined in WAC 173-26-104.

Prior to submittal of a new or amended master program to the department, local government shall solicit public and agency comment during the drafting of proposed new or amended master programs. The degree of public and agency involvement sought by local government should be gauged according to the level of complexity, anticipated controversy, and range of issues covered in the draft proposal. Recogniz-

ing that the department must approve all master programs before they become effective, early and continuous consultation with the department is encouraged during the drafting of new or amended master programs. For local governments planning under chapter 36.70A RCW, local citizen involvement strategies should be implemented that ~~((insure))~~ ensure early and continuous public participation consistent with WAC ~~((365-195-600))~~ 365-196-600.

At a minimum, local government shall:

(1) Conduct at least one public hearing to consider the draft proposal;

(2) Publish notice of the hearing in one or more newspapers of general circulation in the area in which the hearing is to be held. The notice shall include:

(a) Reference to the authority(s) under which the action(s) is proposed;

(b) A statement or summary of the proposed changes to the master program;

(c) The date, time, and location of the hearing, and the manner in which interested persons may present their views; and

(d) Reference to the availability of the draft proposal for public ~~((inspection at the local government office or upon request))~~ review;

(3) Consult with and solicit the comments of any persons, groups, federal, state, regional, or local agency, and tribes, having interests or responsibilities relating to the subject shorelines or any special expertise with respect to any environmental impact. The consultation process should include adjacent local governments with jurisdiction over common shorelines of the state;

(4) Where amendments are proposed to a county or regional master program which has been adopted by cities or towns, the county shall coordinate with those jurisdictions and verify concurrence with or denial of the proposal. For concurring jurisdictions, the amendments should be packaged and processed together. The procedural requirements of this section may be consolidated for concurring jurisdictions;

(5) Solicit comments on the draft proposal from the department prior to local approval. For local governments planning under the Growth Management Act, the local government shall notify both the department and the department of ~~((community, trade, and economic development))~~ commerce of its intent to adopt shoreline policies or regulations, ~~((at least sixty days prior to final local approval,))~~ pursuant to RCW 36.70A.106;

(6) Comply with chapter 43.21C RCW, the State Environmental Policy Act; and

(7) Approve the proposal and submit for final agency approval as outlined in WAC 173-26-110.

NEW SECTION

WAC 173-26-104 Optional joint review process for amending shoreline master programs. This section establishes an optional joint review process a local government may elect to use for master program amendments other than comprehensive updates. The process combines the local and state public comment periods required by RCW 90.58.090. Recognizing that the optional review process requires close

coordination in conducting a joint public review, early and continuous consultation with the department is required during the drafting of amendments. The department and local government should work collaboratively to address local interests while ensuring proposed amendments are consistent with the policy of RCW 90.58.020 and applicable guidelines.

(1) Local government solicits early public and agency feedback.

(a) Prior to commencing the amendment process, local governments shall notify the department of intent to develop an amendment under the optional joint review process.

The department will provide shoreline master program amendment checklists to help local governments identify issues to address. The checklists will not create new or additional requirements beyond the provisions of this chapter. The checklists are intended to aid in the preparation and review of master program amendments.

(b) Prior to submittal of a master program amendment to the department, local government shall solicit public and agency comment during the drafting of proposed amendments.

(i) The degree of public and agency involvement sought by local government should be gauged according to the level of complexity, anticipated controversy, and range of issues covered in the draft proposal.

(ii) Local government shall make all reasonable effort to consult with and solicit comments of any persons, groups, federal, state, regional, or local agency, and tribes, having interests or responsibilities relating to the subject shorelines or any special expertise with respect to any environmental impact. The consultation process should include adjacent local governments with jurisdiction over common shorelines of the state, where applicable.

(iii) For local governments planning under chapter 36.70A RCW, local citizen involvement strategies should be implemented to ensure early and continuous public participation consistent with WAC 365-196-600.

(c) Where amendments are proposed to a county or regional master program which has been adopted by cities or towns, the county shall coordinate with those jurisdictions and verify concurrence with or denial of the proposal. For concurring jurisdictions, the amendments should be packaged and processed together. The procedural requirements of this section may be consolidated for concurring jurisdictions.

(2) Local government and ecology conduct joint public comment period.

At a minimum, local governments and the department shall conduct the following steps:

(a) Local governments planning under the Growth Management Act shall notify the department of commerce of its intent to adopt shoreline policies or regulations, pursuant to RCW 36.70A.106.

(b) Local governments shall comply with chapter 43.21C RCW, the State Environmental Policy Act.

(c) Local governments and the department will provide a formal public comment period.

(i) Provide a public comment period of at least thirty days. The local government will provide reasonable notice and opportunity for written comment to all parties of record who expressed interest regarding the proposal. The depart-

ment will provide notice to the state interested parties list of persons, groups, agencies, and tribes that have requested in writing notice of proposed master programs or amendments generally or for a specific subject matter.

(ii) Conduct at least one joint local/state public hearing to consider the draft proposal. The local government will publish notice of the joint local/state hearing in one or more newspapers of general circulation in the area in which the hearing is to be held. The notice shall include:

(A) Reference to the authority(s) under which the action(s) is proposed;

(B) The date, time, and location of the hearing, and the manner in which interested persons may present their views;

(C) A statement or summary of the proposed changes to the master program; and

(D) Reference to the availability of the draft proposal for public review.

(d) Local governments shall make available to the public and shall accept comment on the following materials:

(i) Amended text clearly identifying the proposed changes;

(ii) Any amended environment designation map(s), showing both existing and proposed designations, with justification for changes;

(iii) A summary of proposed amendments together with explanatory text indicating the scope and intent of the proposal; and

(iv) An initial submittal checklist and other supporting material indicating how the proposed amendment is consistent with the policy of RCW 90.58.020 and applicable guidelines.

(e) Local governments shall prepare a response to public comments.

(i) Within thirty days after the close of the joint public comment period, the local government shall document the submitted comments and prepare a written response to the public comments. The response may identify changes to the proposed amendment in response to public comments. Any proposed changes shall be evaluated by the local government for consistency with the policy of RCW 90.58.020 and applicable guidelines.

(ii) A local government may request additional time to prepare responses. Such requests will be accompanied by estimates of additional time needed.

(3) Local government obtains initial determination from the department.

(a) After conducting the joint public comment period, and prior to local government adoption, the local government shall submit the proposed amendment to the department for initial review. In addition to providing the public comment record of materials, initial submittal shall include:

(i) Documentation of all public comments received during the comment period;

(ii) Local jurisdiction responses to public comments;

(iii) Description of any proposed amendments as a result of the public testimony, with findings supporting the consistency of the proposed amendments with the policy of RCW 90.58.020 and applicable guidelines;

(iv) Updated text and map amendments.

(b) The department shall provide the local government an initial determination of whether or not the proposal is consistent with the policy of RCW 90.58.020 and applicable guidelines.

(i) The department will provide the initial determination within thirty days of submittal. For complex proposals, the department may indicate to the local government that a longer review period of up to forty-five days is needed.

(ii) If the department's initial determination is that the proposal is consistent with applicable laws and rules, the department will provide a written statement of initial concurrence.

(iii) If the department concludes that the proposal is not consistent with applicable laws and rules, the department will provide a written statement describing the specific areas of concern.

(4) Approve the proposal. After receiving the initial determination from the department, the local government adopts the amendment through resolution or ordinance and submits it for final agency approval as outlined in WAC 173-26-110.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-110 Submittal to department of proposed master programs/amendments. A master program or amendment proposed by local government shall be submitted to the department for its review and formal action. Submittals may be in digital format. A complete submittal shall include ~~(two copies of)~~ the following, where applicable:

(1) Documentation (i.e., signed resolution or ordinance) that the proposal has been approved by the local government;

(2) If the proposal includes text amending a master program document of record, it shall be submitted in a form that can replace or be easily incorporated within the existing document. Amended text shall show strikeouts for deleted text and underlining for new text, clearly identifying the proposed changes. At the discretion of the department, strikeouts and underlined text may not be required provided the new or deleted portions of the master program are clearly identifiable;

(3) Amended environment designation map(s), showing both existing and proposed designations, together with corresponding boundaries described in text for each change of environment. All proposals for changes in environment designation and redesignation shall provide written justification for such based on existing development patterns, the biophysical capabilities and limitations of the shoreline being considered, and the goals and aspirations of the local citizenry as reflected in the locally adopted comprehensive land use plan;

(4) A summary of proposed amendments together with explanatory text indicating the scope and intent of the proposal, staff reports, records of the hearing, and/or other materials which document the necessity for the proposed changes to the master program;

(5) Evidence of compliance with chapter 43.21C RCW, the State Environmental Policy Act, specific to the proposal;

(6) Evidence of compliance with the public notice and consultation requirements of either WAC 173-26-100 or 173-26-104;

(7) Copies of all public, agency and tribal comments received, including a record of names and addresses of interested parties involved in the local government review process or, where no comments have been received, a comment to that effect.

(8) A summary of amendments made in response to comments received.

(9) A copy of the applicable master program submittal checklist;

(a) For comprehensive master program updates, a checklist completed in accordance with WAC 173-26-201 ((2)(f) and) (3)(a) and (h).

((9)) (b) For periodic reviews prepared under RCW 90.58.080(4), a checklist completed in accordance with WAC 173-26-090.

(c) For locally initiated amendments, a checklist and any supporting material demonstrating consistency with RCW 90.58.020 and applicable guidelines.

(10) For comprehensive master program updates, copies of the inventory and characterization, use analysis, restoration plan and cumulative impacts analysis.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-120 State process for approving/amending shoreline master programs. Review and approval of master programs and amendments by the department shall follow the procedures set forth below~~(:~~

~~FORMAL REVIEW:~~ The state public comment period under subsection (2) of this section does not apply to master programs adopted under the optional joint review process of WAC 173-26-104.

(1) Formal review for completeness:

(a) The department shall review the submitted master program or amendment for compliance with either WAC 173-26-100 or 173-26-104, and 173-26-110. The department shall notify the local government in writing when it determines that a complete submittal has been received.

(b) If the submittal is determined to be incomplete, the department will identify the deficiencies and so notify the local government in writing. The review process will not ~~(commence))~~ begin until the department determines the submittal is complete.

(2) State public comment period:

For local governments that have followed WAC 173-26-100, the department shall follow the procedures below:

(a) The department shall provide reasonable notice and opportunity for written comment to all parties of record who expressed interest regarding the local government proposal and to all persons, groups, agencies, and tribes that have requested in writing notice of proposed master programs or amendments generally or for a specific subject matter. The comment period shall be at least thirty days, unless the

department determines that a lack of complexity or controversy surrounding the proposal supports a shorter period.

~~((3))~~ (b) For master program or amendment proposals involving local governments planning under chapter 36.70A RCW, the department shall provide notice to the department of ~~((community, trade, and economic development))~~ commerce of its intent to ~~((commence))~~ begin formal review of the local government proposal.

~~((4))~~ (c) At the department's discretion, it may conduct a public hearing during the comment period in the jurisdiction proposing the master program or amendment.

~~((5))~~ (d) If the department conducts a hearing pursuant to subsection ~~((4))~~ (c) of this section, it shall publish notice of the hearing in at least one newspaper of general circulation in the area affected by the master program. The public notice shall include:

~~((a))~~ (i) A description of the proposed master program or amendment;

~~((b))~~ (ii) Reference to the authority under which the action is proposed;

~~((c))~~ (iii) The dates, times, and locations of the public hearing, and the manner in which interested persons may obtain copies of the proposal and present their views.

For master program or amendment proposals involving adoption by rule, the notice of the hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

~~((6))~~ (e) Within fifteen days after the close of the department's public comment period, the department shall request of the local government submitting the proposal a review of the issues if any, identified by the public, interested parties, groups, agencies, and tribes, and a written response as to how the proposal addresses the identified issues consistent with the policy of RCW 90.58.020 and the applicable guidelines. Local government shall submit its response to the department within forty-five days of the date of the department's letter requesting a response. If no response is received by the department within the forty-five-day period, the department may proceed with action on the proposal according to subsection ~~((7))~~ (3) of this section. Within the forty-five-day period, the local government may request in writing additional time to prepare a response.

~~((APPROVAL:))~~

~~((7))~~ (3) Approval:

(a) Within thirty days after receipt of the local government written response pursuant to subsection ~~((6))~~ (2)(c) of this section, or for jurisdictions that followed WAC 173-26-104, after determination of completeness pursuant to subsection (1)(a) of this section, the department shall:

(i) Make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines;

(ii) For amendments adopted under WAC 173-26-100, provide a response to the issues identified in subsection ~~((6))~~ (2)(e) of this section; and

(iii) Either approve the proposal as submitted, recommend specific changes necessary to make the proposal consistent with chapter 90.58 RCW policy and its applicable guidelines, or deny the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government ~~((;))~~ and made available to all interested persons, parties, tribes, groups, and agencies of record on the proposal.

(A) In reaching its determination of consistency with the policy of RCW 90.58.020 and the applicable guidelines, the department shall approve those parts of a master program relating to shorelines unless it determines that the submitted parts are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(B) The department shall approve those parts of a master program relating to shorelines of statewide significance only after determining the program provides for optimum implementation of the statewide interest as set forth in the policy of RCW 90.58.020 and the applicable guidelines.

~~((a) In cases where the proposal is approved as submitted, the effective date of the approved master program or amendment shall be the date of the department's letter to local government approving the submitted master program or amendments.)~~

(b) If the department recommends changes to the proposal, within thirty days after the department ~~((mails))~~ provides the written findings and conclusions to the local government pursuant to this subsection ~~((7))~~ (3), the local government may:

(i) Agree to the proposed changes ~~((Receipt by the department of the written notice of agreement from the local government shall constitute final action by the department approving the revised submittal.)) by written notice to the department. The department shall provide written notice of the local government acceptance ~~((shall be provided by the department)) to all parties of record ~~((In such cases, the effective date of the approved master program or amendment is the date the department receives from local government the written notice of agreement))~~; or~~~~

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally proposed by the department in this subsection ~~((7))~~ (3) and with the policy of RCW 90.58.020 and the applicable guidelines, it shall approve the alternative changes and provide written notice to all parties of record. ~~((In such cases, the effective date of the approved master program or amendments is the date of the department's letter to local government approving the alternative proposal.))~~

If the department determines the alternative proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may either deny the alternative proposal or at the request of local government start anew with the review and approval process beginning ~~((a))~~ in WAC 173-26-120.

~~((8))~~ (c) Department notice of final action.

(i) Promptly after approval or disapproval of a local government's shoreline master program or amendment, the

department shall publish a notice consistent with RCW 36.70A.290 that the shoreline master program or amendment has been approved or disapproved. This notice must be filed for all shoreline master programs or amendments.

(ii) If the notice is for a local government that does not fully plan under RCW 36.70A.040, the department must, on the day the notice is published, notify the legislative authority of the applicable local government by telephone or electronic means, followed by written communication as necessary, to ensure that the local government has received the full written decision of the approval or disapproval.

(d) Effective date.

(i) A master program or amendment thereto takes effect ~~((when and))~~ in such form as it is approved or adopted by rule by the department ~~((except when appealed to the shorelines board as provided for in RCW 90.58.190(4) for local governments not planning under chapter 36.70A RCW. The department's approved document of record, filed at the department, constitutes the official master program.~~

~~(9) For local governments planning under chapter 36.70A RCW, after final action by the department on a local government's shoreline master program or amendment the local government shall (pursuant to RCW 90.58.090) promptly publish a notice that the department has taken final action on the master program or amendment. For purposes of this section, the date of publication for the master program adoption or amendment shall be the date on which the local government publishes the notice that the department has taken final action on the master program or amendment)). The effective date is fourteen days from the date of the department's written notice of final action to the local government stating the department has approved or rejected the proposal.~~

(ii) For master programs adopted by rule, the effective date is governed by RCW 34.05.380.

(iii) The department's written notice to the local government must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications to the proposal.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-130 Appeal procedures for master programs. (1) For local governments planning under chapter 36.70A RCW, appeals shall be to the growth management hearings board ~~((The petition must be filed pursuant to the requirements of RCW 90.58.190. The department's (ecology's) written notice of final action will conspicuously and plainly state it is the department's final decision and there will be no further modifications under RCW 90.58.090(2))~~ as provided in RCW 36.70A.290 and 90.58.190.

(2) For local governments not planning under chapter 36.70A RCW, all petitions for review shall be filed with the state shorelines hearings board within thirty days of the ~~((written decision by the department approving or denying the master program or amendment. The department's written notice will conspicuously and plainly state it is the department's final decision and there will be no further modifica-~~

~~tions under RCW 90.58.090(2))~~ date the department publishes notice of its final decision under RCW 90.58.090(8).

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-160 Local government annexation. Except as provided in WAC 173-26-150, in the event of annexation of a shoreline of the state, the local government assuming jurisdiction shall notify the department of such annexation and develop or amend a master program to include the annexed area. Such master program development or amendment shall be consistent with the policy of RCW 90.58.020 and the applicable guidelines and shall be submitted to the department for approval no later than one year from the effective date of annexation.

Until a new or amended master program is adopted or approved by the department, any decision on an application for a shoreline permit in the annexed shoreline area shall be based upon compliance with the master program in effect for the area prior to annexation.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-201 Process to prepare or amend shoreline master programs. (1) **Applicability.** This section outlines the process to prepare a comprehensive shoreline master program adoption or update. This section also establishes approval criteria for ~~((limited))~~ shoreline master program amendments.

(a) All master program amendments are subject to the minimum procedural rule requirements of WAC 173-26-010 through 173-26-160, and approval by the department as provided in RCW 90.58.090.

(b) Comprehensive master program adoptions and updates shall fully achieve the procedural and substantive requirements of these guidelines. ~~((Adoption of new shoreline master programs and amendments submitted to meet the comprehensive update requirements of RCW 90.58.080 are a statewide priority over and above other amendments.))~~

(c) ~~((Limited))~~ Master program amendments may be approved by the department provided ~~((the department concludes))~~:

- (i) ~~((The amendment is necessary to:~~
 - ~~(A) Comply with state and federal laws and implementing rules applicable to shorelines of the state within the local government jurisdiction;~~
 - ~~(B) Include a newly annexed shoreline of the state within the local government jurisdiction;~~
 - ~~(C) Address the results of the periodic master program review required by RCW 90.58.080(4), following a comprehensive master program update;~~
 - ~~(D) Improve consistency with the act's goals and policies and its implementing rules; or~~
 - ~~(E) Correct errors or omissions.~~

(ii) The local government is not currently conducting a comprehensive shoreline master program update designed to meet the requirements of RCW 90.58.080, unless the limited amendment is vital to the public interest;

~~((iii))~~ The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines;

~~((iv))~~ ~~((ii))~~ The amendment is consistent with all applicable policies and standards of the act;

~~((v))~~ ~~((iii))~~ All procedural rule requirements for public notice and consultation have been satisfied; and

~~((vi))~~ ~~((iv))~~ Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the ~~((limited))~~ amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.

~~((d) A limited amendment in process at the time a local government's comprehensive update begins will be processed to completion, unless requested otherwise by the local government.)~~

(2) Basic concepts.

(a) **Use of scientific and technical information.** To satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1), local governments shall incorporate the following two steps into their master program development and amendment process.

First, identify and assemble the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern. The context, scope, magnitude, significance, and potential limitations of the scientific information should be considered. At a minimum, make use of and, where applicable, incorporate all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science. Local governments should also contact relevant state agencies, universities, affected Indian tribes, port districts and private parties for available information. While adequate scientific information and methodology necessary for development of a master program should be available, if any person, including local government, chooses to initiate scientific research with the expectation that it will be used as a basis for master program provisions, that research shall use accepted scientific methods, research procedures and review protocols. Local governments are encouraged to work interactively with neighboring jurisdictions, state resource agencies, affected Indian tribes, and other local government entities such as port districts to address technical issues beyond the scope of existing information resources or locally initiated research.

Local governments should consult the technical assistance materials produced by the department. When relevant information is available and unless there is more current or specific information available, those technical assistance materials shall constitute an element of scientific and technical information as defined in these guidelines and the use of which is required by the act.

Second, base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available. Local governments should be prepared to identify the following:

(i) Scientific information and management recommendations on which the master program provisions are based;

(ii) Assumptions made concerning, and data gaps in, the scientific information; and

(ii) Risks to ecological functions associated with master program provisions. Address potential risks as described in WAC 173-26-201 (3)(d).

The requirement to use scientific and technical information in these guidelines does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties as part of the master program amendment process. Such information should be solicited through the public participation process described in WAC 173-26-201 (3)(b). Where information collected by or provided to local governments conflicts or is inconsistent, the local government shall base master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.

(b) **Adaptation of policies and regulations.** Effective shoreline management requires the evaluation of changing conditions and the modification of policies and regulations to address identified trends and new information. Local governments should monitor actions taken to implement the master program and shoreline conditions to facilitate appropriate updates of master program provisions to improve shoreline management over time. In reviewing proposals to amend master programs, the department shall evaluate whether the change promotes achievement of the policies of the master program and the act. As provided in WAC 173-26-171 (3)(d), ecology will periodically review these guidelines, based in part on information provided by local government, and through that process local government will receive additional guidance on significant shoreline management issues that may require amendments to master programs.

(c) **Protection of ecological functions of the shorelines.** This chapter implements the act's policy on protection of shoreline natural resources through protection and restoration of ecological functions necessary to sustain these natural resources. The concept of ecological functions recognizes that any ecological system is composed of a wide variety of interacting physical, chemical and biological components, that are interdependent in varying degrees and scales, and that produce the landscape and habitats as they exist at any time. Ecological functions are the work performed or role played individually or collectively within ecosystems by these components.

As established in WAC 173-26-186(8), these guidelines are designed to assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources and to plan for restoration of ecological functions where they have been impaired. Managing shorelines for protection of their natural resources depends on sustaining the functions provided by:

- Ecosystem-wide processes such as those associated with the flow and movement of water, sediment and organic materials; the presence and movement of fish and wildlife and the maintenance of water quality.

- Individual components and localized processes such as those associated with shoreline vegetation, soils, water movement through the soil and across the land surface and the composition and configuration of the beds and banks of water bodies.

The loss or degradation of the functions associated with ecosystem-wide processes, individual components and local-

ized processes can significantly impact shoreline natural resources and may also adversely impact human health and safety. Shoreline master programs shall address ecological functions associated with applicable ecosystem-wide processes, individual components and localized processes identified in the ecological systems analysis described in WAC 173-26-201 (3)(d)(i).

Nearly all shoreline areas, even substantially developed or degraded areas, retain important ecological functions. For example, an intensely developed harbor area may also serve as a fish migration corridor and feeding area critical to species survival. Also, ecosystems are interconnected. For example, the life cycle of anadromous fish depends upon the viability of freshwater, marine, and terrestrial shoreline ecosystems, and many wildlife species associated with the shoreline depend on the health of both terrestrial and aquatic environments. Therefore, the policies for protecting and restoring ecological functions generally apply to all shoreline areas, not just those that remain relatively unaltered.

Master programs shall contain policies and regulations that assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources. To achieve this standard while accommodating appropriate and necessary shoreline uses and development, master programs should establish and apply:

- Environment designations with appropriate use and development standards; and
- Provisions to address the impacts of specific common shoreline uses, development activities and modification actions; and
- Provisions for the protection of critical areas within the shoreline; and
- Provisions for mitigation measures and methods to address unanticipated impacts.

When based on the inventory and analysis requirements and completed consistent with the specific provisions of these guidelines, the master program should ensure that development will be protective of ecological functions necessary to sustain existing shoreline natural resources and meet the standard. The concept of "net" as used herein, recognizes that any development has potential or actual, short-term or long-term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the mitigation sequence, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist. Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions.

Master programs shall also include policies that promote restoration of ecological functions, as provided in WAC 173-26-201 (2)(f), where such functions are found to have been impaired based on analysis described in WAC 173-26-201 (3)(d)(i). It is intended that local government, through the master program, along with other regulatory and nonregulatory programs, contribute to restoration by planning for and

fostering restoration and that such restoration occur through a combination of public and private programs and actions. Local government should identify restoration opportunities through the shoreline inventory process and authorize, coordinate and facilitate appropriate publicly and privately initiated restoration projects within their master programs. The goal of this effort is master programs which include planning elements that, when implemented, serve to improve the overall condition of habitat and resources within the shoreline area of each city and county.

(d) **Preferred uses.** As summarized in WAC 173-26-176, the act establishes policy that preference be given to uses that are unique to or dependent upon a shoreline location. Consistent with this policy, these guidelines use the terms "water-dependent," "water-related," and "water-enjoyment," as defined in WAC 173-26-020, when discussing appropriate uses for various shoreline areas.

Shoreline areas, being a limited ecological and economic resource, are the setting for competing uses and ecological protection and restoration activities. Consistent with RCW 90.58.020 and WAC 173-26-171 through 173-26-186, local governments shall, when determining allowable uses and resolving use conflicts on shorelines within their jurisdiction, apply the following preferences and priorities in the order listed below, starting with (d)(i) of this subsection. For shorelines of statewide significance, also apply the preferences as indicated in WAC 173-26-251(2).

(i) Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health. In reserving areas, local governments should consider areas that are ecologically intact from the uplands through the aquatic zone of the area, aquatic areas that adjoin permanently protected uplands, and tidelands in public ownership. Local governments should ensure that these areas are reserved consistent with constitutional limits.

(ii) Reserve shoreline areas for water-dependent and associated water-related uses. Harbor areas, established pursuant to Article XV of the state Constitution, and other areas that have reasonable commercial navigational accessibility and necessary support facilities such as transportation and utilities should be reserved for water-dependent and water-related uses that are associated with commercial navigation unless the local governments can demonstrate that adequate shoreline is reserved for future water-dependent and water-related uses and unless protection of the existing natural resource values of such areas preclude such uses. Local governments may prepare master program provisions to allow mixed-use developments that include and support water-dependent uses and address specific conditions that affect water-dependent uses.

(iii) Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.

(iv) Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.

(v) Limit nonwater-oriented uses to those locations where the above described uses are inappropriate or where

nonwater-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.

Evaluation pursuant to the above criteria, local economic and land use conditions, and policies and regulations that assure protection of shoreline resources, may result in determination that other uses are considered as necessary or appropriate and may be accommodated provided that the preferred uses are reasonably provided for in the jurisdiction.

(e) Environmental impact mitigation.

(i) To assure no net loss of shoreline ecological functions, master programs shall include provisions that require proposed individual uses and developments to analyze environmental impacts of the proposal and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the master program and other applicable regulations. To the extent Washington's State Environmental Policy Act of 1971 (SEPA), chapter 43.21C RCW, is applicable, the analysis of such environmental impacts shall be conducted consistent with the rules implementing SEPA, which also address environmental impact mitigation in WAC 197-11-660 and define mitigation in WAC 197-11-768. Master programs shall indicate that, where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority, with (e)(i)(A) of this subsection being top priority.

(A) Avoiding the impact altogether by not taking a certain action or parts of an action;

(B) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

(C) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(D) Reducing or eliminating the impact over time by preservation and maintenance operations;

(E) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

(F) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

(ii) In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

Consistent with WAC 173-26-186 (5) and (8), master programs shall also provide direction with regard to mitigation for the impact of the development so that:

(A) Application of the mitigation sequence achieves no net loss of ecological functions for each new development and does not result in required mitigation in excess of that necessary to assure that development will result in no net loss of shoreline ecological functions and not have a significant adverse impact on other shoreline functions fostered by the policy of the act.

(B) When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based

on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.

(f) **Shoreline restoration planning.** Consistent with principle WAC 173-26-186 (8)(c), master programs shall include goals, policies and actions for restoration of impaired shoreline ecological functions. These master program provisions should be designed to achieve overall improvements in shoreline ecological functions over time, when compared to the status upon adoption of the master program. The approach to restoration planning may vary significantly among local jurisdictions, depending on:

- The size of the jurisdiction;
- The extent and condition of shorelines in the jurisdiction;
- The availability of grants, volunteer programs or other tools for restoration; and
- The nature of the ecological functions to be addressed by restoration planning.

Master program restoration plans shall consider and address the following subjects:

(i) Identify degraded areas, impaired ecological functions, and sites with potential for ecological restoration;

(ii) Establish overall goals and priorities for restoration of degraded areas and impaired ecological functions;

(iii) Identify existing and ongoing projects and programs that are currently being implemented, or are reasonably assured of being implemented (based on an evaluation of funding likely in the foreseeable future), which are designed to contribute to local restoration goals;

(iv) Identify additional projects and programs needed to achieve local restoration goals, and implementation strategies including identifying prospective funding sources for those projects and programs;

(v) Identify timelines and benchmarks for implementing restoration projects and programs and achieving local restoration goals;

(vi) Provide for mechanisms or strategies to ensure that restoration projects and programs will be implemented according to plans and to appropriately review the effectiveness of the projects and programs in meeting the overall restoration goals.

(3) Steps in preparing and amending a master program.

(a) **Process overview.** This section provides a generalized process to prepare or comprehensively amend a shoreline master program. Local governments may modify the timing of the various steps, integrate the process into other planning activities, add steps to the process, or work jointly with other jurisdictions or regional efforts, provided the provisions of this chapter are met.

The department will provide a shoreline master program amendment checklist to help local governments identify issues to address. The checklist will not create new or additional requirements beyond the provisions of this chapter. The checklist is intended to aid the preparation and review of master program amendments. Local governments shall sub-

mit the completed checklist with the proposed master program amendments.

(b) Participation process.

(i) Participation requirements. Local government shall comply with the provisions of RCW 90.58.130 which states:

"To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and

(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments."

Additionally, the provisions of WAC 173-26-100 apply and include provisions to assure proper public participation and, for local governments planning under the Growth Management Act, the provisions of RCW 36.70A.140 also apply.

At a minimum, all local governments shall be prepared to describe and document their methods to ensure that all interested parties have a meaningful opportunity to participate.

(ii) Communication with state agencies. Before undertaking substantial work, local governments shall notify applicable state agencies to identify state interests, relevant regional and statewide efforts, available information, and methods for coordination and input. Contact the department for a list of applicable agencies to be notified.

(iii) Communication with affected Indian tribes. Prior to undertaking substantial work, local governments shall notify affected Indian tribes to identify tribal interests, relevant tribal efforts, available information and methods for coordination and input. Contact the individual tribes or coordinating bodies such as the Northwest Indian Fisheries Commission, for a list of affected Indian tribes to be notified.

(c) Inventory shoreline conditions. Gather and incorporate all pertinent and available information, existing inventory data and materials from state and federal agencies, individuals and nongovernmental entities with expertise, affected Indian tribes, watershed management planning, port districts and other appropriate sources. Ensure that, whenever possible, inventory methods and protocols are consistent with those of neighboring jurisdictions and state efforts. The department will provide, to the extent possible, services and resources for inventory work. Contact the department to determine information sources and other relevant efforts. Map inventory information at an appropriate scale. The department may provide an inventory of shoreline conditions to the local jurisdiction.

Local governments shall be prepared to demonstrate how the inventory information was used in preparing their local master program amendments.

Collection of additional inventory information is encouraged and should be coordinated with other watershed, regional, or statewide inventory and planning efforts in order to ensure consistent methods and data protocol as well as effective use of fiscal and human resources. Local governments should be prepared to demonstrate that they have coordinated with applicable interjurisdictional shoreline inventory and planning programs where they exist. Two or more local governments are encouraged to jointly conduct an inventory in order to increase the efficiency of data gathering and comprehensiveness of inventory information. Data from interjurisdictional, watershed, or regional inventories may be substituted for an inventory conducted by an individual jurisdiction, provided it meets the requirements of this section.

Local government shall, at a minimum, and to the extent such information is relevant and reasonably available, collect the following information:

(i) Shoreline and adjacent land use patterns and transportation and utility facilities, including the extent of existing structures, impervious surfaces, vegetation and shoreline modifications in shoreline jurisdiction. Special attention should be paid to identification of ecologically intact blocks of upland vegetation, developed areas with largely intact riparian vegetation, water-oriented uses and related navigation, transportation and utility facilities.

(ii) Existing aquatic and terrestrial wildlife habitats; native aquatic vegetation; riparian and associated upland plant communities; and critical areas, including wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, geologically hazardous areas, and frequently flooded areas. See also WAC 173-26-221.

(iii) Altered and degraded areas and sites with potential for ecological restoration.

(iv) Areas of special interest, such as priority habitats, ecologically intact late successional native plant communities, developing or redeveloping harbors and waterfronts, previously identified toxic or hazardous material clean-up sites, dredged material disposal sites, or eroding shorelines, to be addressed through new master program provisions.

(v) Conditions and regulations in shoreland and adjacent areas that affect shorelines, such as surface water management and land use regulations. This information may be useful in achieving mutual consistency between the master program and other development regulations.

(vi) Existing and potential shoreline public access sites, including public rights of way and utility corridors.

(vii) General location of channel migration zones, and flood plains.

(viii) Gaps in existing information. During the initial inventory, local governments should identify what additional information may be necessary for more effective shoreline management.

(ix) If the shoreline is rapidly developing or subject to substantial human changes such as clearing and grading, past and current records or historical aerial photographs may be necessary to identify cumulative impacts, such as bulkhead construction, intrusive development on priority and critical

habitats, and conversion of harbor areas to nonwater-oriented uses.

(x) If archaeological or historic resources have been identified in shoreline jurisdiction, consult with the state historic preservation office and local affected Indian tribes regarding existing archaeological and historical information.

(xi) Information specific to the aquatic environment for siting in-water uses and development, such as sediment contamination, intertidal property ownership, aquaculture operations, shellfish beds, shellfish protection districts, and areas that meet department of health shellfish water quality certification requirements.

(d) **Analyze shoreline issues of concern.** Before establishing specific master program provisions, local governments shall analyze the information gathered in (c) of this subsection and as necessary to ensure effective shoreline management provisions, address the topics below, where applicable.

(i) **Characterization of functions and ecosystem-wide processes.**

(A) Prepare a characterization of shoreline ecosystems and their associated ecological functions. The characterization consists of three steps:

(I) Identify the ecosystem-wide processes and ecological functions based on the list in (d)(i)(C) of this subsection that apply to the shoreline(s) of the jurisdiction.

(II) Assess the ecosystem-wide processes to determine their relationship to ecological functions present within the jurisdiction and identify which ecological functions are healthy, which have been significantly altered and/or adversely impacted and which functions may have previously existed and are missing based on the values identified in (d)(i)(D) of this subsection; and

(III) Identify specific measures necessary to protect and/or restore the ecological functions and ecosystem-wide processes.

(B) The characterization of shoreline ecological systems may be achieved by using one or more of the approaches below:

(I) If a regional environmental management plan, such as a watershed plan or coastal erosion study, is ongoing or has been completed, then conduct the characterization either within the framework of the regional plan or use the data provided in the regional plan. This methodology is intended to contribute to an in-depth and comprehensive assessment and characterization.

(II) If a regional environmental management plan has not been completed, use available scientific and technical information, including flood studies, habitat evaluations and studies, water quality studies, and data and information from environmental impact statements. This characterization of ecosystem-wide processes and the impact upon the functions of specific habitats and human health and safety objectives may be of a generalized nature.

(III) One or more local governments may pursue a characterization which includes a greater scope and complexity than listed in (d)(i)(B)(I) and (II) of this subsection.

(C) Shoreline ecological functions include, but are not limited to:

In rivers and streams and associated flood plains:

Hydrologic: Transport of water and sediment across the natural range of flow variability; attenuating flow energy; developing pools, riffles, gravel bars, nutrient flux, recruitment and transport of large woody debris and other organic material.

Shoreline vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, sediment removal and stabilization; attenuation of high stream flow energy; and provision of woody debris and other organic matter.

Hyporheic functions: Removing excessive nutrients and toxic compound, water storage, support of vegetation, and sediment storage and maintenance of base flows.

Habitat for native aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction; resting, hiding and migration; and food production and delivery.

In lakes:

Hydrologic: Storing water and sediment, attenuating wave energy, removing excessive nutrients and toxic compounds, recruitment of large woody debris and other organic material.

Shoreline vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, sediment removal and stabilization; and providing woody debris and other organic matter.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

In marine waters:

Hydrologic: Transporting and stabilizing sediment, attenuating wave and tidal energy, removing excessive nutrients and toxic compounds; recruitment, redistribution and reduction of woody debris and other organic material.

Vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, sediment removal and stabilization; and providing woody debris and other organic matter.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

Wetlands:

Hydrological: Storing water and sediment, attenuating wave energy, removing excessive nutrients and toxic compounds, recruiting woody debris and other organic material.

Vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, removing and stabilizing sediment; and providing woody debris and other organic matter.

Hyporheic functions: Removing excessive nutrients and toxic compound, storing water and maintaining base flows, storing sediment and support of vegetation.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not

limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

(D) The overall condition of habitat and shoreline resources are determined by the following ecosystem-wide processes and ecological functions:

The distribution, diversity, and complexity of the watersheds, marine environments, and landscape-scale features that form the aquatic systems to which species, populations, and communities are uniquely adapted.

The spatial and temporal connectivity within and between watersheds and along marine shorelines. Drainage network connections include flood plains, wetlands, upslope areas, headwater tributaries, and naturally functioning routes to areas critical for fulfilling life history requirements of aquatic and riverine-dependent species.

The shorelines, beaches, banks, marine near-shore habitats, and bottom configurations that provide the physical framework of the aquatic system.

The timing, volume, and distribution of woody debris recruitment in rivers, streams and marine habitat areas.

The water quality necessary to maintain the biological, physical, and chemical integrity of the system and support survival, growth, reproduction, and migration of individuals composing aquatic, riverine and lacustrine communities.

The sediment regime under which aquatic ecosystems evolved. Elements of the sediment regime include the timing, volume, rate, and character of sediment input, storage, and transport.

The range of flow variability sufficient to create and sustain lacustrine, fluvial, aquatic, and wetland habitats, the patterns of sediment, nutrient, and wood routing. The timing, magnitude, duration, and spatial distribution of peak, high, and low flows, and duration of flood plain inundation and water table elevation in meadows and wetlands.

The species composition and structural diversity of plant communities in river and stream areas and wetlands that provides summer and winter thermal regulation, nutrient filtering, appropriate rates of surface erosion, bank erosion, and channel migration and to supply amounts and distributions of woody debris sufficient to sustain physical complexity and stability.

(E) Local governments should use the characterization and analysis called for in this section to prepare master program policies and regulations designed to achieve no net loss of ecological functions necessary to support shoreline resources and to plan for the restoration of the ecosystem-wide processes and individual ecological functions on a comprehensive basis over time.

(ii) **Shoreline use analysis and priorities.** Conduct an analysis to estimate the future demand for shoreline space and potential use conflicts. Characterize current shoreline use patterns and projected trends to ensure appropriate uses consistent with chapter 90.58 RCW and WAC 173-26-201 (2)(d) and 173-26-211(5).

If the jurisdiction includes a designated harbor area or urban waterfront with intensive uses or significant development or redevelopment issues, work with the Washington state department of natural resources and port authorities to ensure consistency with harbor area statutes and regulations, and to address port plans. Identify measures and strategies to

encourage appropriate use of these shoreline areas in accordance with the use priorities of chapter 90.58 RCW and WAC 173-26-201 (2)(d) while pursuing opportunities for ecological restoration.

(iii) **Addressing cumulative impacts in developing master programs.** The principle that regulation of development shall achieve no net loss of ecological function requires that master program policies and regulations address the cumulative impacts on shoreline ecological functions that would result from future shoreline development and uses that are reasonably foreseeable from proposed master programs. To comply with the general obligation to assure no net loss of shoreline ecological function, the process of developing the policies and regulations of a shoreline master program requires assessment of how proposed policies and regulations cause and avoid such cumulative impacts.

Evaluating and addressing cumulative impacts shall be consistent with the guiding principle in WAC 173-26-186 (8)(d). An appropriate evaluation of cumulative impacts on ecological functions will consider the factors identified in WAC 173-26-186 (8)(d)(i) through (iii) and the effect on the ecological functions of the shoreline that are caused by unregulated activities, development and uses exempt from permitting, effects such as the incremental impact of residential bulkheads, residential piers, or runoff from newly developed properties. Accordingly, particular attention should be paid to policies and regulations that address platting or subdividing of property, laying of utilities, and mapping of streets that establish a pattern for future development that is to be regulated by the master program.

There are practical limits when evaluating impacts that are prospective and sometimes indirect. Local government should rely on the assistance of state agencies and appropriate parties using evaluation, measurement, estimation, or quantification of impact consistent with the guidance of RCW 90.58.100(1) and WAC 173-26-201 (2)(a). Policies and regulations of a master program are not inconsistent with these guidelines for failing to address cumulative impacts where a purported impact is not susceptible to being addressed using an approach consistent with RCW 90.58.100(1).

Complying with the above guidelines is the way that master program policies and regulations should be developed to assure that the commonly occurring and foreseeable cumulative impacts do not cause a net loss of ecological functions of the shoreline. For such commonly occurring and planned development, policies and regulations should be designed without reliance on an individualized cumulative impacts analysis. Local government shall fairly allocate the burden of addressing cumulative impacts.

For development projects and uses that may have unanticipated or uncommon impacts that cannot be reasonably identified at the time of master program development, the master program policies and regulations should use the permitting or conditional use permitting processes to ensure that all impacts are addressed and that there is no net loss of ecological function of the shoreline after mitigation.

Similarly, local government shall consider and address cumulative impacts on other functions and uses of the shoreline that are consistent with the act. For example, a cumula-

tive impact of allowing development of docks or piers could be interference with navigation on a water body.

(iv) **Shorelines of statewide significance.** If the area contains shorelines of statewide significance, undertake the steps outlined in WAC 173-26-251.

(v) **Public access.** Identify public access needs and opportunities within the jurisdiction and explore actions to enhance shoreline recreation facilities, as described in WAC 173-26-221(4).

(vi) **Enforcement and coordination with other regulatory programs.** Local governments planning under the Growth Management Act shall review their comprehensive plan policies and development regulations to ensure mutual consistency. In order to effectively administer and enforce master program provisions, local governments should also review their current permit review and inspection practices to identify ways to increase efficiency and effectiveness and to ensure consistency.

(vii) **Water quality and quantity.** Identify water quality and quantity issues relevant to master program provisions, including those that affect human health and safety. Review data and information specific to shellfish areas. Identify measures to protect water quality for human health as described in WAC 173-26-221(6). At a minimum, consult with appropriate federal, state, tribal, and local agencies.

(viii) **Vegetation conservation.** Identify how existing shoreline vegetation provides ecological functions and determine methods to ensure protection of those functions. Identify important ecological functions that have been degraded through loss of vegetation. Consider the amount of vegetated shoreline area necessary to achieve ecological objectives. While there may be less vegetation remaining in urbanized areas than in rural areas, the importance of this vegetation, in terms of the ecological functions it provides, is often as great or even greater than in rural areas due to its scarcity. Identify measures to ensure that new development meets vegetation conservation objectives.

(ix) **Special area planning.** Some shoreline sites or areas require more focused attention than is possible in the overall master program development process due to complex shoreline ecological issues, changing uses, or other unique features or issues. In these circumstances, the local government is encouraged to undertake special area planning. Special area planning also may be used to address: Public access, vegetation conservation, shoreline use compatibility, port development master planning, ecological restoration, or other issues best addressed on a comprehensive basis.

The resultant plans may serve as the basis for facilitating state and local government coordination and permit review. Special area planning shall provide for public and affected Indian tribe participation and compliance with all applicable provisions of the act and WAC 173-26-090 through 173-26-120.

(e) **Establish shoreline policies.** Address all of the elements listed in RCW 90.58.100(2) and all applicable provisions of these guidelines in policies. These policies should be reviewed for mutual consistency with the comprehensive plan policies. If there are shorelines of statewide significance, ensure that the other comprehensive plan policies affecting

shoreline jurisdiction are consistent with the objectives of RCW 90.58.020 and 90.58.090(4).

(f) **Establish environment designations.** Establish environment designations and identify permitted uses and development standards for each environment designation.

Based on the inventory in (c) of this subsection and the analysis in (d) of this subsection, assign each shoreline segment an environment designation.

Prepare specific environment designation policies and regulations.

Review the environment designations for mutual consistency with comprehensive plan land use designations as indicated in WAC 173-26-211(3).

In determining the boundaries and classifications of environment designations, adhere to the criteria in WAC 173-26-211(5).

(g) **Prepare other shoreline regulations.** Prepare other shoreline regulations based on the policies and the analyses described in this section as necessary to assure consistency with the guidelines of this chapter. The level of detail of inventory information and planning analysis will be a consideration in setting shoreline regulations. As a general rule, the less known about existing resources, the more protective shoreline master program provisions should be to avoid unanticipated impacts to shoreline resources. If there is a question about the extent or condition of an existing ecological resource, then the master program provisions shall be sufficient to reasonably assure that the resource is protected in a manner consistent with the policies of these guidelines.

(h) **Submit for review and approval.** Local governments are encouraged to work with department personnel during preparation of the master program and to submit draft master program provisions to the department for informal advice and guidance prior to formal submittal.

Local governments shall submit the completed checklist, as described in WAC 173-26-201 (3)(a), with their master program amendments proposed for adoption. Master program review and formal adoption procedures are described in Parts I and II of this chapter.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-211 Environment designation system.

(1) **Applicability.** This section applies to the establishment of environment designation boundaries and provisions as described in WAC 173-26-191 (1)(d).

(2) **Basic requirements for environment designation classification and provisions.**

(a) Master programs shall contain a system to classify shoreline areas into specific environment designations. This classification system shall be based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through comprehensive plans as well as the criteria in this section. Each master program's classification system shall be consistent with that described in WAC 173-26-211 (4) and (5) unless the alternative proposed provides equal or better implementation of the act.

(b) An up-to-date and accurate map of the shoreline area delineating the environment designations and their boundaries shall be prepared and maintained in the local government office that administers shoreline permits. If it is not feasible to accurately designate individual parcels on a map, the master program text shall include a clear basis for identifying the boundaries, physical features, explicit criteria, or "common" boundary descriptions to accurately define and distinguish the environments on the ground. The master program should also make it clear that in the event of a mapping error, the jurisdiction will rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.

(c) To facilitate consistency with land use planning, local governments planning under chapter 36.70A RCW are encouraged to illustrate shoreline designations on the com-

prehensive plan future land use map as described in WAC ((365-195-300)) 365-196-400 (2)(d).

(d) Pursuant to RCW 90.58.040, the map should clearly illustrate what environment designations apply to all shorelines of the state as defined in RCW 90.58.030 (2)(c) within the local government's jurisdiction in a manner consistent with WAC 173-26-211 (4) and (5).

(e) The map and the master program should note that all areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned a "rural conservancy" designation, or "urban conservancy" designation if within a municipality or urban growth area, or the comparable environment designation of the applicable master program until the shoreline can be redesignated through a master program amendment.

(f) The following diagram summarizes the components of the environment designation provisions.

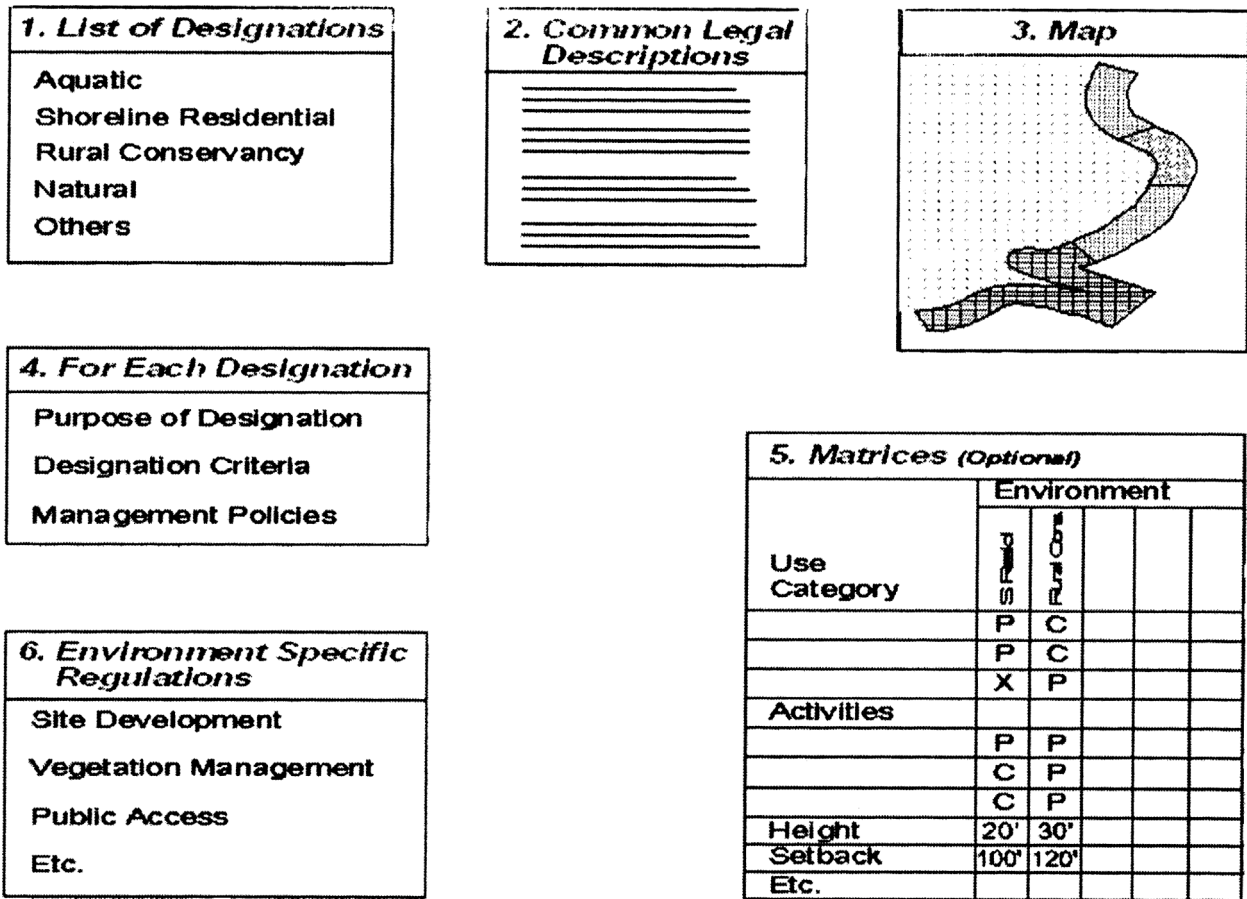


Diagram summarizing the components of the environment designation provisions.
(This is for illustration purposes only and does not supplement or add to the language in the chapter text.)

(3) **Consistency between shoreline environment designations and the local comprehensive plan.** As noted in WAC 173-26-191 (1)(e), RCW 90.58.340 requires that policies for lands adjacent to the shorelines be consistent with the Shoreline Management Act, implementing rules, and the applicable master program. Conversely, local comprehensive plans constitute the underlying framework within which master program provisions should fit. The Growth Management

Act, where applicable, designates shoreline master program policies as an element of the comprehensive plan and requires that all elements be internally consistent. Chapter 36.70A RCW also requires development regulations to be consistent with the comprehensive plan.

The following criteria are intended to assist local governments in evaluating the consistency between master program environment designation provisions and the corresponding

comprehensive plan elements and development regulations. In order for shoreline designation provisions, local comprehensive plan land use designations, and development regulations to be internally consistent, all three of the conditions below should be met:

(a) **Provisions not precluding one another.** The comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criteria, the provisions of both the comprehensive plan and the master program must be able to be met. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.

(b) **Use compatibility.** Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible uses. The intent is to prevent water-oriented uses, especially water-dependent uses, from being restricted on shoreline areas because of impacts to nearby nonwater-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development.

(c) **Sufficient infrastructure.** Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.

(4) General environment designation provisions.

(a) **Requirements.** For each environment designation, the shoreline master program shall describe:

(i) **Purpose statement.** The statement of purpose shall describe the shoreline management objectives of the designation in a manner that distinguishes it from other designations.

(ii) **Classification criteria.** Clearly stated criteria shall provide the basis for classifying or reclassifying a specific shoreline area with an environment designation.

(iii) **Management policies.** These policies shall be in sufficient detail to assist in the interpretation of the environment designation regulations and, for jurisdictions planning under chapter 36.70A RCW, to evaluate consistency with the local comprehensive plan.

(iv) **Regulations.** Environment-specific regulations shall address the following where necessary to account for different shoreline conditions:

(A) Types of shoreline uses permitted, conditionally permitted, and prohibited;

(B) Building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards; and

(C) Other topics not covered in general use regulations that are necessary to assure implementation of the purpose of the environment designation.

(b) **The recommended classification system.** The recommended classification system consists of six basic envi-

ronments: "High-intensity," "shoreline residential," "urban conservancy," "rural conservancy," "natural," and "aquatic" as described in this section and WAC 173-26-211(5). Local governments should assign all shoreline areas an environment designation consistent with the corresponding designation criteria provided for each environment. In delineating environment designations, local government should assure that existing shoreline ecological functions are protected with the proposed pattern and intensity of development. Such designations should also be consistent with policies for restoration of degraded shorelines.

(c) Alternative systems.

(i) Local governments may establish a different designation system or may retain their current environment designations, provided it is consistent with the purposes and policies of this section and WAC 173-26-211(5).

(ii) Local governments may use "parallel environments" where appropriate. Parallel environments divide shorelands into different sections generally running parallel to the shoreline or along a physical feature such as a bluff or railroad right of way. Such environments may be useful, for example, to accommodate resource protection near the shoreline and existing development further from the shoreline. Where parallel environments are used, developments and uses allowed in one environment should not be inconsistent with the achieving the purposes of the other.

(5) The designations.

(a) "Natural" environment.

(i) **Purpose.** The purpose of the "natural" environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Consistent with the policies of the designation, local government should include planning for restoration of degraded shorelines within this environment.

(ii) Management policies.

(A) Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.

(B) The following new uses should not be allowed in the "natural" environment:

- Commercial uses.
- Industrial uses.
- Nonwater-oriented recreation.
- Roads, utility corridors, and parking areas that can be located outside of "natural" designated shorelines.

(C) Single-family residential development may be allowed as a conditional use within the "natural" environment if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.

(D) Commercial forestry may be allowed as a conditional use in the "natural" environment provided it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of this environment designation.

(E) Agricultural uses of a very low intensity nature may be consistent with the natural environment when such use is

subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.

(F) Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses may be allowed provided that no significant ecological impact on the area will result.

(G) New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. Do not allow the subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions. That is, each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.

(ii) **Designation criteria.** A "natural" environment designation should be assigned to shoreline areas if any of the following characteristics apply:

(A) The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;

(B) The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or

(C) The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

Such shoreline areas include largely undisturbed portions of shoreline areas such as wetlands, estuaries, unstable bluffs, coastal dunes, spits, and ecologically intact shoreline habitats. Shorelines inside or outside urban growth areas may be designated as "natural."

Ecologically intact shorelines, as used here, means those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies. Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development. Whether or not a shoreline is ecologically intact is determined on a case-by-case basis.

The term "ecologically intact shorelines" applies to all shoreline areas meeting the above criteria ranging from larger reaches that may include multiple properties to small areas located within a single property.

Areas with significant existing agriculture lands should not be included in the "natural" designation, except where the existing agricultural operations involve very low intensity uses where there is no significant impact on natural ecological functions, and where the intensity or impacts associated

with such agriculture activities is unlikely to expand in a manner inconsistent with the "natural" designation.

(b) **"Rural conservancy" environment.**

(i) **Purpose.** The purpose of the "rural conservancy" environment is to protect ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource use, achieve natural flood plain processes, and provide recreational opportunities. Examples of uses that are appropriate in a "rural conservancy" environment include low-impact outdoor recreation uses, timber harvesting on a sustained-yield basis, agricultural uses, aquaculture, low-intensity residential development and other natural resource-based low-intensity uses.

(ii) **Management policies.**

(A) Uses in the "rural conservancy" environment should be limited to those which sustain the shoreline area's physical and biological resources and uses of a nonpermanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area.

Except as noted, commercial and industrial uses should not be allowed. Agriculture, commercial forestry, and aquaculture when consistent with provisions of this chapter may be allowed. Low-intensity, water-oriented commercial and industrial uses may be permitted in the limited instances where those uses have located in the past or at unique sites in rural communities that possess shoreline conditions and services to support the use.

Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time, such as boating facilities, angling, hunting, wildlife viewing trails, and swimming beaches, are preferred uses, provided significant adverse impacts to the shoreline are mitigated.

Mining is a unique use as a result of its inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the rural conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-241 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(B) Developments and uses that would substantially degrade or permanently deplete the biological resources of the area should not be allowed.

(C) Construction of new structural shoreline stabilization and flood control works should only be allowed where there is a documented need to protect an existing structure or ecological functions and mitigation is applied, consistent with WAC 173-26-231. New development should be designed and located to preclude the need for such work.

(D) Residential development standards shall ensure no net loss of shoreline ecological functions and should preserve the existing character of the shoreline consistent with the purpose of the environment. As a general matter, meeting this provision will require density, lot coverage, vegetation conservation and other provisions.

Scientific studies support density or lot coverage limitation standards that assure that development will be limited to a maximum of ten percent total impervious surface area within the lot or parcel, will maintain the existing hydrologic

character of the shoreline. However, an alternative standard developed based on scientific information that meets the provisions of this chapter and accomplishes the purpose of the environment designation may be used.

Master programs may allow greater lot coverage to allow development of lots legally created prior to the adoption of a master program prepared under these guidelines. In these instances, master programs shall include measures to assure protection of ecological functions to the extent feasible such as requiring that lot coverage is minimized and vegetation is conserved.

(E) New shoreline stabilization, flood control measures, vegetation removal, and other shoreline modifications should be designed and managed consistent with these guidelines to ensure that the natural shoreline functions are protected. Such shoreline modification should not be inconsistent with planning provisions for restoration of shoreline ecological functions.

(iii) **Designation criteria.** Assign a "rural conservancy" environment designation to shoreline areas outside incorporated municipalities and outside urban growth areas, as defined by RCW 36.70A.110, if any of the following characteristics apply:

(A) The shoreline is currently supporting lesser-intensity resource-based uses, such as agriculture, forestry, or recreational uses, or is designated agricultural or forest lands pursuant to RCW 36.70A.170;

(B) The shoreline is currently accommodating residential uses outside urban growth areas and incorporated cities or towns;

(C) The shoreline is supporting human uses but subject to environmental limitations, such as properties that include or are adjacent to steep banks, feeder bluffs, or flood plains or other flood-prone areas;

(D) The shoreline is of high recreational value or with unique historic or cultural resources; or

(E) The shoreline has low-intensity water-dependent uses.

Areas designated in a local comprehensive plan as "limited areas of more intensive rural development," as provided for in chapter 36.70A RCW, may be designated an alternate shoreline environment, provided it is consistent with the objectives of the Growth Management Act and this chapter. "Master planned resorts" as described in RCW 36.70A.360 may be designated an alternate shoreline environment, provided the applicable master program provisions do not allow significant ecological impacts.

Lands that may otherwise qualify for designation as rural conservancy and which are designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the "rural conservancy" environment that allows mining and associated uses in addition to other uses consistent with the rural conservancy environment.

(c) **"Aquatic" environment.**

(i) **Purpose.** The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

(ii) **Management policies.**

(A) Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.

(B) The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.

(C) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

(D) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

(E) Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201 (2)(e) as necessary to assure no net loss of ecological functions.

(F) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

(G) Local governments should reserve shoreline space for shoreline preferred uses. Such planning should consider upland and in-water uses, water quality, navigation, presence of aquatic vegetation, existing shellfish protection districts and critical habitats, aesthetics, public access and views.

(iii) **Designation criteria.** Assign an "aquatic" environment designation to lands waterward of the ordinary high-water mark.

Local governments may designate submerged and intertidal lands with shoreland designations (e.g., "high-intensity" or "rural conservancy") if the management policies and objectives for aquatic areas are met. In this case, the designation system used must provide regulations for managing submerged and intertidal lands that are clear and consistent with the "aquatic" environment management policies in this chapter. Additionally, local governments may assign an "aquatic" environment designation to wetlands.

(d) **"High-intensity" environment.**

(i) **Purpose.** The purpose of the "high-intensity" environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

(ii) **Management policies.**

(A) In regulating uses in the "high-intensity" environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Nonwater-oriented uses should not be allowed except as part of mixed use developments. Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline. Such specific situations should be identified in shoreline use analysis or special area planning, as

described in WAC (~~(173-26-200 (3)(d))~~) 173-26-201 (3)(d)(ii) and (ix).

If an analysis of water-dependent use needs as described in WAC 173-26-201 (3)(d)(ii) demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a mix of water-dependent and nonwater-dependent uses may be established. If those shoreline areas also provide ecological functions, apply standards to assure no net loss of those functions.

(B) Full utilization of existing urban areas should be achieved before further expansion of intensive development is allowed. Reasonable long-range projections of regional economic need should guide the amount of shoreline designated "high-intensity." However, consideration should be given to the potential for displacement of nonwater-oriented uses with water-oriented uses when analyzing full utilization of urban waterfronts and before considering expansion of such areas.

(C) Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline to comply in accordance with any relevant state and federal law.

(D) Where feasible, visual and physical public access should be required as provided for in WAC 173-26-221 (4)(d).

(E) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

(iii) **Designation criteria.** Assign a "high-intensity" environment designation to shoreline areas within incorporated municipalities, urban growth areas, and industrial or commercial "limited areas of more intensive rural development," as described by RCW 36.70A.070, if they currently support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses.

(e) **"Urban conservancy" environment.**

(i) **Purpose.** The purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

(ii) **Management policies.**

(A) Uses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

(B) Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the "urban conservancy" designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

(C) Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

(D) Water-oriented uses should be given priority over nonwater-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.

(E) Mining is a unique use as a result of its inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the urban conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC (~~(173-26-240 (3)(h) [173-26-241 (3)(h)])~~) 173-26-241 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(iii) **Designation criteria.** Assign an "urban conservancy" environment designation to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial "limited areas of more intensive rural development" if any of the following characteristics apply:

(A) They are suitable for water-related or water-enjoyment uses;

(B) They are open space, flood plain or other sensitive areas that should not be more intensively developed;

(C) They have potential for ecological restoration;

(D) They retain important ecological functions, even though partially developed; or

(E) They have the potential for development that is compatible with ecological restoration.

Lands that may otherwise qualify for designation as urban conservancy and which are designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the "urban conservancy" environment that allows mining and associated uses in addition to other uses consistent with the urban conservancy environment.

(f) **"Shoreline residential" environment.**

(i) **Purpose.** The purpose of the "shoreline residential" environment is to accommodate residential development and appurtenant structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

(ii) **Management policies.**

(A) Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.

Local governments may establish two or more different "shoreline residential" environments to accommodate different shoreline densities or conditions, provided both environments adhere to the provisions in this chapter.

(B) Multifamily and multilot residential and recreational developments should provide public access and joint use for community recreational facilities.

(C) Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

(D) Commercial development should be limited to water-oriented uses.

(iii) **Designation criteria.** Assign a "shoreline residential" environment designation to shoreline areas inside urban growth areas, as defined in RCW 36.70A.110, incorporated municipalities, "rural areas of more intense development," or "master planned resorts," as described in RCW 36.70A.360, if they are predominantly single-family or multifamily residential development or are planned and platted for residential development.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-221 General master program provisions. The provisions of this section shall be applied either generally to all shoreline areas or to shoreline areas that meet the specified criteria of the provision without regard to environment designation. These provisions address certain elements as required by RCW 90.58.100(2) and implement the principles as established in WAC 173-26-186.

(1) **Archaeological and historic resources.**

(a) **Applicability.** The following provisions apply to archaeological and historic resources that are either recorded at the state department of archaeology and historic preservation (~~((office))~~) and/or by local jurisdictions or have been inadvertently uncovered. Archaeological sites located both in and outside shoreline jurisdiction are subject to chapter 27.44 RCW (Indian graves and records) and chapter 27.53 RCW (Archaeological sites and records) and development or uses that may impact such sites shall comply with chapter 25-48 WAC as well as the provisions of this chapter.

(b) **Principles.** Due to the limited and irreplaceable nature of the resource(s), prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Indian tribes, and the (~~((office))~~) department of archaeology and historic preservation.

(c) **Standards.** Local shoreline master programs shall include policies and regulations to protect historic, archaeological, and cultural features and qualities of shorelines and implement the following standards. A local government may reference historic inventories or regulations. Contact the (~~((office))~~) department of archaeology and historic preservation and affected Indian tribes for additional information.

(i) Require that developers and property owners immediately stop work and notify the local government, the (~~((office))~~) department of archaeology and historic preservation and affected Indian tribes if archaeological resources are uncovered during excavation.

(ii) Require that permits issued in areas documented to contain archaeological resources require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes.

(2) **Critical areas.**

(a) **Applicability.** Pursuant to the provisions of RCW 90.58.090(4) and 36.70A.480(3) as amended by chapter 107,

Laws of 2010 (EHB 1653), shoreline master programs must provide for management of critical areas designated as such pursuant to RCW 36.70A.170 (1)(d) located within the shorelines of the state with policies and regulations that:

(i) Are consistent with the specific provisions of this subsection (2) critical areas and subsection (3) of this section flood hazard reduction, and these guidelines; and

(ii) Provide a level of protection to critical areas within the shoreline area that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

The provisions of this section and subsection (3) of this section, flood hazard reduction, shall be applied to critical areas within the shorelines of the state. RCW 36.70A.030 defines critical areas as:

"Critical areas" include the following areas and ecosystems:

(a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable waters; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas."

The provisions of WAC 365-190-080 through 365-190-130, to the extent standards for certain types of critical areas are not provided by this section and subsection (3) of this section flood hazard reduction, and to the extent consistent with these guidelines are also applicable to and provide further definition of critical area categories and management policies.

As provided in RCW 90.58.030 (2)(f)(ii) and 36.70A.-480, as amended by chapter 321, Laws of 2003 (ESHB 1933), any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provision of WAC 173-26-241 (3)(e) are not subject to additional regulations. If a local government does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized above, then the local jurisdiction shall continue to regulate those critical areas and required buffers pursuant to RCW 36.70A.060(2).

In addition to critical areas defined under chapter 36.70A RCW and critical saltwater and freshwater habitats as described in these guidelines, local governments should identify additional shoreline areas that warrant special protection necessary to achieve no net loss of ecological functions.

(b) **Principles.** Local master programs, when addressing critical areas, shall implement the following principles:

(i) Shoreline master programs shall adhere to the standards established in the following sections, unless it is demonstrated through scientific and technical information as provided in RCW 90.58.100(1) and as described in WAC 173-26-201 (2)(a) that an alternative approach provides better resource protection.

(ii) In addressing issues related to critical areas, use scientific and technical information, as described in WAC 173-26-201 (2)(a). The role of ecology in reviewing master program provisions for critical areas in shorelines of the state

will be based on the Shoreline Management Act and these guidelines.

(iii) In protecting and restoring critical areas within shoreline jurisdiction, integrate the full spectrum of planning and regulatory measures, including the comprehensive plan, interlocal watershed plans, local development regulations, and state, tribal, and federal programs.

(iv) The planning objectives of shoreline management provisions for critical areas shall be the protection of existing ecological functions and ecosystem-wide processes and restoration of degraded ecological functions and ecosystem-wide processes. The regulatory provisions for critical areas shall protect existing ecological functions and ecosystem-wide processes.

(v) Promote human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values, provided that impacts to ecological functions are first avoided, and any unavoidable impacts are mitigated.

(c) **Standards.** When preparing master program provisions for critical areas, local governments should implement the following standards and use scientific and technical information, as provided for in WAC 173-26-201 (2)(a).

Provisions for frequently flooded areas are included in WAC 173-26-221(3).

(i) **Wetlands.**

(A) **Wetland use regulations.** Local governments should consult the department's technical guidance documents on wetlands.

Regulations shall address the following uses to achieve, at a minimum, no net loss of wetland area and functions, including lost time when the wetland does not perform the function:

- The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- The dumping, discharging, or filling with any material, including discharges of storm water and domestic, commercial, or industrial wastewater;
- The draining, flooding, or disturbing of the water level, duration of inundation, or water table;
- The driving of pilings;
- The placing of obstructions;
- The construction, reconstruction, demolition, or expansion of any structure;
- Significant vegetation removal, provided that these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules;
- Other uses or development that results in an ecological impact to the physical, chemical, or biological characteristics of wetlands; or
- Activities reducing the functions of buffers described in (c)(i)(D) of this subsection.

(B) **Wetland rating or categorization.** Wetlands shall be categorized based on the rarity, irreplaceability, or sensitivity to disturbance of a wetland and the functions the wetland provides. Local governments should either use the Washington state wetland rating system, Eastern or Western Washington version as appropriate, or they should develop their own, regionally specific, scientifically based method for

categorizing wetlands. Wetlands should be categorized to reflect differences in wetland quality and function in order to tailor protection standards appropriately. A wetland categorization method is not a substitute for a function assessment method, where detailed information on wetland functions is needed.

(C) **Alterations to wetlands.** Master program provisions addressing alterations to wetlands shall be consistent with the policy of no net loss of wetland area and functions, wetland rating, scientific and technical information, and the mitigation priority sequence defined in WAC 173-26-201 (2)(e).

(D) **Buffers.** Master programs shall contain requirements for buffer zones around wetlands. Buffer requirements shall be adequate to ensure that wetland functions are protected and maintained in the long term. Requirements for buffer zone widths and management shall take into account the ecological functions of the wetland, the characteristics and setting of the buffer, the potential impacts associated with the adjacent land use, and other relevant factors.

(E) **Mitigation.** Master programs shall contain wetland mitigation requirements that are consistent with WAC 173-26-201 (2)(e) and which are based on the wetland rating.

(F) **Compensatory mitigation.** Compensatory mitigation shall be allowed only after mitigation sequencing is applied and higher priority means of mitigation are determined to be infeasible.

Requirements for compensatory mitigation must include provisions for:

(I) Mitigation replacement ratios or a similar method of addressing the following:

- The risk of failure of the compensatory mitigation action;
- The length of time it will take the compensatory mitigation action to adequately replace the impacted wetland functions and values;
- The gain or loss of the type, quality, and quantity of the ecological functions of the compensation wetland as compared with the impacted wetland.

(II) Establishment of performance standards for evaluating the success of compensatory mitigation actions;

(III) Establishment of long-term monitoring and reporting procedures to determine if performance standards are met; and

(IV) Establishment of long-term protection and management of compensatory mitigation sites.

Credits from a certified mitigation bank may be used to compensate for unavoidable impacts.

(ii) **Geologically hazardous areas.** Development in designated geologically hazardous areas shall be regulated in accordance with the following:

(A) Consult designation criteria for geologically hazardous areas, WAC 365-190-120.

(B) Do not allow new development or the creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development.

(C) Do not allow new development that would require structural shoreline stabilization over the life of the development. Exceptions may be made for the limited instances where stabilization is necessary to protect allowed uses

where no alternative locations are available and no net loss of ecological functions will result. The stabilization measures shall conform to WAC 173-26-231.

(D) Where no alternatives, including relocation or reconstruction of existing structures, are found to be feasible, and less expensive than the proposed stabilization measure, stabilization structures or measures to protect existing primary residential structures may be allowed in strict conformance with WAC 173-26-231 requirements and then only if no net loss of ecological functions will result.

(iii) **Critical saltwater habitats.**

(A) **Applicability.** Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association. Critical saltwater habitats require a higher level of protection due to the important ecological functions they provide. Ecological functions of marine shorelands can affect the viability of critical saltwater habitats. Therefore, effective protection and restoration of critical saltwater habitats should integrate management of shorelands as well as submerged areas.

(B) **Principles.** Master programs shall include policies and regulations to protect critical saltwater habitats and should implement planning policies and programs to restore such habitats. The inclusion of commercial aquaculture in the critical saltwater habitat definition does not limit its regulation as a use. Reserving shoreline areas for protecting and restoring ecological functions should be done prior to reserving shoreline areas for uses described in WAC 173-26-201 (2)(d)(i) through (v). Planning for critical saltwater habitats shall incorporate the participation of state resource agencies to assure consistency with other legislatively created programs in addition to local and regional government entities with an interest such as port districts. Affected Indian tribes shall also be consulted. Local governments should review relevant comprehensive management plan policies and development regulations for shorelands and adjacent lands to achieve consistency as directed in RCW 90.58.340. Local governments should base management planning on information provided by state resource agencies and affected Indian tribes unless they demonstrate that they possess more accurate and reliable information.

The management planning should include an evaluation of current data and trends regarding the following:

- Available inventory and collection of necessary data regarding physical characteristics of the habitat, including upland conditions, and any information on species population trends;
- Terrestrial and aquatic vegetation;
- The level of human activity in such areas, including the presence of roads and level of recreational types (passive or active recreation may be appropriate for certain areas and habitats);
- Restoration potential;
- Tributaries and small streams flowing into marine waters;
- Dock and bulkhead construction, including an inventory of bulkheads serving no protective purpose;

- Conditions and ecological functions in the near-shore area;

- Uses surrounding the critical saltwater habitat areas that may negatively impact those areas, including permanent or occasional upland, beach, or over-water uses; and

- An analysis of what data gaps exist and a strategy for gaining this information.

The management planning should address the following, where applicable:

- Protecting a system of fish and wildlife habitats with connections between larger habitat blocks and open spaces and restoring such habitats and connections where they are degraded;

- Protecting existing and restoring degraded riparian and estuarine ecosystems, especially salt marsh habitats;

- Establishing adequate buffer zones around these areas to separate incompatible uses from the habitat areas;

- Protecting existing and restoring degraded near-shore habitat;

- Protecting existing and restoring degraded or lost salmonid, shorebird, waterfowl, or marine mammal habitat;

- Protecting existing and restoring degraded upland ecological functions important to critical saltwater habitats, including riparian and associated upland native plant communities;

- Improving water quality;

- Protecting existing and restoring degraded sediment inflow and transport regimens; and

- Correcting activities that cause excessive sediment input where human activity has led to mass wasting.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should classify critical saltwater habitats and protect and restore seasonal ranges and habitat elements with which federal-listed and state-listed endangered, threatened, and priority species have a primary association and which, if altered, may reduce the likelihood that a species will maintain its population and reproduce over the long term.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should determine which habitats and species are of local importance.

Local governments shall protect kelp and eelgrass beds, forage fish spawning and holding areas, and priority species habitat identified by the department of natural resources' aquatic resources division, the department of fish and wildlife, the department, and affected Indian tribes as critical saltwater habitats.

Comprehensive saltwater habitat management planning should identify methods for monitoring conditions and adapting management practices to new information.

(C) **Standards.** Docks, piers, bulkheads, bridges, fill, floats, jetties, utility crossings, and other human-made structures shall not intrude into or over critical saltwater habitats except when all of the conditions below are met:

- The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW 90.58.020;

- Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would

result in unreasonable and disproportionate cost to accomplish the same general purpose;

- The project including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.

- The project is consistent with the state's interest in resource protection and species recovery.

Private, noncommercial docks for individual residential or community use may be authorized provided that:

- Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible;

- The project including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.

Until an inventory of critical saltwater habitat has been done, shoreline master programs shall condition all over-water and near-shore developments in marine and estuarine waters with the requirement for an inventory of the site and adjacent beach sections to assess the presence of critical saltwater habitats and functions. The methods and extent of the inventory shall be consistent with accepted research methodology. At a minimum, local governments should consult with department technical assistance materials for guidance.

(iv) **Critical freshwater habitats.**

(A) **Applicability.** The following applies to master program provisions affecting critical freshwater habitats within shorelines of the state designated under chapter 36.70A RCW, including those portions of streams, rivers, wetlands, and lakes, their associated channel migration zones, and flood plains designated as such in the master program.

(B) **Principles.** Many ecological functions of lake, river and stream corridors depend both on continuity and connectivity along the length of the shoreline and on the conditions of the surrounding lands on either side of river channel and lake basin. Environmental degradation caused by development such as improper storm water sewer or industrial outfalls, unmanaged clearing and grading, or runoff from buildings and parking lots within the watershed, can degrade ecological functions in lakes and downstream. Likewise, gradual destruction or loss of riparian and associated upland native plant communities, alteration of runoff quality and quantity along the lake basin and stream corridor resulting from incremental flood plain and lake basin development can raise water temperatures and alter hydrographic conditions, degrading ecological functions. This makes the corridor inhospitable for invertebrate and vertebrate aquatic, amphibian and terrestrial wildlife species and susceptible to catastrophic flooding, droughts, landslides and channel changes. These conditions also threaten human health, safety, and property. Long stretches of lake, river and stream shorelines have been significantly altered or degraded in this manner. Therefore, effective management of lake basins and river and stream corridors depends on:

(I) Planning for protection, and restoration where appropriate, throughout the lake basin and along the entire length of the corridor from river headwaters to the mouth; and

(II) Regulating uses and development within lake basins and stream channels, associated channel migration zones, wetlands, and the flood plains, to the extent such areas are in the shoreline jurisdictional area, as necessary to assure no net

loss of ecological functions, including where applicable the associated hyporheic zone, results from new development.

As part of a comprehensive approach to management of critical freshwater habitat and other lake, river and stream values, local governments should integrate master program provisions, including those for shoreline stabilization, fill, vegetation conservation, water quality, flood hazard reduction, and specific uses, to protect human health and safety and to protect and restore lake and river corridor ecological functions and ecosystem-wide processes.

Applicable master programs shall contain provisions to protect hydrologic connections between water bodies, water courses, and associated wetlands. Restoration planning should include incentives and other means to restore water connections that have been impeded by previous development.

Master program provisions for lake basins and river and stream corridors should, where appropriate, be based on the information from comprehensive watershed management planning where available.

(C) **Standards.** Master programs shall implement the following standards within shoreline jurisdiction:

(I) Provide for the protection of ecological functions associated with critical freshwater habitat as necessary to assure no net loss of ecological functions.

(II) Integrate protection of critical freshwater, riparian and associated upland habitat, protection with flood hazard reduction and other lake, wetland, river and stream management provisions.

(III) Include provisions that facilitate authorization of appropriate restoration projects.

(IV) Provide for the implementation of the principles identified in (c)(iv)(B) of this subsection.

(3) **Flood hazard reduction.**

(a) **Applicability.** The following provisions apply to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and storm water management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program. Additional relevant critical area provisions are in WAC 173-26-221(2).

(b) **Principles.** Flooding of rivers, streams, and other shorelines is a natural process that is affected by factors and land uses occurring throughout the watershed. Past land use practices have disrupted hydrological processes and increased the rate and volume of runoff, thereby exacerbating flood hazards and reducing ecological functions. Flood hazard reduction measures are most effective when integrated into comprehensive strategies that recognize the natural hydrogeological and biological processes of water bodies. Over the long term, the most effective means of flood hazard reduction is to prevent or remove development in flood-prone areas, to manage storm water within the flood plain, and to maintain or restore river and stream system's natural hydrological and geomorphological processes.

Structural flood hazard reduction measures, such as diking, even if effective in reducing inundation in a portion of the watershed, can intensify flooding elsewhere. Moreover, structural flood hazard reduction measures can damage ecological functions crucial to fish and wildlife species, bank stability, and water quality. Therefore, structural flood hazard reduction measures shall be avoided whenever possible. When necessary, they shall be accomplished in a manner that assures no net loss of ecological functions and ecosystem-wide processes.

The dynamic physical processes of rivers, including the movement of water, sediment and wood, cause the river channel in some areas to move laterally, or "migrate," over time. This is a natural process in response to gravity and topography and allows the river to release energy and distribute its sediment load. The area within which a river channel is likely to move over a period of time is referred to as the channel migration zone (CMZ) or the meander belt. Scientific examination as well as experience has demonstrated that interference with this natural process often has unintended consequences for human users of the river and its valley such as increased or changed flood, sedimentation and erosion patterns. It also has adverse effects on fish and wildlife through loss of critical habitat for river and riparian dependent species. Failing to recognize the process often leads to damage to, or loss of, structures and threats to life safety.

Applicable shoreline master programs should include provisions to limit development and shoreline modifications that would result in interference with the process of channel migration that may cause significant adverse impacts to property or public improvements and/or result in a net loss of ecological functions associated with the rivers and streams. (See also (c) of this subsection.)

The channel migration zone should be established to identify those areas with a high probability of being subject to channel movement based on the historic record, geologic character and evidence of past migration. It should also be recognized that past action is not a perfect predictor of the future and that human and natural changes may alter migration patterns. Consideration should be given to such changes that may have occurred and their effect on future migration patterns.

For management purposes, the extent of likely migration along a stream reach can be identified using evidence of active stream channel movement over the past one hundred years. Evidence of active movement can be provided from historic and current aerial photos and maps and may require field analysis of specific channel and valley bottom characteristics in some cases. A time frame of one hundred years was chosen because aerial photos, maps and field evidence can be used to evaluate movement in this time frame.

In some cases, river channels are prevented from normal or historic migration by human-made structures or other shoreline modifications. The definition of channel migration zone indicates that in defining the extent of a CMZ, local governments should take into account the river's characteristics and its surroundings. Unless otherwise demonstrated through scientific and technical information, the following characteristics should be considered when establishing the extent of the CMZ for management purposes:

- Within incorporated municipalities and urban growth areas, areas separated from the active river channel by legally existing artificial channel constraints that limit channel movement should not be considered within the channel migration zone.

- All areas separated from the active channel by a legally existing artificial structure(s) that is likely to restrain channel migration, including transportation facilities, built above or constructed to remain intact through the one hundred-year flood, should not be considered to be in the channel migration zone.

- In areas outside incorporated municipalities and urban growth areas, channel constraints and flood control structures built below the one hundred-year flood elevation do not necessarily restrict channel migration and should not be considered to limit the channel migration zone unless demonstrated otherwise using scientific and technical information.

Master programs shall implement the following principles:

(i) Where feasible, give preference to nonstructural flood hazard reduction measures over structural measures.

(ii) Base shoreline master program flood hazard reduction provisions on applicable watershed management plans, comprehensive flood hazard management plans, and other comprehensive planning efforts, provided those measures are consistent with the Shoreline Management Act and this chapter.

(iii) Consider integrating master program flood hazard reduction provisions with other regulations and programs, including (if applicable):

- Storm water management plans;

- Flood plain regulations, as provided for in chapter 86.16 RCW;

- Critical area ordinances and comprehensive plans, as provided in chapter 36.70A RCW; and

- The National Flood Insurance Program.

(iv) Assure that flood hazard protection measures do not result in a net loss of ecological functions associated with the rivers and streams.

(v) Plan for and facilitate returning river and stream corridors to more natural hydrological conditions. Recognize that seasonal flooding is an essential natural process.

(vi) When evaluating alternate flood control measures, consider the removal or relocation of structures in flood-prone areas.

(vii) Local governments are encouraged to plan for and facilitate removal of artificial restrictions to natural channel migration, restoration of off channel hydrological connections and return river processes to a more natural state where feasible and appropriate.

(c) **Standards.** Master programs shall implement the following standards within shoreline jurisdiction:

(i) Development in flood plains should not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to chapter 86.12 RCW, provided the plan has been adopted after 1994 and approved by the department. New development or new uses in shoreline jurisdiction, including the subdivision of land, should not be established when it would be reasonably foreseeable that the development or use

would require structural flood hazard reduction measures within the channel migration zone or floodway. The following uses and activities may be appropriate and/or necessary within the channel migration zone or floodway:

- Actions that protect or restore the ecosystem-wide processes or ecological functions.
- Forest practices in compliance with the Washington State Forest Practices Act and its implementing rules.
- Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.
- Mining when conducted in a manner consistent with the environment designation and with the provisions of WAC 173-26-241 (3)(h).
- Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of watershed or drift cell.
- Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.
- Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
- Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.
- Development in incorporated municipalities and designated urban growth areas, as defined in chapter 36.70A RCW, where existing structures prevent active channel movement and flooding.
- Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.

(ii) Allow new structural flood hazard reduction measures in shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken consistent with WAC 173-26-221(5).

Structural flood hazard reduction measures shall be consistent with an adopted comprehensive flood hazard management plan approved by the department that evaluates cumulative impacts to the watershed system.

(iii) Place new structural flood hazard reduction measures landward of the associated wetlands, and designated vegetation conservation areas, except for actions that increase ecological functions, such as wetland restoration, or as noted below. Provided that such flood hazard reduction projects be authorized if it is determined that no other alternative to reduce flood hazard to existing development is feasi-

ble. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through a geotechnical analysis.

(iv) Require that new structural public flood hazard reduction measures, such as dikes and levees, dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

(v) Require that the removal of gravel for flood management purposes be consistent with an adopted flood hazard reduction plan and with this chapter and allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

(4) **Public access.**

(a) **Applicability.** Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Public access provisions below apply to all shorelines of the state unless stated otherwise.

(b) **Principles.** Local master programs shall:

(i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.

(ii) Protect the rights of navigation and space necessary for water-dependent uses.

(iii) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water.

(iv) Regulate the design, construction, and operation of permitted uses in the shorelines of the state to minimize, insofar as practical, interference with the public's use of the water.

(c) **Planning process to address public access.** Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development. This planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights.

Where a port district or other public entity has incorporated public access planning into its master plan through an open public process, that plan may serve as a portion of the local government's public access planning, provided it meets the provisions of this chapter. The planning may also justify more flexible off-site or special area public access provisions in the master program. Public participation requirements in WAC 173-26-201 (3)(b)(i) apply to public access planning.

At a minimum, the public access planning should result in public access requirements for shoreline permits, recommended projects, port master plans, and/or actions to be taken to develop public shoreline access to shorelines on public property. The planning should identify a variety of shoreline access opportunities and circulation for pedestrians (including disabled persons), bicycles, and vehicles between shoreline access points, consistent with other comprehensive plan elements.

(d) **Standards.** Shoreline master programs should implement the following standards:

(i) Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access. The master program shall address public access on public lands. The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety.

(ii) Require that shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. Where public access planning as described in WAC 173-26-221 (4)(c) demonstrates that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, local governments may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.

(iii) Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required except:

(A) Where the local government provides more effective public access through a public access planning process described in WAC 173-26-221 (4)(c).

(B) Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.

In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider alternate methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

(C) For individual single-family residences not part of a development planned for more than four parcels.

(iv) Adopt provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

(v) Assure that public access improvements do not result in a net loss of shoreline ecological functions.

(5) **Shoreline vegetation conservation.**

(a) **Applicability.** Vegetation conservation includes activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species.

Unless otherwise stated, vegetation conservation does not include those activities covered under the Washington State Forest Practices Act, except for conversion to other uses and those other forest practice activities over which local governments have authority. As with all master program provisions, vegetation conservation provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit. Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures, such as existing agricultural practices.

(b) **Principles.** The intent of vegetation conservation is to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation along shorelines. Vegetation conservation should also be undertaken to protect human safety and property, to increase the stability of river banks and coastal bluffs, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

Master programs shall include: Planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and to reduce the hazard of slope failures or accelerated erosion.

Local governments should address ecological functions and ecosystem-wide processes provided by vegetation as described in WAC 173-26-201 (3)(d)(i).

Local governments may implement these objectives through a variety of measures, where consistent with Shoreline Management Act policy, including clearing and grading regulations, setback and buffer standards, critical area regulations, conditional use requirements for specific uses or areas, mitigation requirements, incentives and nonregulatory programs.

In establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and *Management Recommendations for Washington's Priority Habitats*, prepared by the Washington state department of fish and wildlife where applicable.

Current scientific evidence indicates that the length, width, and species composition of a shoreline vegetation community contribute substantively to the aquatic ecological functions. Likewise, the biota within the aquatic environment is essential to ecological functions of the adjacent upland

vegetation. The ability of vegetated areas to provide critical ecological functions diminishes as the length and width of the vegetated area along shorelines is reduced. When shoreline vegetation is removed, the narrower the area of remaining vegetation, the greater the risk that the functions will not be performed.

In the Pacific Northwest, aquatic environments, as well as their associated upland vegetation and wetlands, provide significant habitat for a myriad of fish and wildlife species. Healthy environments for aquatic species are inseparably linked with the ecological integrity of the surrounding terrestrial ecosystem. For example, a nearly continuous corridor of mature forest characterizes the natural riparian conditions of the Pacific Northwest. Riparian corridors along marine shorelines provide many of the same functions as their freshwater counterparts. The most commonly recognized functions of the shoreline vegetation include, but are not limited to:

- Providing shade necessary to maintain the cool temperatures required by salmonids, spawning forage fish, and other aquatic biota.
- Providing organic inputs critical for aquatic life.
- Providing food in the form of various insects and other benthic macroinvertebrates.
- Stabilizing banks, minimizing erosion, and reducing the occurrence of landslides. The roots of trees and other riparian vegetation provide the bulk of this function.
 - Reducing fine sediment input into the aquatic environment through storm water retention and vegetative filtering.
 - Filtering and vegetative uptake of nutrients and pollutants from ground water and surface runoff.
 - Providing a source of large woody debris into the aquatic system. Large woody debris is the primary structural element that functions as a hydraulic roughness element to moderate flows. Large woody debris also serves a pool-forming function, providing critical salmonid rearing and refuge habitat. Abundant large woody debris increases aquatic diversity and stabilization.
 - Regulation of microclimate in the stream-riparian and intertidal corridors.
 - Providing critical wildlife habitat, including migration corridors and feeding, watering, rearing, and refugia areas.

Sustaining different individual functions requires different widths, compositions and densities of vegetation. The importance of the different functions, in turn, varies with the type of shoreline setting. For example, in forested shoreline settings, periodic recruitment of fallen trees, especially conifers, into the stream channel is an important attribute, critical to natural stream channel maintenance. Therefore, vegetated areas along streams which once supported or could in the future support mature trees should be wide enough to accomplish this periodic recruitment process.

Woody vegetation normally classed as trees may not be a natural component of plant communities in some environments, such as in arid climates and on coastal dunes. In these instances, the width of a vegetated area necessary to achieve the full suite of vegetation-related shoreline functions may not be related to vegetation height.

Local governments should identify which ecological processes and functions are important to the local aquatic and

terrestrial ecology and conserve sufficient vegetation to maintain them. Such vegetation conservation areas are not necessarily intended to be closed to use and development but should provide for management of vegetation in a manner adequate to assure no net loss of shoreline ecological functions.

(c) **Standards.** Master programs shall implement the following requirements in shoreline jurisdiction.

Establish vegetation conservation standards that implement the principles in WAC 173-26-221 (5)(b). Methods to do this may include setback or buffer requirements, clearing and grading standards, regulatory incentives, environment designation standards, or other master program provisions. Selective pruning of trees for safety and view protection may be allowed and the removal of noxious weeds should be authorized.

Additional vegetation conservation standards for specific uses are included in WAC 173-26-241(3).

(6) **Water quality, storm water, and nonpoint pollution.**

(a) **Applicability.** The following section applies to all development and uses in shorelines of the state, as defined in WAC 173-26-020, that affect water quality.

(b) **Principles.** Shoreline master programs shall, as stated in RCW 90.58.020, protect against adverse impacts to the public health, to the land and its vegetation and wildlife, and to the waters of the state and their aquatic life, through implementation of the following principles:

(i) Prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.

(ii) Ensure mutual consistency between shoreline management provisions and other regulations that address water quality and storm water quantity, including public health, storm water, and water discharge standards. The regulations that are most protective of ecological functions shall apply.

(c) **Standards.** Shoreline master programs shall include provisions to implement the principles of this section.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-241 Shoreline uses. (1) Applicability.

The provisions in this section apply to specific common uses and types of development to the extent they occur within shoreline jurisdiction. Master programs should include these, where applicable, and should include specific use provisions for other common uses and types of development in the jurisdiction. All uses and development must be consistent with the provisions of the environment designation in which they are located and the general regulations of the master program.

(2) **General use provisions.**

(a) **Principles.** Shoreline master programs shall implement the following principles:

(i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201 (2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas.

(ii) Ensure that all shoreline master program provisions concerning proposed development of property are established, as necessary, to protect the public's health, safety, and welfare, as well as the land and its vegetation and wildlife, and to protect property rights while implementing the policies of the Shoreline Management Act.

(iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses.

(iv) Establish use regulations designed to assure no net loss of ecological functions associated with the shoreline.

(b) Conditional uses.

(i) Master programs shall define the types of uses and development that require shoreline conditional use permits pursuant to RCW 90.58.100(5). Requirements for a conditional use permit may be used for a variety of purposes, including:

- To effectively address unanticipated uses that are not classified in the master program as described in WAC 173-27-030.

- To address cumulative impacts.

- To provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific environment designation within a master program or with the Shoreline Management Act policies.

In these cases, allowing a given use as a conditional use could provide greater flexibility within the master program than if the use were prohibited outright.

(ii) If master programs permit the following types of uses and development, they should require a conditional use permit:

(A) Uses and development that may significantly impair or alter the public's use of the water areas of the state.

(B) Uses and development which, by their intrinsic nature, may have a significant ecological impact on shoreline ecological functions or shoreline resources depending on location, design, and site conditions.

(C) Development and uses in critical saltwater habitats.

(D) New commercial geoduck aquaculture as described in (3)(b) of this section.

(iii) The provisions of this section are minimum requirements and are not intended to limit local government's ability to identify other uses and developments within the master program as conditional uses where necessary or appropriate.

(3) **Standards.** Master programs shall establish a comprehensive program of use regulations for shorelines and shall incorporate provisions for specific uses consistent with the following as necessary to assure consistency with the policy of the act and where relevant within the jurisdiction.

(a) Agriculture.

(i) For the purposes of this section, the terms agricultural activities, agricultural products, agricultural equipment and facilities and agricultural land shall have the specific meanings as provided in WAC 173-26-020.

(ii) Master programs shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, 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.

(iii) Nothing in this section limits or changes the terms of the current exception to the definition of substantial development. A substantial development permit is required for any agricultural development not specifically exempted by the provisions of RCW 90.58.030 (3)(e)(iv).

(iv) Master programs shall use definitions consistent with the definitions found in WAC 173-26-020(3).

(v) New agricultural activities are activities that meet the definition of agricultural activities but are proposed on land not currently in agricultural use. Master programs shall include provisions for new agricultural activities to assure that:

(A) Specific uses and developments in support of agricultural use are consistent with the environment designation in which the land is located.

(B) Agricultural uses and development in support of agricultural uses, are located and designed to assure no net loss of ecological functions and to not have a significant adverse impact on other shoreline resources and values.

Measures appropriate to meet these requirements include provisions addressing water quality protection, and vegetation conservation, as described in WAC 173-26-220 (5) and (6). Requirements for buffers for agricultural development shall be based on scientific and technical information and management practices adopted by the applicable state agencies necessary to preserve the ecological functions and qualities of the shoreline environment.

(vi) Master programs shall include provisions to assure that development on agricultural land that does not meet the definition of agricultural activities, and the conversion of agricultural land to nonagricultural uses, shall be consistent with the environment designation, and the general and specific use regulations applicable to the proposed use and do not result in a net loss of ecological functions associated with the shoreline.

(b) Aquaculture.

(i) General provisions.

(A) Aquaculture is the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.

This activity is of statewide interest. Properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Local government should consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions.

(B) Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, commercial navigation, and, in marine waters, salinity. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Local shoreline master programs should therefore recognize the necessity for some latitude in the development of this use as well as its potential impact on existing uses and natural systems.

(C) Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses. Aquacultural facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-201 (2)(e).

(D) Local government should ensure proper management of upland uses to avoid degradation of water quality of existing shellfish areas.

(ii) Siting considerations for commercial geoduck aquaculture.

In addition to the siting provisions of (b)(i) of this subsection, commercial geoduck aquaculture should only be allowed where sediments, topography, land and water access support geoduck aquaculture operations without significant clearing or grading.

(iii) Shoreline substantial development permits for geoduck aquaculture.

As determined by Attorney General Opinion 2007 No. 1, the planting, growing, and harvesting of farm-raised geoduck clams requires a substantial development permit if a specific project or practice causes substantial interference with normal public use of the surface waters, but not otherwise.

(iv) Conditional use permits for commercial geoduck aquaculture.

(A) Conditional use permits are required for new commercial geoduck aquaculture only. Where the applicant proposes to convert existing nongeoduck aquaculture to geoduck aquaculture, the requirement for a conditional use permit is at the discretion of local government.

(B) All subsequent cycles of planting and harvest shall not require a new conditional use permit.

(C) Conditional use permits must take into account that commercial geoduck operators have a right to harvest geoduck once planted.

(D) A single conditional use permit may be submitted for multiple sites within an inlet, bay or other defined feature, provided the sites are all under control of the same applicant and within the same shoreline permitting jurisdiction.

(E) Local governments should minimize redundancy between federal, state and local commercial geoduck aquaculture permit application requirements. Measures to consider include accepting documentation that has been submitted to other permitting agencies, and using permit applications that mirror federal or state permit applications.

(F) In addition to complying with chapter 173-27 WAC, the application must contain:

(I) A narrative description and timeline for all anticipated geoduck planting and harvesting activities if not already contained in the federal or state permit application or comparable information mentioned above.

(II) A baseline ecological survey of the proposed site to allow consideration of the ecological effects if not already contained in the federal or state permit application or comparable information mentioned above.

(III) Measures to achieve no net loss of ecological functions consistent with the mitigation sequence described in WAC-173-26-201 (2)(e).

(IV) Management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations.

(G) Local governments should provide public notice to all property owners within three hundred feet of the proposed project boundary, and notice to tribes with usual and accustomed fishing rights to the area.

(H) Commercial geoduck aquaculture workers often-times need to accomplish on-site work during low tides, which may occur at night or on weekends. Local governments must allow work during low tides but may require limits and conditions to reduce impacts, such as noise and lighting, to adjacent existing uses.

(I) Local governments should establish monitoring and reporting requirements necessary to verify that geoduck aquaculture operations are in compliance with shoreline limits and conditions set forth in conditional use permits and to support cumulative impacts analysis.

(J) Conditional use permits should be reviewed using the best scientific and technical information available.

(K) Local governments should apply best management practices to accomplish the intent of the limits and conditions.

(L) In order to avoid or limit impacts from geoduck aquaculture siting and operations and achieve no net loss of ecological functions, local governments should consider the following:

(I) The practice of placing nursery tanks or holding pools or other impervious materials directly on the intertidal sediments.

(II) Use of motorized vehicles, such as trucks, tractors and forklifts below the ordinary high water mark.

(III) Specific periods when limits on activities are necessary to protect priority habitats and associated species. The need for such measures should be identified in the baseline ecological survey conducted for the site.

(IV) Alterations to the natural condition of the site, including significant removal of vegetation or rocks and regrading of the natural slope and sediments.

(V) Installation of property corner markers that are visible at low tide during planting and harvesting.

(VI) Mitigation measures such as buffers between commercial geoduck aquaculture and other fish and wildlife habitat conservation areas as necessary to ensure no net loss of ecological functions.

(VII) Use of predator exclusion devices with minimal adverse ecological effects and requiring that they be removed as soon as they are no longer needed for predator exclusion.

(VIII) Use of the best available methods to minimize turbid runoff from the water jets used to harvest geoducks.

(IX) Number of barges or vessels that can be moored or beached at the site as well as duration limits.

(X) Public rights to navigation over the surface of the water.

(XI) Good housekeeping practices at geoduck aquaculture sites, including worker training and regular removal of equipment, tools, extra materials, and all wastes.

(XII) Where the site contains existing public access to publicly owned lands, consider recommendations from the department of natural resources or other landowning agencies regarding protection of the existing public access.

(c) **Boating facilities.** For the purposes of this chapter, "boating facilities" excludes docks serving four or fewer single-family residences. Shoreline master programs shall contain provisions to assure no net loss of ecological functions as a result of development of boating facilities while providing the boating public recreational opportunities on waters of the state.

Where applicable, shoreline master programs should, at a minimum, contain:

(i) Provisions to ensure that boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses.

(ii) Provisions that assure that facilities meet health, safety, and welfare requirements. Master programs may reference other regulations to accomplish this requirement.

(iii) Regulations to avoid, or if that is not possible, to mitigate aesthetic impacts.

(iv) Provisions for public access in new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-221(4).

(v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).

(vi) Regulations that assure that the development of boating facilities, and associated and accessory uses, will not result in a net loss of shoreline ecological functions or other significant adverse impacts.

(vii) Regulations to protect the rights of navigation.

(viii) Regulations restricting vessels from extended mooring on waters of the state except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

(d) **Commercial development.** Master programs shall first give preference to water-dependent commercial uses over nonwater-dependent commercial uses; and second, give preference to water-related and water-enjoyment commercial uses over nonwater-oriented commercial uses.

The design, layout and operation of certain commercial uses directly affects their classification with regard to whether or not they qualify as water-related or water-enjoyment uses. Master programs shall assure that commercial uses that may be authorized as water-related or water-enjoyment uses are required to incorporate appropriate design and

operational elements so that they meet the definition of water-related or water-enjoyment uses.

Master programs should require that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate. Where commercial use is proposed for location on land in public ownership, public access should be required. Refer to WAC 173-26-221(4) for public access provisions.

Master programs should prohibit nonwater-oriented commercial uses on the shoreline unless they meet the following criteria:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for commercial use, nonwater-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right of way.

Nonwater-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

Master programs shall assure that commercial development will not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

(e) **Forest practices.** Local master programs should rely on the Forest Practices Act and rules implementing the act and the *Forest and Fish Report* as adequate management of commercial forest uses within shoreline jurisdiction. ~~((However))~~ A forest practice that only involves timber cutting is not a development under the act and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the act and may require a substantial development permit. In addition, local governments shall, where applicable, apply this chapter to Class IV-General forest practices where shorelines are being converted or are expected to be converted to nonforest uses.

Forest practice conversions and other Class IV-General forest practices where there is a likelihood of conversion to nonforest uses, shall assure no net loss of shoreline ecological functions and shall maintain the ecological quality of the watershed's hydrologic system. Master programs shall establish provisions to ensure that all such practices are conducted in a manner consistent with the master program environment designation provisions and the provisions of this chapter. Applicable shoreline master programs should contain provisions to ensure that when forest lands are converted to another use, there will be no net loss of shoreline ecological functions or significant adverse impacts to other shoreline

uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

Master programs shall implement the provisions of RCW 90.58.150 regarding selective removal of timber harvest on shorelines of statewide significance. Exceptions to this standard shall be by conditional use permit only.

Lands designated as "forest lands" pursuant to RCW 36.70A.170 shall be designated consistent with either the "natural," "rural conservancy," environment designation.

Where forest practices fall within the applicability of the Forest Practices Act, local governments should consult with the department of natural resources, other applicable agencies, and local timber owners and operators.

(f) **Industry.** Master programs shall first give preference to water-dependent industrial uses over nonwater-dependent industrial uses; and second, give preference to water-related industrial uses over nonwater-oriented industrial uses.

Regional and statewide needs for water-dependent and water-related industrial facilities should be carefully considered in establishing master program environment designations, use provisions, and space allocations for industrial uses and supporting facilities. Lands designated for industrial development should not include shoreline areas with severe environmental limitations, such as critical areas.

Where industrial development is allowed, master programs shall include provisions that assure that industrial development will be located, designed, or constructed in a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values.

Master programs should require that industrial development consider incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property, as provided in WAC 173-26-221(4).

Where industrial use is proposed for location on land in public ownership, public access should be required. Industrial development and redevelopment should be encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated. New nonwater-oriented industrial development should be prohibited on shorelines except when:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the industrial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for industrial use, nonwater-oriented industrial uses may be allowed if the site is physically separated from the shoreline by another property or public right of way.

(g) **In-stream structural uses.** "In-stream structure" means a structure placed by humans within a stream or river waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream

structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

In-stream structures shall provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources((;)) including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. The location and planning of in-stream structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

(h) **Mining.** Mining is the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses. Historically, the most common form of mining in shoreline areas is for sand and gravel because of the geomorphic association of rivers and sand and gravel deposits. Mining in the shoreline generally alters the natural character, resources, and ecology of shorelines of the state and may impact critical shoreline resources and ecological functions of the shoreline. However, in some circumstances, mining may be designed to have benefits for shoreline resources, such as creation of off channel habitat for fish or habitat for wildlife. Activities associated with shoreline mining, such as processing and transportation, also generally have the potential to impact shoreline resources unless the impacts of those associated activities are evaluated and properly managed in accordance with applicable provisions of the master program.

A shoreline master program should accomplish two purposes in addressing mining. First, identify where mining may be an appropriate use of the shoreline, which is addressed in this section and in the environment designation sections above. Second, ensure that when mining or associated activities in the shoreline are authorized, those activities will be properly sited, designed, conducted, and completed so that it will cause no net loss of ecological functions of the shoreline.

(i) Identification of shoreline areas where mining may be designated as appropriate shall:

(A) Be consistent with the environment designation provisions of WAC 173-26-211 and where applicable WAC 173-26-251(2) regarding shorelines of statewide significance; and

(B) Be consistent with local government designation of mineral resource lands with long-term significance as provided for in RCW 36.70A.170 (1)(c), 36.70A.130, and 36.70A.131; and

(C) Be based on a showing that mining is dependent on a shoreline location in the city or county, or portion thereof, which requires evaluation of geologic factors such as the distribution and availability of mineral resources for that jurisdiction, as well as evaluation of need for such mineral resources, economic, transportation, and land use factors. This showing may rely on analysis or studies prepared for purposes of GMA designations, be integrated with any relevant environmental review conducted under SEPA (chapter 43.21C RCW), or otherwise be shown in a manner consistent with RCW 90.58.100(1) and WAC 173-26-201 (2)(a).

(ii) Master programs shall include policies and regulations for mining, when authorized, that accomplish the following:

(A) New mining and associated activities shall be designed and conducted to comply with the regulations of the environment designation and the provisions applicable to critical areas where relevant. Accordingly, meeting the no net loss of ecological function standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. It is appropriate, however, to determine whether there will be no net loss of ecological function based on evaluation of final reclamation required for the site. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.

(B) Master program provisions and permit requirements for mining should be coordinated with the requirements of chapters 78.44 and 77.55 RCW.

(C) Master programs shall assure that proposed subsequent use of mined property is consistent with the provisions of the environment designation in which the property is located and that reclamation of disturbed shoreline areas provides appropriate ecological functions consistent with the setting.

(D) Mining within the active channel or channels (a location waterward of the ordinary high-water mark) of a river shall not be permitted unless:

(I) Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole; and

(II) The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.

(III) The determinations required by (h)(ii)(D)(I) and (II) of this subsection shall be made consistent with RCW 90.58.100(1) and WAC 173-26-201 (2)(a). Such evaluation of impacts should be appropriately integrated with relevant environmental review requirements of SEPA (chapter 43.21C RCW) and the SEPA rules (chapter 197-11 WAC).

(IV) In considering renewal, extension or reauthorization of gravel bar and other in-channel mining operations in locations where they have previously been conducted, local government shall require compliance with this subsection (D) to the extent that no such review has previously been conducted. Where there has been prior review, local government shall review previous determinations comparable to the requirements of this section to assure compliance with this subsection (D) under current site conditions.

(V) The provisions of this section do not apply to dredging of authorized navigation channels when conducted in accordance with WAC 173-26-231 (3)(f).

(E) Mining within any channel migration zone that is within Shoreline Management Act jurisdiction shall require a shoreline conditional use permit.

(i) **Recreational development.** Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public. Master programs should assure that shoreline recreational devel-

opment is given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the state. Commercial recreational development should be consistent with the provisions for commercial development in (d) of this subsection. Provisions related to public recreational development shall assure that the facilities are located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.

In accordance with RCW 90.58.100(4), master program provisions shall reflect that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public and give appropriate special consideration to the same.

For all jurisdictions planning under the Growth Management Act, master program recreation policies shall be consistent with growth projections and level-of-service standards established by the applicable comprehensive plan.

(j) Residential development.

(i) Single-family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Without proper management, single-family residential use can cause significant damage to the shoreline area through cumulative impacts from shoreline armoring, storm water runoff, septic systems, introduction of pollutants, and vegetation modification and removal. Residential development also includes multifamily development and the creation of new residential lots through land division.

(ii) Master programs shall include policies and regulations that assure no net loss of shoreline ecological functions will result from residential development. Such provisions should include specific regulations for setbacks and buffer areas, density, shoreline armoring, vegetation conservation requirements, and, where applicable, on-site sewage system standards for all residential development and uses and applicable to divisions of land in shoreline jurisdiction.

(iii) Residential development, including appurtenant structures and uses, should be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses. (See RCW 90.58.100(6).)

(iv) Over-water residences.

(A) New over-water residences, including floating homes, are not a preferred use and should be prohibited. It is recognized that certain existing communities of floating and/or over-water homes exist and should be reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.

(B) A floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use. For the purposes of this subsection, "conforming preferred use" means that applicable development and shoreline master program regulations may only impose rea-

sonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.

(C) A floating on-water residence legally established prior to July 1, 2014, must be considered a conforming use and accommodated through reasonable shoreline master program regulations, permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.

(v) Multiunit residential development.

(A) New multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance to the local government's public access planning and this chapter.

(B) Master programs shall include standards for the creation of new residential lots through land division that accomplish the following:

((+)) (I) Plats and subdivisions must be designed, configured and developed in a manner that assures that no net loss of ecological functions results from the plat or subdivision at full build-out of all lots.

((+)) (II) Prevent the need for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.

((+)) (III) Implement the provisions of WAC 173-26-211 and 173-26-221.

(vi) Option for addressing legal status of existing shoreline structures.

(A) New or amended master programs may include provisions authorizing:

(I) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density; and

(II) Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program, including requirements for no net loss of shoreline ecological functions.

(B) For purposes of this subsection, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.

(C) Nothing in this subsection:

(I) Restricts the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as flood plains and geologically hazardous areas; or

(II) Affects the application of other federal, state, or local government requirements to residential structures.

(k) **Transportation and parking.** Master programs shall include policies and regulations to provide safe, reasonable, and adequate circulation systems to, and through or over shorelines where necessary and otherwise consistent with these guidelines.

Transportation and parking plans and projects shall be consistent with the master program public access policies, public access plan, and environmental protection provisions.

Circulation system planning shall include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the master program.

Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses. Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction.

Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Shoreline master programs shall include policies and regulations to minimize the environmental and visual impacts of parking facilities.

(l) Utilities. These provisions apply to services and facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and the like. On-site utility features serving a primary use, such as a water, sewer or gas line to a residence, are "accessory utilities" and shall be considered a part of the primary use.

Master programs shall include provisions to assure that:

All utility facilities are designed and located to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.

Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities, that are nonwater-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.

Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.

Utilities should be located in existing rights of way and corridors whenever possible.

Development of pipelines and cables on tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-360 Ocean management. (1) Purpose and intent. This section implements the Ocean Resources Management Act, (RCW 43.143.005 through 43.143.030)

enacted in 1989 by the Washington state legislature. The law requires the department of ecology to develop guidelines and policies for the management of ocean uses and to serve as the basis for evaluation and modification of local shoreline management master programs of coastal local governments in Jefferson, Clallam, Grays Harbor, and Pacific counties. The guidelines are intended to clarify state shoreline management policy regarding use of coastal resources, address evolving interest in ocean development and prepare state and local agencies for new ocean developments and activities.

(2) Geographical application. The guidelines apply to Washington's coastal waters from Cape Disappointment ((~~at~~) directly south to the state border, including the mouth of the Columbia River, and from Cape Disappointment north one hundred sixty miles to Cape Flattery at the entrance to the Strait of Juan De Fuca including the offshore ocean area, the near shore area under state ownership, shorelines of the state, and their adjacent uplands. Their broadest application would include an area seaward two hundred miles (RCW 43.143.020) and landward to include those uplands immediately adjacent to land under permit jurisdiction for which consistent planning is required under RCW 90.58.340. The guidelines address uses occurring in Washington's coastal waters, but not impacts generated from activities offshore of Oregon, Alaska, California, or British Columbia or impacts from Washington's offshore on the Strait of Juan de Fuca, the Columbia River east of Cape Disappointment, or other inland marine waters.

(3) Ocean uses defined. Ocean uses are activities or developments involving renewable and/or nonrenewable resources that occur on Washington's coastal waters and includes their associated off shore, near shore, inland marine, shoreland, and upland facilities and the supply, service, and distribution activities, such as crew ships, circulating to and between the activities and developments. Ocean uses involving nonrenewable resources include such activities as extraction of oil, gas and minerals, energy production, disposal of waste products, and salvage. Ocean uses which generally involve sustainable use of renewable resources include commercial, recreational, and tribal fishing, aquaculture, recreation, shellfish harvesting, and pleasure craft activity.

(4) Relationship to existing management programs. These guidelines augment existing requirements of the Shoreline Management Act, chapter 90.58 RCW, and those chapters in Title 173 of the Washington Administrative Code that implement the act. They are not intended to modify current resource allocation procedures or regulations administered by other agencies, such as the Washington department of fisheries management of commercial, recreational, and tribal fisheries. They are not intended to regulate recreational uses or currently existing commercial uses involving fishing or other renewable marine or ocean resources. Every effort will be made to take into account tribal interests and programs in the guidelines and master program amendment processes. After inclusion in the state coastal zone management program, these guidelines and resultant master programs will be used for federal consistency purposes in evaluating federal permits and activities in Washington's coastal waters. Participation in the development of these guidelines and subsequent amendments to master programs will not preclude state

and local government from opposing the introduction of new uses, such as oil and gas development.

These and other statutes, documents, and regulations referred to or cited in these rules may be reviewed at the department of ecology, headquarters in Lacey, Washington, for which the mailing address is P.O. Box 47600, Olympia, WA 98504. The physical address is 300 Desmond Drive S.E., Lacey, WA 98503.

(5) Regional approach. The guidelines are intended to foster a regional perspective and consistent approach for the management of ocean uses. While local governments may have need to vary their programs to accommodate local circumstances, local government should attempt and the department will review local programs for compliance with these guidelines and chapter 173-26 WAC: Shoreline Management Act guidelines for development of master programs. It is recognized that further amendments to the master programs may be required to address new information on critical and sensitive habitats and environmental impacts of ocean uses or to address future activities, such as oil development. In addition to the criteria in RCW 43.143.030, these guidelines apply to ocean uses until local master program amendments are adopted. The amended master program shall be the basis for review of an action that is either located exclusively in, or its environmental impacts confined to, one county. Where a proposal clearly involves more than one local jurisdiction, the guidelines shall be applied and remain in effect in addition to the provisions of the local master programs.

(6) Permit criteria: Local government and the department may permit ocean or coastal uses and activities as a substantial development, variance or conditional use only if the criteria of RCW 43.143.030(2) listed below are met or exceeded:

(a) There is a demonstrated significant local, state, or national need for the proposed use or activity;

(b) There is no reasonable alternative to meet the public need for the proposed use or activity;

(c) There will be no likely long-term significant adverse impacts to coastal or marine resources or uses;

(d) All reasonable steps are taken to avoid and minimize adverse environmental impacts, with special protection provided for the marine life and resources of the Columbia River, Willapa Bay and Grays Harbor estuaries, and Olympic National Park;

(e) All reasonable steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;

(f) Compensation is provided to mitigate adverse impacts to coastal resources or uses;

(g) Plans and sufficient performance bonding are provided to ensure that the site will be rehabilitated after the use or activity is completed; and

(h) The use or activity complies with all applicable local, state, and federal laws and regulations.

(7) General ocean uses guidelines. The following guidelines apply to all ocean uses, their service, distribution, and supply activities and their associated facilities that require shoreline permits.

(a) Ocean uses and activities that will not adversely impact renewable resources shall be given priority over those that will. Correspondingly, ocean uses that will have less adverse impacts on renewable resources shall be given priority over uses that will have greater adverse impacts.

(b) Ocean uses that will have less adverse social and economic impacts on coastal uses and communities should be given priority over uses and activities that will have more such impacts.

(c) When the adverse impacts are generally equal, the ocean use that has less probable occurrence of a disaster should be given priority.

(d) The alternatives considered to meet a public need for a proposed use should be commensurate with the need for the proposed use. For example, if there is a demonstrated national need for a proposed use, then national alternatives should be considered.

(e) Chapter 197-11 WAC (SEPA rules) provides guidance in the application of the permit criteria and guidelines of this section. The range of impacts to be considered should be consistent with WAC 197-11-060 (4)(e) and 197-11-792 (2)(c). The determination of significant adverse impacts should be consistent with WAC 197-11-330(3) and 197-11-794. The sequence of actions described in WAC 197-11-768 should be used as an order of preference in evaluating steps to avoid and minimize adverse impacts.

(f) Impacts on commercial resources, such as the crab fishery, on noncommercial resources, such as environmentally critical and sensitive habitats, and on coastal uses, such as loss of equipment or loss of a fishing season, should be considered in determining compensation to mitigate adverse environmental, social and economic impacts to coastal resources and uses.

(g) Allocation of compensation to mitigate adverse impacts to coastal resources or uses should be based on the magnitude and/or degree of impact on the resource, jurisdiction and use.

(h) Rehabilitation plans and bonds prepared for ocean uses should address the effects of planned and unanticipated closures, completion of the activity, reasonably anticipated disasters, inflation, new technology, and new information about the environmental impacts to ensure that state of the art technology and methods are used.

(i) Local governments should evaluate their master programs and select the environment(s) for coastal waters that best meets the intent of chapter 173-26 WAC, these guidelines and chapter 90.58 RCW.

(j) Ocean uses and their associated coastal or upland facilities should be located, designed and operated to prevent, avoid, and minimize adverse impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats such as breeding, spawning, nursery, foraging areas and wetlands, and areas of high productivity for marine biota such as upwelling and estuaries.

(k) Ocean uses should be located to avoid adverse impacts on proposed or existing environmental and scientific preserves and sanctuaries, parks, and designated recreation areas.

(l) Ocean uses and their associated facilities should be located and designed to avoid and minimize adverse impacts on historic or culturally significant sites in compliance with chapter 27.34 RCW. Permits in general should contain special provisions that require permittees to comply with chapter 27.53 RCW if any archaeological sites or archaeological objects such as artifacts and shipwrecks are discovered.

(m) Ocean uses and their distribution, service, and supply vessels and aircraft should be located, designed, and operated in a manner that minimizes adverse impacts on fishing grounds, aquatic lands, or other renewable resource ocean use areas during the established, traditional, and recognized times they are used or when the resource could be adversely impacted.

(n) Ocean use service, supply, and distribution vessels and aircraft should be routed to avoid environmentally critical and sensitive habitats such as sea stacks and wetlands, preserves, sanctuaries, bird colonies, and migration routes, during critical times those areas or species could be affected.

(o) In locating and designing associated onshore facilities, special attention should be given to the environment, the characteristics of the use, and the impact of a probable disaster, in order to assure adjacent uses, habitats, and communities adequate protection from explosions, spills, and other disasters.

(p) Ocean uses and their associated facilities should be located and designed to minimize impacts on existing water dependent businesses and existing land transportation routes to the maximum extent feasible.

(q) Onshore facilities associated with ocean uses should be located in communities where there is adequate sewer, water, power, and streets. Within those communities, if space is available at existing marine terminals, the onshore facilities should be located there.

(r) Attention should be given to the scheduling and method of constructing ocean use facilities and the location of temporary construction facilities to minimize impacts on tourism, recreation, commercial fishing, local communities, and the environment.

(s) Special attention should be given to the effect that ocean use facilities will have on recreational activities and experiences such as public access, aesthetics, and views.

(t) Detrimental effects on air and water quality, tourism, recreation, fishing, aquaculture, navigation, transportation, public infrastructure, public services, and community culture should be considered in avoiding and minimizing adverse social and economic impacts.

(u) Special attention should be given to designs and methods that prevent, avoid, and minimize adverse impacts such as noise, light, temperature changes, turbidity, water pollution and contaminated sediments on the marine, estuarine or upland environment. Such attention should be given particularly during critical migration periods and life stages of marine species and critical oceanographic processes.

(v) Preproject environmental baseline inventories and assessments and monitoring of ocean uses should be required when little is known about the effects on marine and estuarine ecosystems, renewable resource uses and coastal communities or the technology involved is likely to change.

(w) Oil and gas, mining, disposal, and energy producing ocean uses should be designed, constructed, and operated in a manner that minimizes environmental impacts on the coastal waters environment, particularly the seabed communities, and minimizes impacts on recreation and existing renewable resource uses such as fishing.

(x) To the extent feasible, the location of oil and gas, and mining facilities should be chosen to avoid and minimize impacts on shipping lanes or routes traditionally used by commercial and recreational fishermen to reach fishing areas.

(y) Discontinuance or shutdown of oil and gas, mining or energy producing ocean uses should be done in a manner that minimizes impacts to renewable resource ocean uses such as fishing, and restores the seabed to a condition similar to its original state to the maximum extent feasible.

(8) Oil and gas uses and activities. Oil and gas uses and activities involve the extraction of oil and gas resources from beneath the ocean.

~~((a) Whenever feasible oil and gas facilities should be located and designed to permit joint use in order to minimize adverse impacts to coastal resources and uses and the environment.~~

~~(b) Special attention should be given to the availability and adequacy of general disaster response capabilities in reviewing ocean locations for oil and gas facilities.~~

~~(c) Because environmental damage is a very probable impact of oil and gas uses, the adequacy of plans, equipment, staffing, procedures, and demonstrated financial and performance capabilities for preventing, responding to, and mitigating the effects of accidents and disasters such as oil spills should be major considerations in the review of permits for their location and operation. If a permit is issued, it should ensure that adequate prevention, response, and mitigation can be provided before the use is initiated and throughout the life of the use.~~

~~(d) Special attention should be given to the response times for public safety services such as police, fire, emergency medical, and hazardous materials spill response services in providing and reviewing onshore locations for oil and gas facilities.~~

~~(e) Oil and gas facilities including pipelines should be located, designed, constructed, and maintained in conformance with applicable requirements but should at a minimum ensure adequate protection from geological hazards such as liquefaction, hazardous slopes, earthquakes, physical oceanographic processes, and natural disasters.~~

~~(f) Upland disposal of oil and gas construction and operation materials and waste products such as cuttings and drilling muds should be allowed only in sites that meet applicable requirements.)) As established by the legislature in RCW 43.143.010, there shall be no leasing of Washington's tidal or submerged lands extending from mean high tide seaward three miles along the Washington coast from Cape Flattery south to Cape Disappointment, nor in Grays Harbor, Willapa Bay, and the Columbia River downstream from the Longview bridge, for purposes of oil or gas exploration, development, or production.~~

(9) Ocean mining. Ocean mining includes such uses as the mining of metal, mineral, sand, and gravel resources from the sea floor.

(a) Seafloor mining should be located and operated to avoid detrimental effects on ground fishing or other renewable resource uses.

(b) Seafloor mining should be located and operated to avoid detrimental effects on beach erosion or accretion processes.

(c) Special attention should be given to habitat recovery rates in the review of permits for seafloor mining.

(10) Energy production. Energy production uses involve the production of energy in a usable form directly in or on the ocean rather than extracting a raw material that is transported elsewhere to produce energy in a readily usable form. Examples of these ocean uses are facilities that use wave action or differences in water temperature to generate electricity.

(a) Energy-producing uses should be located, constructed, and operated in a manner that has no detrimental effects on beach accretion or erosion and wave processes.

(b) An assessment should be made of the effect of energy producing uses on upwelling, and other oceanographic and ecosystem processes.

(c) Associated energy distribution facilities and lines should be located in existing utility rights of way and corridors whenever feasible, rather than creating new corridors that would be detrimental to the aesthetic qualities of the shoreline area.

(11) Ocean disposal. Ocean disposal uses involve the deliberate deposition or release of material at sea, such as solid wastes, industrial waste, radioactive waste, incineration, incinerator residue, dredged materials, vessels, aircraft, ordnance, platforms, or other man-made structures.

(a) Storage, loading, transporting, and disposal of materials shall be done in conformance with local, state, and federal requirements for protection of the environment.

(b) Ocean disposal shall be allowed only in sites that have been approved by the Washington department of ecology, the Washington department of natural resources, the United States Environmental Protection Agency, and the United States Army Corps of Engineers as appropriate.

(c) Ocean disposal sites should be located and designed to prevent, avoid, and minimize adverse impacts on environmentally critical and sensitive habitats, coastal resources and uses, or loss of opportunities for mineral resource development. Ocean disposal sites for which the primary purpose is habitat enhancement may be located in a wider variety of habitats, but the general intent of the guidelines should still be met.

(12) Transportation. Ocean transportation includes such uses as: Shipping, transferring between vessels, and offshore storage of oil and gas; transport of other goods and commodities; and offshore ports and airports. The following guidelines address transportation activities that originate or conclude in Washington's coastal waters or are transporting a nonrenewable resource extracted from the outer continental shelf off Washington.

(a) An assessment should be made of the impact transportation uses will have on renewable resource activities such as fishing and on environmentally critical and sensitive habitat areas, environmental and scientific preserves and sanctuaries.

(b) When feasible, hazardous materials such as oil, gas, explosives and chemicals, should not be transported through highly productive commercial, tribal, or recreational fishing areas. If no such feasible route exists, the routes used should pose the least environmental risk.

(c) Transportation uses should be located or routed to avoid habitat areas of endangered or threatened species, environmentally critical and sensitive habitats, migration routes of marine species and birds, marine sanctuaries and environmental or scientific preserves to the maximum extent feasible.

(13) Ocean research. Ocean research activities involve scientific investigation for the purpose of furthering knowledge and understanding. Investigation activities involving necessary and functionally related precursor activities to an ocean use or development may be considered exploration or part of the use or development. Since ocean research often involves activities and equipment, such as drilling and vessels, that also occur in exploration and ocean uses or developments, a case by case determination of the applicable regulations may be necessary.

(a) Ocean research should be encouraged to coordinate with other ocean uses occurring in the same area to minimize potential conflicts.

(b) Ocean research meeting the definition of "exploration activity" of WAC 173-15-020 shall comply with the requirements of chapter 173-15 WAC: Permits for oil or natural gas exploration activities conducted from state marine waters.

(c) Ocean research should be located and operated in a manner that minimizes intrusion into or disturbance of the coastal waters environment consistent with the purposes of the research and the intent of the general ocean use guidelines.

(d) Ocean research should be completed or discontinued in a manner that restores the environment to its original condition to the maximum extent feasible, consistent with the purposes of the research.

(e) Public dissemination of ocean research findings should be encouraged.

(14) Ocean salvage. Ocean salvage uses share characteristics of other ocean uses and involve relatively small sites occurring intermittently. Historic shipwreck salvage which combines aspects of recreation, exploration, research, and mining is an example of such a use.

(a) Nonemergency marine salvage and historic shipwreck salvage activities should be conducted in a manner that minimizes adverse impacts to the coastal waters environment and renewable resource uses such as fishing.

(b) Nonemergency marine salvage and historic shipwreck salvage activities should not be conducted in areas of cultural or historic significance unless part of a scientific effort sanctioned by appropriate governmental agencies.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-27-030 Definitions. The following definitions shall apply:

(1) "Act" means chapter 90.58 RCW, the Shoreline Management Act of 1971, as amended;

(2) "Applicable master program" means the master program approved or adopted by the department pursuant to RCW 90.58.090(6) or 90.58.190(4) prior to acceptance of a complete application by local government;

(3) "Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure;

(4) "Conditional use" means a use, development, or substantial development which is classified as a conditional use or is not classified within the applicable master program;

(5) "Department" means the department of ecology;

(6) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. "Development" does not include dismantling or removing structures if there is no other associated development or redevelopment;

(7) "Exempt" developments are those set forth in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515 which are not required to obtain a substantial development permit but which must otherwise comply with applicable provisions of the act and the local master program;

(8) "Fair market value" of a development is the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

(9) "Height" is measured from average grade level to the highest point of a structure: Provided, That television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the applicable master program specifically requires that such appurtenances be included: Provided further, That temporary construction equipment is excluded in this calculation;

(10) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to chapter 90.58 RCW;

(11) "Natural or existing topography" means the topography of the lot, parcel, or tract of real property immediately

prior to any site preparation or grading, including excavation or filling;

(12) "Party of record" includes all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on the application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail;

(13) "Permit" means any substantial development, variance, conditional use permit, or revision authorized under chapter 90.58 RCW;

(14) "Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development;

(15) "Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels;

(16) "Transmit" means to send from one person or place to another by mail or hand delivery. The date of transmittal for mailed items is the date that the document is certified for mailing or, for hand-delivered items, is the date of receipt at the destination;

(17) "Variance" is a means to grant relief from the specific bulk, dimensional or performance standards set forth in the applicable master program and not a means to vary a use of a shoreline;

(18) "Vessel" includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water;

(19) The definitions and concepts set forth in RCW 90.58.030, and chapters ~~((473-25))~~ 173-20, 173-22, and 173-26 WAC also apply as used in this chapter.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-27-040 Developments exempt from substantial development permit requirement. (1) Application and interpretation of exemptions.

(a) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.

(b) An exemption from the substantial development permit process is not an exemption from compliance with the act or the local master program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to the local master program or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not

comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance.

(c) The burden of proof that a development or use is exempt from the permit process is on the applicant.

(d) If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.

(e) Local government may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the act and the local master program.

(2) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

(c) Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing sin-

gle-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bio-engineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife((-);

(d) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

(e) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(f) Construction or modification of navigational aids such as channel markers and anchor buoys;

(g) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than require-

ments imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

(h) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

(ii) In fresh waters the fair market value of the dock does not exceed:

(A) Twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003; or

(B) Ten thousand dollars((-, but)) for all other docks constructed in fresh waters.

However, if subsequent construction ((having a fair market value exceeding two thousand five hundred dollars)) occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either (h)(ii)(A) or (B) of this subsection, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above;

(i) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands;

(j) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(k) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;

(l) Any project with a certification from the governor pursuant to chapter 80.50 RCW;

(m) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(i) The activity does not interfere with the normal public use of the surface waters;

(ii) The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(iii) The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(iv) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(v) The activity is not subject to the permit requirements of RCW 90.58.550;

(n) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department of ecology jointly with other state agencies under chapter 43.21C RCW;

(o) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

(i) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(A) A project that involves less than ten miles of stream-reach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(B) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(C) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two

hundred square feet in floor area and is located above the ordinary high water mark of the stream.

(ii) "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act;

(p) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

(i) The project has been approved in writing by the department of fish and wildlife;

(ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

(iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs, as follows:

(A) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (p)(iii)(A)(I) and (II) of this subsection:

(I) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

- Elimination of human-made fish passage barriers, including culvert repair and replacement;

- Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

- Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department of fish and wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(II) A fish habitat enhancement project must be approved in one of the following ways:

- By the department of fish and wildlife pursuant to chapter 77.95 or 77.100 RCW;

- By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;

- By the department as a department of fish and wildlife-sponsored fish habitat enhancement or restoration project;
- Through the review and approval process for the jobs for the environment program;
- Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the natural resource conservation service;
- Through a formal grant program established by the legislature or the department of fish and wildlife for fish habitat enhancement or restoration; and
- Through other formal review and approval processes established by the legislature.

(B) Fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030 (2)(c).

(C)(I) A hydraulic project approval permit is required for projects that meet the criteria of (p)(iii)(A) of this subsection and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department of fish and wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department of fish and wildlife shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(II) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

(D) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of (p)(iii)(A) of this subsection and that are reviewed and approved according to the provisions of this section.

(q) The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

NEW SECTION

WAC 173-27-044 Developments not required to obtain shoreline permits or local reviews. Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government to implement this chapter do not apply to the following:

(1) **Remedial actions.** Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department must ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090.

(2) **Boatyard improvements to meet NPDES permit requirements.** Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit. The department must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard storm water treatment facilities.

(3) **WSDOT facility maintenance and safety improvements.** Pursuant to RCW 90.58.356, department of transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government to implement the Shoreline Management Act, chapter 90.58 RCW.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-27-045 Developments not subject to the Shoreline Management Act. Certain developments are not required to meet requirements of the Shoreline Management Act as follows:

(1) ~~((Pursuant to RCW 90.58.390, certain secure community transition facilities are not subject to the Shoreline Management Act. An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under chapter 71.09 RCW. To meet this emergency, secure community transition facilities sited pursuant to the preemption provisions of RCW 71.09.342 and secure facilities sited pursuant to the preemption provisions of RCW 71.09.250 are not subject to the provisions of this chapter.~~

~~This section expires June 30, 2009.~~

(2)) Pursuant to RCW 90.58.045 regarding environmental excellence program agreements, notwithstanding any other provision of law, any legal requirement under the Shoreline Management Act, including any standard, limitation, rule, or order is superseded and replaced in accordance

with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW.

~~((3)) Pursuant to RCW 90.58.355 regarding hazardous substance remedial actions, the procedural requirements of the Shoreline Management Act shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of chapter 90.58 RCW, chapter 173-26 WAC and the local master program through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090.~~

~~(4)) (2) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under chapter 90.58 RCW.~~

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-27-080 Nonconforming use and development standards. Local governments typically develop their own approaches to addressing nonconforming use and development. This section is intended to apply if a shoreline master program does not contain locally adopted nonconforming use and development standards. When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply~~((:))~~.

(1) Definitions.

(a) "Nonconforming use ((or development))" means ((a)) an existing shoreline use ((or development which)) that was lawfully ((constructed or)) established prior to the effective date of the act or the applicable master program, ((or amendments thereto;)) but which does not conform to present use regulations ((or standards of the program-

(2)) due to subsequent changes to the master program.

(b) "Nonconforming development" or "nonconforming structure" means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.

(c) "Nonconforming lot" means a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the master program.

(2) Nonconforming structures.

(a) Structures that were legally established and are used for a conforming use but ((which)) are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may continue as legal nonconforming structures and may be maintained and repaired ((and)).

(b) Nonconforming structures may be enlarged or expanded provided that said enlargement ((does)) meets the

applicable provisions of the master program. In the absence of other more specific regulations, proposed expansion shall not increase the extent of nonconformity by further encroaching upon or extending into areas where construction ((or use)) would not be allowed for new ((development or uses-

(3) Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that)) structures, unless a shoreline variance permit is obtained.

(c) Nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.

~~((4)) A use which is listed as a conditional use but which existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.~~

~~(5)) (d) A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to pre-existing nonconformities.~~

~~((6)) (e) In the absence of other more specific regulations, a structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:~~

~~((a)) (i) No reasonable alternative conforming use is practical; and~~

~~((b)) (ii) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.~~

In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

~~((7)) (f) A nonconforming structure which is moved any distance must be brought as closely as practicable into conformance with the applicable master program and the act.~~

~~((8)) (g) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within ((six months)) two years of the date the damage occurred((, all permits are obtained and the restoration is completed within two years of permit issuance.~~

~~(9)).~~

(3) Nonconforming uses.

(a) Uses that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses.

(b) In the absence of other more specific regulations in the master program, such uses shall not be enlarged or expanded, except upon approval of a conditional use permit.

(c) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming unless reestablishment of the use is authorized through a conditional use permit which must be applied for within the two-year period. Water-dependent uses should not be considered discontinued when they are inactive due to dormancy, or where the use includes phased or rotational operations as part of typical operations. A use authorized pursuant to subsection ~~((6))~~ (2)(e) of this section shall be considered a conforming use for purposes of this section.

~~((10) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards)~~ (4) Nonconforming lot. A nonconforming lot may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

NEW SECTION

WAC 173-27-085 Moratoria. (1) Local governments may adopt moratoria or other interim official controls as necessary and appropriate to implement chapter 90.58 RCW.

(2) A local government adopting a moratorium or control under this section must:

(a) Hold a public hearing on the moratorium or control within sixty days of its adoption;

(b) Adopt detailed findings of fact that include, but are not limited to, justifications for the proposed or adopted actions and explanations of the desired and likely outcomes;

(c) Notify the department of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing required by this subsection;

(d) Provide that all lawfully existing uses, structures, or other development shall continue to be deemed lawful conforming uses and may continue to be maintained, repaired, and redeveloped, so long as the use is not expanded, under the terms of the land use and shoreline rules and regulations in place at the time of the moratorium.

(3) A moratorium or control may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review. A moratorium or control may be renewed for two six-month periods if the local government complies with subsection (2)(a) of this section before each renewal. If a moratorium or control is in effect on the date a proposed master program or amendment

is submitted to the department, the moratorium or control must remain in effect until the department's final action under RCW 90.58.090; however, the moratorium expires six months after the date of submittal if the department has not taken final action.

NEW SECTION

WAC 173-27-125 Special procedures for WSDOT projects. (1) Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, the legislature established a target of ninety days review time for local governments.

(2) Optional process allowing construction to commence twenty-one days after date of filing. Pursuant to RCW 90.58.140, Washington state department of transportation projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

AMENDATORY SECTION (Amending WSR 07-02-086, filed 1/2/07, effective 2/2/07)

WAC 173-27-130 Filing with department. (1) All applications for a permit or a permit revision shall be submitted to the department by return receipt requested mail upon a final decision by local government. Final decision by local government shall mean the order or ruling, whether it be an approval or denial, which is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals have lapsed.

(2) When a substantial development permit and a conditional use or variance permit are required for a development, the submittal on the permits shall be made concurrently.

(3) A complete submittal shall consist of the following documents and information:

(a) A copy of the complete application pursuant to WAC 173-27-180;

(b) Findings and conclusions that establish the basis for the decision including, but not limited to, identification of shoreline environment designation, applicable master program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s) as established in WAC 173-27-140 through 173-27-170;

(c) The final decision of the local government;

(d) The permit data sheet required by WAC 173-27-190; and

(e) Where applicable, local government shall also file the applicable documents required by chapter 43.21C RCW, the State Environmental Policy Act, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under chapter 43.21C RCW.

(4) When the project has been modified in the course of the local review process, plans or text shall be provided to the department that clearly indicate the final approved plan.

(5) Submittal of substantial development permits, conditional use permits, variances, rescissions and revisions is complete when all of the documents required pursuant to subsections (3) and (4) of this section have been received by the department. If the department determines that the submittal does not contain all of the documents and information

required by this section, the department shall identify the deficiencies and so notify local government and the applicant in writing. Ecology will not act on conditional use permit or variance submittal until the material requested in writing is submitted to the department.

(6) "Date of filing" of a local government final decision involving approval or denial of a substantial development permit is the date of actual receipt by the department of a local government's final decision on the permit.

(7) "Date of filing" involving approval or denial of a variance or conditional use permit, is the date of transmittal of the department's final decision on the variance or conditional use permit to local government and the applicant.

(8) Date of filing for a substantial development permit transmitted simultaneously with a shoreline conditional use permit or variance, or both, has the same meaning as subsection (7) of this section.

~~(9) The department shall ((provide a written notice to the local government and the applicant of the "date of filing."~~

(9)) notify the local government and applicant of the date of filing by telephone or electronic means, followed by written communication, to ensure that the applicant has received the full written decision.

(10) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general.

~~((10))~~ (11) When a permit has been appealed pursuant to RCW 90.58.180, upon conclusion of all review proceedings, a copy of the final order shall be provided by the local government to the department. When the project has been modified in the course of the review proceeding, plans or text shall be provided to the local government, consistent with the provisions of WAC 173-27-180, that clearly indicate the final approved plan and the local government shall reissue the permit accordingly and submit a copy of the reissued permit and supporting documents consistent with subsection (3) of this section to the department for completion of the file on the permit. The purpose of this provision is to assure that the local and department files on the permit are complete and accurate and not to provide a new opportunity for appeal of the permit.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-27-170 Review criteria for variance permits. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

(1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances

shall be shown and the public interest shall suffer no substantial detrimental effect.

(2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)((~~b~~)) (c), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;

(b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;

(c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;

(d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

(e) That the variance requested is the minimum necessary to afford relief; and

(f) That the public interest will suffer no substantial detrimental effect.

(3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)((~~b~~)) (c), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;

(b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and

(c) That the public rights of navigation and use of the shorelines will not be adversely affected.

(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

(5) Variances from the use regulations of the master program are prohibited.

NEW SECTION

WAC 173-27-215 Shoreline restoration projects—Relief from shoreline master program development standards and use regulations. (1) Purpose of section. In adopting RCW 90.58.580, the legislature found that restoration of degraded shoreline conditions is important to the ecological

function of our waters. However, restoration projects that shift the location of the shoreline can inadvertently create hardships for property owners, particularly in urban areas. Hardship may occur when a shoreline restoration project shifts Shoreline Management Act regulations into areas that had not previously been regulated under the act or shifts the location of required shoreline buffers. The intent of this section is to provide relief to property owners in such cases, while protecting the viability of shoreline restoration projects.

(2) Conditions and criteria for providing relief. The local government may grant relief from shoreline master program development standards and use regulations within urban growth areas when the following apply:

(a) A shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in the following:

(i) Land that had not been regulated under this chapter prior to construction of the restoration project is brought under shoreline jurisdiction; or

(ii) Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable shoreline master program; and

(iii) Application of shoreline master program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent;

(b) The proposed relief meets the following criteria:

(i) The proposed relief is the minimum necessary to relieve the hardship;

(ii) After granting the proposed relief, there is net environmental benefit from the restoration project;

(iii) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the shoreline master program; and

(iv) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and

(c) The application for relief must be submitted to the department for written approval or disapproval. This review must occur during the department's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then the department shall conduct its review when the local government provides a copy of a complete application and all supporting information necessary to conduct the review.

(i) Except as otherwise provided in subsection (3) of this section, the department shall provide at least twenty days notice to parties that have indicated interest to the department in reviewing applications for relief under this section, and post the notice on its web site.

(ii) The department shall act within thirty calendar days of the close of the public notice period, or within thirty days of receipt of the proposal from the local government if additional public notice is not required.

(3) The public notice requirements of subsection (2)(c) of this section do not apply if the relevant shoreline restoration project was included in a shoreline master program or

shoreline restoration plan as defined in WAC 173-26-201, as follows:

(a) The restoration plan has been approved by the department under applicable shoreline master program guidelines;

(b) The shoreline restoration project is specifically identified in the shoreline master program or restoration plan or is located along a shoreline reach identified in the shoreline master program or restoration plan as appropriate for granting relief from shoreline regulations; and

(c) The shoreline master program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

(4) A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A-030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(6) "Shoreline restoration project" means a project designed to restore impaired ecological function of a shoreline.

WSR 17-17-019

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed August 7, 2017, 10:47 p.m., effective September 7, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-08-400 How much can a health care provider charge for searching and duplicating health care records?, the adopted rule increases the amounts health care providers may charge by 4.8 percent, based on the change in the consumer price index for the Seattle-Tacoma area, as required in RCW 70.02.010(37). The adopted rule also deletes unnecessary effective dates and makes clarifications for HIPAA covered entities.

Citation of Rules Affected by this Order: Amending WAC 246-08-400.

Statutory Authority for Adoption: RCW 70.02.010(37) and 43.70.040.

Adopted under notice filed as WSR 17-08-096 on April 5, 2017.

Changes Other than Editing from Proposed to Adopted Version: The department added a reference to the Code of Federal Regulations (C.F.R.) definition of HIPAA covered entity in subsection (3).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 1, 2017.

Jessica Todorovich
Chief of Staff
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 15-14-073, filed 6/26/15, effective 7/27/15)

WAC 246-08-400 How much can a health care provider charge for searching and duplicating health care records? RCW 70.02.010(37) allows health care providers to charge fees for searching and duplicating health care records. The fees a provider may charge cannot exceed the fees listed below:

- (1) Copying charge per page:
 - (a) No more than one dollar and ~~((twelve))~~ seventeen cents per page for the first thirty pages;
 - (b) No more than ~~((eighty-four))~~ eighty-eight cents per page for all other pages.
- (2) Additional charges:
 - (a) The provider can charge a ~~((twenty-five))~~ twenty-six dollar clerical fee for searching and handling records;
 - (b) If the provider personally edits confidential information from the record, as required by statute, the provider can charge the usual fee for a basic office visit.
- (3) ~~((This section is effective July 1, 2015, through June 30, 2017.~~
- (4) ~~((HIPAA covered entities ((shall refer to)) as defined in 45 C.F.R. Sec. 103 may not charge fees or costs that are not authorized by, or are prohibited by, Federal HIPAA regulation 45 C.F.R. ((164.524(e)(4))) Sec. 164.~~

WSR 17-17-022
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Securities Division)

[Filed August 8, 2017, 9:35 a.m., effective September 8, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: On October 26, 2016, the Securities and Exchange Commission (SEC) adopted final rules amending intrastate offering exemptions. See SEC Rulemaking Release No. 33-10238, titled "Exemptions to Facilitate Intrastate and Regional Securities Offerings," available at <https://www.sec.gov/rules/final/2016/33-10238.pdf>. Included in these amendments are changes to the federal intrastate offering exemption, which is the basis for the state crowdfunding exemption in the Securities Act of Washington. In addition, on April 25, 2017, Governor Inslee signed into law HB 1593, which amends the state crowdfunding exemption in the Securities Act of Washington. The bill includes amendments to the ref-

erence to federal exemptions from registration, and other housekeeping amendments.

As the rules contained in chapter 460-99C WAC implement the state crowdfunding exemption, the division is now amending these rules to ensure coordination of our rules to related federal amendments and to state statutory amendments. The amendments include revisions to: Allow offerings under either federal Rule 147 or newly adopted federal Rule 147A; remove the requirement to use a portal; relax ongoing reporting requirements; expand the types of securities an issuer can offer under the crowdfunding rules; and exclude accredited investors from individual investment limits.

Citation of Rules Affected by this Order: Repealing 3; and amending 10.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.880.

Other Authority: HB 1593, chapter 113, Laws of 2017.

Adopted under notice filed as WSR 17-12-009 on May 25, 2017.

Changes Other than Editing from Proposed to Adopted Version: The securities division amended WAC 460-99C-040(6) to require an issuer to file a copy of any agreements between it and any broker-dealer or other intermediary.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 10, Repealed 3.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 7, 2017.

Gloria Papiez
Director

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-010 Application. The rules in this chapter apply to the exemption from registration set forth in RCW 21.20.880 (crowdfunding exemption) for intrastate offerings of securities exempt under section 3 (a)(11) of the federal Securities Act of 1933 and Securities and Exchange Commission Rule 147, 17 C.F.R. 230.147 (crowdfunding exemption), or offers and sales of securities made under the federal exemption under section 28 of the federal Securities Act of 1933 and Securities and Exchange Commission Rule 147A, 17 C.F.R. 230.147A. The rules are intended to assist Washington start-up companies in accessing capital in small securities offerings through ~~((equity))~~ crowdfunding (crowdfunding offering). ~~((Issuers may work in collaboration with~~

~~organizations that qualify as portals to develop business plans, complete disclosure documents, to seek out other technical assistance, and to submit filings in connection with a public securities offering. The exemption is))~~ The rules are intended to reduce the costs and burdens of raising ((equity)) capital for small businesses without sacrificing investor protection, and to maximize the amount of offering proceeds available to the issuer for investment in the business. Issuers eligible ((for this exemption)) to make an offering under the rules of this chapter shall use the Washington Crowdfunding Form as the disclosure document for the offering.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-020 Definitions. (1) "Escrow agent" means a bank, trust company, savings bank, national banking association, building and loan association, mortgage banker, credit union, insurance company, an escrow agent that is registered under chapter 18.44 RCW, or any other independent escrow agent acceptable to the director. The entity acting as the escrow agent must be independently audited or examined, in a manner acceptable to the director, on a regular basis.

(2) ~~("Local associate development organization" means a Washington associate development organization as defined in RCW 43.330.010.~~

(3) ~~"Port district" means a port district formed under chapter 53.04 RCW.~~

(4) ~~"Portal" means:~~

(a) ~~A port district;~~

(b) ~~A local associate development organization; or~~

(c) ~~A broker-dealer registered with the division; that files offering materials with the director on behalf of issuers seeking to rely on the crowdfunding exemption in RCW 21.20.880 or that offers services to issuers as contemplated in RCW 21.20.883.~~

(5) ~~"Promoter" means:~~

(a) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly, takes initiative in founding and organizing the business or enterprise of an issuer; or

(b) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, ten percent or more of any class of securities of the issuer or ten percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this subsection if such person does not otherwise take part in founding and organizing the enterprise.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-030 Availability. (1) ~~((The crowdfunding exemption in RCW 21.20.880 is))~~ These rules are intended to allow start-up companies to raise capital in small securities offerings to Washington residents. The rules in this chapter provide for the use of a simplified offering document

designed to provide adequate disclosure to investors concerning the issuer, the securities offered, and the offering itself. Certain issuers may not be able to make adequate disclosure using the simplified Washington Crowdfunding Form and will, therefore, be unable to utilize ~~((this))~~ the exemption in RCW 21.20.880. The director finds that the Washington Crowdfunding Form is generally unsuitable for the following issuers and programs and that, therefore, they will not be allowed to utilize the crowdfunding exemption in RCW 21.20.880 unless written permission is obtained from the director based upon a showing that adequate disclosure can be made to investors using the Washington Crowdfunding Form:

(a) Holding companies, companies whose principal purpose is owning stock in, or supervising the management of, other companies;

(b) Investment companies subject to the Investment Company Act of 1940, including private equity funds;

(c) Portfolio companies, such as real estate investment trusts;

(d) Development stage companies that either have no specific business plan or purpose or have indicated that their business plan is to engage in merger or acquisition with an unidentified company or companies or other entity or person;

(e) Companies with complex capital structures;

(f) Blind pools;

(g) Commodity pools;

(h) Companies engaging in petroleum exploration or production or mining or other extractive industries;

(i) Equipment leasing programs; and

(j) Real estate programs, except entities formed to invest in a single, income-producing real estate property.

(2) The crowdfunding exemption in RCW 21.20.880 is available only to a corporation or centrally managed limited liability company or limited partnership that is resident and doing business within Washington at the time of any offer or sale of securities.

(3) The aggregate purchase price of all securities offered by an issuer in an offering made pursuant to the crowdfunding exemption in RCW 21.20.880 may not exceed one million dollars during any twelve-month period.

(4) The crowdfunding exemption is available only to equity or convertible debt securities offerings by the issuer of the securities and is not available to any affiliate of that issuer or to any other person for resale of the issuer's securities. ~~((The exemption is not available to debt offerings.~~

~~(5) For the purposes of this section, "equity" includes convertible preferred stock that is authorized and issued pursuant to charter documents that provide holders of the convertible preferred stock with the following protections:~~

~~(a) A provision restricting the payment of dividends on common stock or other outstanding securities of the issuer unless comparable dividends are paid on all convertible preferred stock based on the number of common shares into which they are convertible;~~

~~(b) A liquidation preference that provides that the holders of the convertible preferred stock are entitled to receive in preference to the holders of any outstanding common stock an amount that is at least equal to the amount at which the~~

convertible preferred stock was purchased from the company plus any accrued but unpaid dividends;

(e) A conversion feature that allows holders of the convertible preferred stock to convert their shares into common stock of the company at any time at the conversion rate of at least one common share per share of convertible preferred stock. The preferred stock may either be participating or non-participating preferred stock;

(d) An appropriate antidilution provision providing for an adjustment of the number of shares into which such stock is convertible upon any stock split, stock dividend, or similar event. Such charter documents must also provide for a similar adjustment upon the issuance of additional common stock, preferred stock, or convertible debt by the issuer for consideration less than either the consideration paid to the company for the convertible preferred stock or the current market price for the common stock;

(e) Voting rights that provide that holders of convertible preferred stock shall be entitled to that number of votes on all matters presented to stockholders equal to the number of shares of common stock then issuable upon conversion of such shares;

(f) Voting rights that provide that as long as at least fifty percent of the convertible preferred stock issued remains outstanding, the approval by at least fifty percent of the voting interests in the outstanding shares of convertible preferred stock is required in connection with:

(i) The creation of any senior or pari passu security to the convertible preferred stock;

(ii) Any increase or decrease in the number of authorized securities;

(iii) The adoption or amendment of any incentive compensation plan;

(iv) Any adverse change to the rights, preferences, and privileges of the convertible preferred stock;

(v) Any redemption, repurchase, or other acquisition for value of any of the company's equity securities, other than from present or former consultants, directors, or employees pursuant to the terms of a stock option plan of the company;

(vi) Any material change in the company's line of business;

(vii) The merger, consolidation, or reorganization of the company with and into another company or entity, or of any other company or entity with and into the company;

(viii) The acquisition of a substantial portion of the assets or business of another company or entity or any other acquisition of material assets;

(ix) A sale of all or substantially all of the company's assets;

(x) Dissolution or liquidation of the company; and

(xi) Any other action materially adversely affecting the interests of the holders of the convertible preferred stock.)

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-040 Filing requirements. In addition to filing a properly completed Washington Crowdfunding Form, issuers seeking to rely on the crowdfunding exemption in RCW 21.20.880 shall file the following with the division:

(1) The filing fee as prescribed in WAC 460-99C-260;

(2) The issuer's articles of incorporation or other charter documents pursuant to which the issuer is organized (~~(in this state)~~) and all amendments thereto;

(3) The issuer's (~~(by-laws)~~) bylaws or operating agreement, and all amendments thereto;

(4) A copy of any resolutions by directors setting forth terms and provisions of capital stock to be issued or by managing members setting forth terms and or capital ownership interest to be issued;

(5) The issuer's financial statements as of the end of the issuer's most recent fiscal year, prepared in accordance with generally accepted accounting principles in the United States. If the date of the most recent fiscal year end is more than ninety days prior to the date of filing, the issuer must also submit an unaudited balance sheet and unaudited statement of income or operations prepared in accordance with generally accepted accounting principles in the United States for the issuer's most recent fiscal quarter;

(6) A copy of any agreements between the issuer and any (~~(portal)~~) broker-dealer or other intermediary;

(7) A copy of the escrow agreement between the issuer and an escrow agent located in the state of Washington in which offering proceeds will be deposited;

(8) A copy of any subscription agreement for the purchase of securities in this offering;

(9) A specimen or copy of the security to be offered, or other document evidencing the security, including required legends, if the issuer will issue physical certificates;

(10) A copy of all advertising and other materials directed to or to be furnished to investors in this offering; and

(11) Any other document reasonably requested by the director.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-140 Issuer compliance with investor limitations. Prior to accepting investor funds or an irrevocable commitment to invest, the issuer must obtain (~~(the following)~~), from each investor(=

(1) Evidence of residency of the investor in the state of Washington;

(2)), a copy of the Investor Certifications and Acknowledgements Form prescribed by the director that has been either manually or electronically signed by the investor.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-150 Aggregate investment limitations. (1) In each sale of securities in reliance on the crowdfunding exemption under RCW 21.20.880, the issuer must reasonably believe that the aggregate amount of securities sold to any investor, other than an "accredited investor" as that term is defined under the Securities Act of 1933, by one or more issuers offering or selling securities under the crowdfunding exemption during the twelve-month period preceding the date of the sale, together with the securities to be sold by the issuer to the investor, does not exceed the lesser of:

(a) Two thousand dollars or five percent of the annual income or net worth of the investor, whichever is greater, if either the annual income or the net worth of the investor is less than one hundred thousand dollars; or

(b) Ten percent of the annual income or net worth of the investor, as applicable, up to one hundred thousand dollars, if either the annual income or net worth of the investor is one hundred thousand dollars or more.

(2) For the purpose of determining the annual income of an investor under this section, the annual income of an investor shall be the investor's lowest annual net income out of the two most recently completed calendar or fiscal years, provided that the investor has a reasonable expectation of having at least that amount of net income in the current calendar or fiscal year.

(3) For the purpose of calculating the net worth of an investor under this section:

(a) The investor's primary residence shall not be included as an asset;

(b) Indebtedness that is secured by the investor's primary residence, up to the estimated fair market value of that primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of the sale of securities exceeds the amount outstanding sixty days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(c) Indebtedness that is secured by the investor's primary residence in excess of the estimated fair market value of the primary residence shall be included as a liability.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-170 Restrictions on resale. (1) Securities issued in reliance on the crowdfunding exemption in RCW 21.20.880 may not be transferred by the purchaser during a one-year period beginning on the date of purchase, unless the securities are transferred:

- (a) To the issuer of the securities;
- (b) To an accredited investor;

(c) Pursuant to an effective registration statement under the Securities Act of Washington, chapter 21.20 RCW; or

(d) To a member of the family of the purchaser or the equivalent, or in connection with the death or divorce or other similar circumstances, in the discretion of the director.

(2) Securities issued under the crowdfunding exemption in RCW 21.20.880 are also restricted by the requirements for the federal exemption from registration for intrastate offerings under section 3 (a)(11) of the federal Securities Act of 1933, 15 U.S.C. 77c (a)(11), and securities and exchange commission Rule 147, 17 C.F.R. 230.147, ~~((including restrictions on transfer of securities by the purchaser))~~ or the requirements for the federal exemption from registration for offerings under section 28 of the federal Securities Act of 1933, 15 U.S.C. 77z-3, and securities and exchange commission Rule 147A, 17 C.F.R. 230.147A, as applicable.

Note: Rules 147 and 147A generally provide(s) that ~~((during the period in which securities that are part of an issue are being offered and sold by the issuer, and for a period of nine months from the date of last sale by the issuer of such securities, all resales of any part of the issue, by any person, shall be made only to persons residing within the state of Washington))~~ for a period of six months from the date of the sale by the issuer of a security pursuant to that rule, any resale of such security shall be made only to persons resident within the state or territory in which the issuer was resident at the time of the sale of the security by the issuer. Issuers are cautioned to carefully review and implement safeguards to ensure their compliance with the restrictions contained in Rule 147 or 147A, whichever is applicable, as well as the restrictions contained in RCW 21.20.880.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-180 ((Quarterly)) Annual reporting requirements. For as long as securities issued under the crowdfunding exemption in RCW 21.20.880 remain outstanding, the issuer shall provide ~~((a quarterly))~~ an annual report to the issuer's shareholders ((by making such report publicly accessible, free of charge, at the issuer's internet web site address within forty-five days of the end of each fiscal quarter)) no later than one hundred twenty days after the end of the fiscal year covered by the report. An issuer may provide the report to its shareholders by posting a copy of the report on the issuer's web site. The report must contain the following information:

(1) Executive officer and director compensation, including specifically the cash compensation earned by the executive officers and directors since the previous report and on an annual basis, and any bonuses or other compensation, including stock options or other rights to receive equity securities of the issuer or any affiliate of the issuer, received by them;

(2) The names of the issuer's owners of twenty percent or more of a class of outstanding securities, directors, officers, managing members and/or other persons occupying similar status or performing similar functions on behalf of the issuer;

(3) A brief analysis by management of the issuer of the business operations and financial condition of the issuer.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-230 Disqualification based on reporting failures. An issuer that has sold securities in reliance on RCW 21.20.880 and has not complied with the ~~((quarterly))~~ annual reporting requirements set forth in WAC 460-99C-180 during the twelve months immediately preceding the filing of the Washington Crowdfunding Form is ineligible to offer securities in reliance on RCW 21.20.880.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-240 Books and records—Inspection rights. (1) An issuer that has filed or is required to file under the crowdfunding exemption must keep and maintain written or electronic records relating to offers and sales of securities made in reliance on the crowdfunding exemption for at least

six years following the termination of the offering. These records shall include:

(a) The issuer's Washington Crowdfunding Form and all exhibits, together with all amendments thereto;

(b) Evidence of residency from each investor in the offering, including written representation from each purchaser as to his or her residence;

(c) A manually or electronically signed copy of the Investor Certifications and Acknowledgements Form for each investor in the offering;

(d) Final sales reports filed with the director; and

(e) ~~((Quarterly))~~ Annual reports and all other communications with shareholders.

(2) The director may access, inspect, review, copy, and remove for inspection any records described in subsection (1) of this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 460-99C-160	Evidence of residency.
WAC 460-99C-200	Integration.
WAC 460-99C-210	Activities of portals.

WSR 17-17-026 PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Behavioral Health Administration)

[Filed August 8, 2017, 1:05 p.m., effective September 8, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is putting certification requirements into rule to create the ability for mental health and substance use disorder service providers to provide supportive housing and supported employment behavioral health services. Programs for supportive housing services and supported employment services are included as part of Washington state's medicaid transformation waiver, which was approved on January 9, 2017. RCW 71.24.385 authorizes a supportive housing services program and a supported employment services program to be developed to serve individuals receiving behavioral health services. These rules will allow the department to certify these services when a licensed behavioral health agency applies and qualifies for certification. This permanent rule, when it becomes effective, will supersede emergency rules filed as WSR 17-11-075 filed on May 18, 2017.

Citation of Rules Affected by this Order: New WAC 388-877A-0335, 388-877B-0700, 388-877B-0710, 388-877B-0720, 388-877B-0730 and 388-877B-0740; and amending WAC 388-877A-0100, 388-877A-0300, and 388-877A-0330.

Statutory Authority for Adoption: RCW 43.20A.550, 71.05.560, 71.24.035 (5)(m), 71.24.037, 71.24.520(4), 74.04.050.

Other Authority: RCW 71.24.385.

Adopted under notice filed as WSR 17-11-073 on May 18, 2017.

A final cost-benefit analysis is available by contacting Stephanie Vaughn, P.O. Box 45330, Olympia, WA 98504-5330, phone 360-725-1342, email stephanie.vaughn@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 3, Repealed 0.

Date Adopted: August 8, 2017.

Bill Moss
Acting Secretary

AMENDATORY SECTION (Amending WSR 14-06-093, filed 3/4/14, effective 4/4/14)

WAC 388-877A-0100 Outpatient mental health services—General. The rules in this section apply to behavioral health agencies that provide outpatient mental health services. The definitions in WAC 388-877-0200 also apply to outpatient mental health services. ~~((The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.))~~

(1) Outpatient mental health services are intended to improve ~~((and/or))~~ or reduce symptoms~~((;))~~ and ~~((resolve))~~ help facilitate resolution of situational disturbances for individuals in the areas of ~~((relational, occupational and/or vocational concerns))~~ relationships, employment, and community integration.

(2) Outpatient mental health services include:

(a) Individual treatment services ~~((see))~~ as described in WAC 388-877A-0138~~((;))~~;

(b) Brief intervention treatment services ~~((see))~~ as described in WAC 388-877A-0140~~((;))~~;

(c) Group therapy services ~~((see))~~ as described in WAC 388-877A-0150~~((;))~~;

(d) Family therapy services ~~((see))~~ as described in WAC 388-877A-0155~~((;))~~;

(e) Case management services ~~((see))~~ as described in WAC 388-877A-0170~~((;))~~;

(f) The optional mental health services described in subsection (3) of this ~~((subsection))~~ section; and

(g) The recovery support services described in subsection (4) of this ((subsection)) section.

(3) A behavioral health agency that provides certified ~~((for))~~ outpatient mental health services may choose to provide optional outpatient mental health services. Optional outpatient mental health services require additional program-specific certification by the department's division of behavioral health and recovery (DBHR) and include the following:

(a) Psychiatric medication services ~~((see))~~ as described in WAC 388-877A-0180((+));

(b) Day support services ~~((see))~~ as described in WAC 388-877A-0190((+));

(c) Less restrictive alternative (LRA) support services ~~((see))~~ as described in WAC 388-877A-0195((+)); and

(d) Services provided in a residential treatment facility ~~((see))~~ as described in WAC 388-877A-0197((+)).

(4) A behavioral health agency that provides certified ~~((for))~~ outpatient mental health services may also provide recovery support services. Recovery support services require program-specific certification and include the following:

(a) Supported employment services ((see)) as described in WAC 388-877A-0330((+));

(b) Supportive housing services as described in WAC 388-877A-0335;

(c) Peer support services ~~((see))~~ as described in WAC 388-877A-0340((+));

~~((e))~~ (d) Wraparound facilitation services ~~((see))~~ as described in WAC 388-877A-0350((+));

~~((d))~~ (e) Medication support services ~~((see))~~ as described in WAC 388-877A-0360((+)); and

~~((e))~~ (f) Applied behavior analysis (ABA) services ~~((see))~~ as described in WAC 388-877A-0370((+)).

(5) An agency ~~((providing))~~ that provides outpatient mental health services to individuals must:

(a) Be licensed by the department as a behavioral health agency~~((:));~~

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC~~((:));~~ and

(c) Have policies and procedures ~~((to))~~ that support and implement the:

(i) General requirements in chapter 388-877 WAC;

(ii) Applicable program-specific requirements for each outpatient mental health service provided~~((:));~~ and each optional and recovery support service requiring program-specific certification that the agency elects to provide; and

(iii) Department of corrections access to confidential mental health information requirements in WAC 388-865-0600 through 388-865-0640.

(6) At the ~~((verbal))~~ oral or written request of the individual, the behavioral health agency must, if applicable:

(a) Include the individual's family members, significant others, and other relevant treatment providers in the clinical services provided to the individual by the agency; and

(b) Document the request in the individual's clinical record.

(7) If an individual has a crisis plan, the crisis plan must be:

(a) Placed in the individual's clinical record; and

(b) Subject to state and federal confidentiality rules and laws, made available to the following~~((subject to state and federal confidentiality rules and laws)):~~

(i) Designated mental health professionals;

(ii) Crisis team members; and

(iii) Voluntary and involuntary inpatient evaluation and treatment facilities.

(8) ~~((An))~~ A behavioral health agency that provides services at an established off-site location(s) must:

(a) Maintain a list of each established off-site location where services are provided~~((:));~~ and

(b) Include, for each established off-site location:

(i) The name and address of the location the services are provided;

(ii) The primary purpose of the off-site location;

(iii) The service(s) provided; and

(iv) The date off-site services began at that location.

(9) ~~((An))~~ A behavioral health agency providing in-home services or services in a public setting must:

(a) Implement and maintain a written protocol of how services will be offered in a manner that promotes individual ~~((and)),~~ staff member, and community safety; and

(b) For the purpose of emergency communication~~((:));~~ and as required by RCW 71.05.710, provide a wireless telephone~~((:));~~ or comparable device~~((:));~~ to any mental health professional who makes home visits to individuals.

(10) ~~((An))~~ A behavioral health agency must:

(a) Maintain an individual's confidentiality at the off-site location;

(b) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable;

(c) ~~((Be certified to provide))~~ Ensure the type of mental health service offered at each off-site location is certified by DBHR in accordance with chapter 388-877A WAC; and

(d) Ensure the mental health services provided at off-site locations meet the requirements of all applicable local, state, and federal rules and laws.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877A-0300 Recovery support services ~~((requiring)) that require program-specific certification—General.~~ The rules in this section apply to behavioral health agencies that provide one or more recovery support services that require program-specific certification by the department's division of behavioral health and recovery. The definitions in WAC 388-877-0200 also apply to these services. ~~((The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.))~~

(1) Recovery support services are intended to promote an individual's socialization, recovery, self-advocacy, development of natural support, and maintenance of community living skills.

(2) Recovery support services ~~((requiring)) that require~~ program-specific certification include:

(a) Supported employment services (~~((see))~~) as described in WAC 388-877A-0330(~~(+)~~);

(b) Supportive housing services as described in WAC 388-877A-0335;

(c) Peer support services (~~((see))~~) as described in WAC 388-877A-0340(~~(+)~~);

~~((+))~~ (d) Wraparound facilitation services (~~((see))~~) as described in WAC 388-877A-0350(~~(+)~~);

~~((+))~~ (e) Medication support services (~~((see))~~) as described in WAC 388-877A-0360(~~(+)~~); and

~~((+))~~ (f) Applied behavior analysis (ABA) services (~~((see))~~) as described in WAC 388-877A-0370(~~(+)~~).

(3) ~~((An))~~ A behavioral health agency (~~((providing))~~) that provides any recovery support service (~~((requiring))~~) that requires program-specific certification must:

(a) Be licensed by the department as a behavioral health agency(~~(-)~~);

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC(~~(-)~~); and

(c) Have policies and procedures (~~((to))~~) that support and implement the:

- (i) General requirements in chapter 388-877 WAC; and
- (ii) Applicable program-specific requirements.

(4) An agency that provides any recovery support service (~~((requiring))~~) that requires program-specific certification may operate through an agreement with a behavioral health agency that provides certified (~~((for an))~~) outpatient mental health (~~((service))~~) services listed in WAC 388-877A-0100(2). The agreement must specify the responsibility for initial assessments, the determination of appropriate services, individual service planning, and the documentation of these requirements.

(5) When providing any recovery support service requiring program-specific certification, (~~((an))~~) a behavioral health agency must:

(a) Have an assessment process to determine the appropriateness of the agency's services, based on the individual's needs and goals(~~(-)~~);

(b) Refer an individual to a more intensive level of care when appropriate(~~(-)~~); and

(c) With the consent of the individual, include the individual's family members, significant others, and other relevant treatment providers(~~(-)~~) as necessary to provide support to the individual.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877A-0330 Recovery support services (~~((requiring))~~) that require program-specific certification—Supported employment services. Supported employment services are (~~((a))~~) recovery support (~~((service))~~) services that (~~((requires))~~) require program-specific certification by the department's division of behavioral health and recovery. These services assist in (~~((training,))~~) job search, (~~((and))~~) placement services (~~((in order))~~), and training to help individuals find competitive jobs in their local communities.

(1) ~~((An))~~ A behavioral health agency (~~((providing))~~) that provides supported employment services must have knowl-

edge of and provide individuals access to employment and education opportunities by coordinating efforts with one or more entities that provide other rehabilitation and employment services, such as:

(a) The department's division of vocational rehabilitation (DVR). DVR provides supported employment under WAC 388-891-0840 by community rehabilitation program contract as described in WAC 388-892-0100;

(b) The department's community services offices;

(c) Community, trade, and technical colleges;

~~((+))~~ (d) The business community;

~~((+))~~ (e) WorkSource, Washington state's official site for online employment services;

~~((+))~~ (f) Washington state department of employment security; and

~~((+))~~ (g) Organizations (~~((providing))~~) that provide job placement within the community.

(2) ~~((An))~~ A behavioral health agency (~~((providing))~~) that provides supported employment services must:

(a) Ensure all staff members (~~((providing))~~) who provide direct services for employment are knowledgeable and familiar with services provided by the department's division of vocational rehabilitation(~~(-)~~);

(b) Conduct and document a vocational assessment in partnership with the individual that includes work history, skills, training, education, and personal career goals(~~(-)~~);

(c) Assist the individual to create an individualized job (~~((and/or))~~) and career development plan that focuses on the individual's strengths and skills(~~(-)~~);

(d) Assist the individual to locate employment opportunities that are consistent with the individual's skills, goals, and interests(~~(-)~~);

(e) Provide and document any outreach, job coaching, and support at the individual's worksite(~~(-)~~) when requested by the individual (~~((and/or))~~) or the individual's employer(~~(-)~~); and

(f) If the employer makes a request, provide information regarding the requirements of reasonable accommodations, consistent with the Americans with Disabilities Act (ADA) of 1990(~~(-)~~) and (~~((the))~~) Washington state anti-discrimination law.

NEW SECTION

WAC 388-877A-0335 Recovery support services that require program-specific certification—Supportive housing services. Supportive housing services are recovery support services that require program-specific certification by the department's division of behavioral health and recovery. Supportive housing services support an individual's transition to community integrated housing and support the individual to be a successful tenant in a housing arrangement.

(1) A behavioral health agency that provides supportive housing services must have knowledge of and provide housing related collaborative activities to assist individuals in identifying, coordinating, and securing housing or housing resources with entities such as:

(a) Local homeless continuum of care groups or local homeless planning groups;

(b) Housing authorities that operate in a county or city in the behavioral health organization's (BHO) regional service area;

(c) Community action councils that operate in a county or region in the BHO's regional service area;

(d) Landlords of privately owned residential homes; and

(e) State agencies that provide housing resources.

(2) A behavioral health agency that provides supportive housing services must:

(a) Ensure all staff members who provide direct services for supportive housing are knowledgeable and familiar with fair housing laws;

(b) Conduct and document a housing assessment in partnership with the individual that includes housing preferences, affordability, and barriers to housing;

(c) Conduct and document a functional needs assessment in partnership with the individual that includes independent living skills and personal community integration goals;

(d) Assist the individual to create an individualized housing acquisition and maintenance plan that focuses on the individual's choice in housing;

(e) Assist the individual to locate housing opportunities that are consistent with the individual's preferences, goals, and interests;

(f) Provide any outreach, tenancy support, and independent living skill building supports at a location convenient to the individual;

(g) Provide the individual with information regarding the requirements of the Fair Housing Act, Americans with Disabilities Act (ADA) of 1990, and Washington state anti-discrimination law, and post this information in a public place in the agency; and

(h) Ensure the services are specific to each individual and meant to assist in obtaining and maintaining housing in scattered-site, clustered, integrated, or single-site housing as long as the individual holds a lease or sub-lease.

SECTION SEVEN—SUBSTANCE USE DISORDER RECOVERY SUPPORT SERVICES THAT REQUIRE PROGRAM-SPECIFIC CERTIFICATION

NEW SECTION

WAC 388-877B-0700 Substance use disorder recovery support services that require program-specific certification—General. The rules in WAC 388-877B-0700 through 388-877B-0740 apply to behavioral health agencies that provide substance use disorder recovery support services that require program-specific certification. The definitions in WAC 388-877-0200 also apply to substance use disorder recovery support services.

(1) Recovery support services are considered nontreatment services provided to support an individual who has a need for interventions related to substance use disorders.

(2) Recovery support services require additional program-specific certification by the department's division of behavioral health and recovery and include:

(a) Supported employment services as described in WAC 388-877B-0730; and

(b) Supportive housing services as described in WAC 388-877B-0740.

(3) An agency that provides recovery support services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0700 through 388-877B-0740.

(4) A behavioral health agency that provides recovery support services must maintain and provide a list of resources, including self-help groups and referral options, that can be used by staff members to refer an individual to appropriate services.

NEW SECTION

WAC 388-877B-0710 Substance use disorder recovery support services that require program-specific certification—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing substance use disorder recovery support services that require program-specific certification must ensure:

(1) All substance use disorder assessment and counseling services are provided by a chemical dependency professional (CDP) or department of health-credential CDP trainee (CDPT) under the supervision of an approved supervisor.

(2) There is a designated clinical supervisor who:

(a) Is a CDP;

(b) Has documented competency in clinical supervision;

(c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. The monitoring must include a semi-annual review of a sample of the clinical records kept by the CDP; and

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(3) Each chemical dependency professional trainee has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(4) All staff members that provide individual care have a copy of an initial TB screen or test and any subsequent screenings or testing in their personnel files.

(5) All staff members are provided annual training on the prevention and control of communicable disease, bloodborne pathogens and TB, and document the training in their personnel files.

NEW SECTION

WAC 388-877B-0720 Substance use disorder recovery support services that require program-specific certification—Clinical record content and documentation. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing substance use disorder recovery support services that require program-specific certification must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation that the individual was informed of federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanctions.

(c) Documentation that the initial individual service plan was completed before treatment services are received.

(d) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(e) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and

(ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.

(B) Tuberculosis (TB) screen or test result.

(C) A record of the individual's detoxification and treatment history.

(D) The reason for the individual's transfer.

(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(f) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

(g) Documentation that staff members met with each individual at the time of discharge, unless the individual left without notice, to:

(i) Determine the appropriate recommendation for care and finalize a continuing care plan;

(ii) Assist the individual in making contact with necessary agencies or services; and

(iii) Provide and document the individual was provided with a copy of the plan.

(h) Documentation that a discharge summary was completed within seven days of the individual's discharge, including the date of discharge, a summary of the individual's progress towards each individual service plan goal, legal status, and if applicable, current prescribed medication.

(2) In addition to the requirements in subsection (1) of this section, an agency must ensure each individual service plan:

(a) Is personalized to the individual's unique treatment needs;

(b) Includes individual needs identified in the diagnostic and periodic reviews that address the following:

(i) All substance use needing treatment, including tobacco, if necessary;

(ii) The individual's bio-psychosocial problems;

(iii) Treatment goals;

(iv) Estimated dates or conditions for completion of each treatment goal; and

(v) Approaches to resolve the problem;

(c) Documents approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP;

(d) Documents that the plan was updated to reflect any changes in the individual's treatment needs, or as requested by the individual, at least once per month for the first three months, and at least quarterly thereafter; and

(e) Documents that the plan has been reviewed with the individual.

NEW SECTION

WAC 388-877B-0730 Substance use disorder recovery support services that require program-specific certification—Supported employment services. Supported employment services are substance use disorder recovery support services that require program-specific certification by the department's division of behavioral health and recovery. These services assist in job search, placement services, and training to help individuals find competitive jobs in their local communities.

(1) A behavioral health agency that provides supported employment services must have knowledge of and provide individuals access to employment and education opportunities by coordinating efforts with one or more entities that provide other rehabilitation and employment services, such as:

(a) The department's division of vocational rehabilitation (DVR), which provides supported employment under WAC 388-891-0840 by community rehabilitation program contract as described in WAC 388-892-0100;

(b) The department's community service offices;

(c) Community, trade, and technical colleges;

(d) The business community;

(e) WorkSource, Washington state's official site for online employment services;

(f) Washington state department of employment security; and

(g) Organizations that provide job placement within the community.

(2) A behavioral health agency that provides supported employment services must:

(a) Ensure all staff members who provide direct services for employment are knowledgeable and familiar with services provided by the department's division of vocational rehabilitation;

(b) Conduct and document a vocational assessment in partnership with the individual that includes work history, skills, training, education, and personal career goals;

(c) Assist the individual to create an individualized job and career development plan that focuses on the individual's strengths and skills;

(d) Assist the individual to locate employment opportunities that are consistent with the individual's skills, goals, and interests;

(e) Provide and document any outreach, job coaching, and support at the individual's worksite, when requested by the individual or the individual's employer; and

(f) If the employer makes a request, provide information regarding the requirements of reasonable accommodations, consistent with the Americans with Disabilities Act (ADA) of 1990 and Washington state anti-discrimination law.

NEW SECTION

WAC 388-877B-0740 Substance use disorder recovery support services that require program-specific certification—Supportive housing services. Supportive housing services are substance use disorder recovery support services that require program-specific certification by the department's division of behavioral health and recovery. Supportive housing services support an individual's transition to community integrated housing and support the individual to be a successful tenant in a housing arrangement.

(1) A behavioral health agency that provides supportive housing services must have knowledge of and provide housing related collaborative activities to assist individuals in identifying, coordinating, and securing housing or housing resources with entities such as:

(a) Local homeless continuum of care groups or local homeless planning groups;

(b) Housing authorities that operate in a county or city in the behavioral health organization's (BHO) regional service area;

(c) Community action councils that operate in a county or region in the BHO's regional service area;

(d) Landlords of privately owned residential homes; and

(e) State agencies that provide housing resources.

(2) A behavioral health agency that provides supportive housing services must:

(a) Ensure all staff members who provide direct services for supportive housing are knowledgeable and familiar with fair housing laws;

(b) Conduct and document a housing assessment in partnership with the individual that includes housing preferences, affordability, and barriers to housing;

(c) Conduct and document a functional needs assessment in partnership with the individual that includes independent living skills and personal community integration goals;

(d) Assist the individual to create an individualized housing acquisition and maintenance plan that focuses on the individual's choice in housing;

(e) Assist the individual to locate housing opportunities that are consistent with the individual's preferences, goals, and interests;

(f) Provide any outreach, tenancy support, and independent living skill building supports at a location convenient to the individual;

(g) Provide the individual with information regarding the requirements of the Fair Housing Act, Americans with Disabilities Act (ADA) of 1990, and Washington state anti-discrimination law, and post this information in a public place in the agency; and

(h) Ensure the services are specific to each individual and meant to assist in obtaining and maintaining housing in scattered-site, clustered, integrated, or single-site housing as long as the individual holds a lease or sub-lease.

WSR 17-17-029

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed August 8, 2017, 3:37 p.m., effective September 8, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Recreational salmon fishing rules based on North of Falcon recommendations change from year to year to reflect current resource availability and to achieve conservation goals. Amendments to recreational salmon fishing rules are needed to implement the agreed-upon changes.

Citation of Rules Affected by this Order: Amending WAC 220-312-030 Freshwater exceptions to statewide rules—Southwest, 220-312-050 Freshwater exceptions to statewide rules—Eastside, and 220-312-060 Freshwater exceptions to statewide rules—Columbia.

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

Adopted under notice filed as WSR 17-13-110 on June 20, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 8, 2017.

J. W. Unsworth
Director

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

WAC 220-312-030 Freshwater exceptions to statewide rules—Southwest. (1) Abernathy Creek and all tributaries including Cameron, Slide, and Wiest creeks (Cowlitz County):

(a) From the mouth to a point 500 feet downstream from the Abernathy Technology Center:

- (i) Barbless hooks are required for salmon and steelhead.
- (ii) Bass: No limit and no size restriction.
- (iii) Channel catfish: No limit.
- (iv) Walleye: No limit and no size restriction.
- (v) Open the first Saturday in June through August 31 and November 1 through March 15.

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

(A) First Saturday in June through August 31:

- (I) No minimum size for trout.
- (II) Release all fish except adipose clipped trout as evidenced by a healed scar at the location of the adipose fin.
- (III) Three hatchery trout limit.

(B) November 1 through March 15: Catch and release except up to 3 hatchery steelhead may be retained.

(C) Salmon:

- (I) Open November 1 through December 31.
- (II) Limit 6; up to 2 may be adults.
- (III) Only hatchery Chinook and hatchery coho may be retained.

(b) From 200 feet above Abernathy Falls to posted markers 500 feet downstream from the Abernathy Fish Technology Center: Closed.

(c) From 200 feet above Abernathy Falls upstream to source and all tributaries including Erick and Ordway creeks:

- (i) Open the first Saturday in June through August 31.
- (ii) Release all fish except adipose clipped trout as evidenced by a healed scar at the location of the adipose fin.
- (iii) Trout: No minimum size.
- (iv) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead. Three hatchery trout limit.
- (v) Selective gear rules apply.

(2) **Battle Ground Lake (Clark County):**

(a) Closed the Monday before Thanksgiving Day through Thanksgiving Day.

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

(c) Trout: It is unlawful to retain more than 2 fish twenty inches or greater in length.

(3) **Blue Creek (Lewis County), from the mouth to Spencer Road:**

(a) Closed from posted sign above rearing pond outlet to Spencer Road.

(b) Anti-snagging rule applies. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

- (c) Night closure in effect.
- (d) Open June 1 through April 14 for trout only:
- (i) Limit 5; minimum length 12 inches; it is unlawful to retain more than 3 hatchery steelhead.

(ii) Release wild cutthroat.

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

(e) Barbless hooks are required for salmon and steelhead.

(f) Salmon:

- (i) Open August 1 through December 31.
- (ii) Limit 6; up to 2 may be adults.

(ii) Only hatchery Chinook and hatchery coho may be retained.

(4) **Blue Lake (Cowlitz 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) Catch and release only.

(5) **Blue Lake Creek (Lewis County):** Selective gear rules apply.

(6) **Butter Creek (Lewis County):**

(a) Selective gear rules apply.

(b) Trout: Minimum length 10 inches.

(7) **Canyon Creek (Clark County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Trout: Limit 5.

(8) **Canyon Creek tributaries including Fly, Little Fly, Big Rock, Sorehead, Jakes, and Pelvey creeks (Clark/Skamania counties):** Open.

(9) **Carlisle Lake (Lewis County):**

(a) Open the fourth Saturday in April through last day in February.

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

(c) Landlocked salmon rules apply.

(10) **Carson Creek (Skamania County):** Selective gear rules apply.

(11) **Castle Lake (Cowlitz County):**

(a) Selective gear rules apply.

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

(c) Trout: Limit one; minimum length 16 inches.

(12) **Cedar Creek (tributary of N.F. Lewis) (Clark County):**

(a) From the mouth to Grist Mill Bridge:

(i) Open the first Saturday in June through August 31 and November 1 through March 15.

(ii) Selective gear rules apply.

(iii) Release all trout except anglers may retain up to 3 hatchery steelhead.

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

(v) Salmon:

(A) Open November 1 through December 31.

(B) Limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(b) From the Grist Mill Bridge to 100 feet upstream of the falls: Closed.

(c) From 100 feet upstream of the falls upstream:

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

(ii) Selective gear rules apply.

(iii) Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(13) **Cedar Creek tributaries including Bitter, Brush, Chelatchie, John, and Pup creeks (Clark County):** Selective gear rules apply.

(14) **Chinook River (Pacific County):** From the Highway 101 Bridge upstream to source:

- (a) Selective gear rules apply.
- (b) Bass: No limit and no size restriction.
- (c) Channel catfish: No limit.
- (d) Walleye: No limit and no size restriction.

(15) **Cispus River (Lewis County):** From the mouth to the falls, not including the North Fork:

(a) Open year-round, except closed to all angling within posted "Closed Waters" signs around the adult fish release site.

(b) Barbless hooks are required for salmon and steelhead.

(c) Release all trout except anglers may retain up to 2 hatchery steelhead.

(d) Fly fishing only from the North Fork to the falls.

(e) Salmon:

(i) Open year-round.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(16) **Cispus River, North Fork (Lewis County):**

(a) Selective gear rules apply.

(b) Trout: Release cutthroat.

(17) **Coal Creek (Cowlitz County):**

(a) From the mouth to 400 feet below the falls:

(i) Open the first Saturday in June through August 31 and November 1 through last day in February.

(ii) Selective gear rules apply.

(iii) Bass: No limit and no size restriction.

(iv) Channel catfish: No limit.

(v) Trout:

(A) Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(vi) Walleye: No limit and no size restriction.

(vii) Salmon:

(A) Open November 1 through December 31.

(B) Limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(b) From the falls to 400 feet downstream: Closed.

(c) From the falls upstream to source including all tributaries: Release all fish except trout.

(18) **Coldwater Lake (Cowlitz County):**

(a) The Coldwater Lake inlet and outlet streams are closed.

(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; minimum length 16 inches.

(19) **Cougar Creek (tributary to Yale Reservoir) (Cowlitz County):** Open the first Saturday in June through August 31.

(20) **Coweeman River (Cowlitz County):**

(a) Barbless hooks are required for salmon and steelhead.

(b) From the mouth to Baird Creek:

(i) Open the first Saturday in June through August 31 and November 1 through March 15.

(ii) Salmon:

(A) Open November 1 through December 31.

(B) Limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(c) From Baird Creek upstream to the source, open the first Saturday in June through August 31.

(d) Release all trout, except anglers may retain up to 3 hatchery steelhead.

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

(21) **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis County):**

(a) The upstream boundary of the reservoir in the Cowlitz arm is at the posted Lewis County PUD sign on Peters Road.

(b) The upstream boundary of the reservoir in the Cispus arm is at the posted markers at the Lewis County PUD kayak launch, approximately 1.5 miles upstream from the confluence of the Cowlitz and Cispus arms.

(c) Barbless hooks are required for salmon and steelhead.

(d) Open year-round.

(e) Trout:

(i) Release cutthroat.

(ii) Release rainbow trout, except those with a clipped adipose fin with a healed scar at the site of the clipped fin.

(iii) From September 1 through the last day in February: Limit 10.

(f) Salmon open year-round:

(i) Limit 6; up to 2 may be adults.

(ii) Minimum length 8 inches.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(22) **Cowlitz River (Lewis County):**

(a) From the boundary markers at the mouth to Mayfield Dam:

(i) The following areas are closed:

(A) From 400 feet or posted markers below Cowlitz Salmon Hatchery barrier dam to boundary markers near the Cowlitz Salmon Hatchery water intake approximately 1,700 feet upstream of the Cowlitz Salmon Hatchery barrier dam.

(B) From 400 feet below the Mayfield powerhouse upstream to Mayfield Dam.

(C) Within a 100 foot radius of the new Cowlitz Trout Hatchery outfall structure, except open to anglers with disabilities who permanently use a wheelchair and possess a designated harvester companion card within posted markers when adjacent waters are open.

(D) Within a 100 foot radius of the Cowlitz Salmon Hatchery wheelchair ramp (within the posted fishing boundary) except for anglers with disabilities **and** who have a designated harvester companion card.

(ii) Barbless hooks are required for salmon, steelhead, and cutthroat trout, except from the Lexington Drive Bridge (Sparks Road Bridge) at Lexington upstream to the barrier dam from June 1 through July 31.

(A) From the mouth to Lexington Bridge; August 1 through August 31 release all steelhead.

(B) From September 1 through October 31; only one hatchery steelhead may be retained.

(C) From August 1 through October 31; night closure in effect for all species.

(iii) Game fish other than trout: Open first Saturday in June through March 31.

(A) Bass: No limit and no size restriction.

(B) Channel catfish: No limit.

(C) Walleye: No limit and no size restriction.

(iv) From the mouth to Lexington Bridge, night closure from June 16 through October 31.

(v) From Lexington Bridge to the barrier dam, fishing 2 poles is permissible so long as the angler possesses a valid two-pole endorsement.

~~((iv))~~ (vi) From the mouth of Mill Creek to the Cowlitz Salmon Hatchery barrier dam:

(A) April 1 through November 30:

(I) Anti-snagging rule applies. Anglers may only retain fish hooked in the mouth when the anti-snagging rule applies.

(II) Night closure in effect.

(B) It is unlawful to fish from a floating device.

(C) May 1 through June 15: It is unlawful to fish from the south side of the river.

~~((v))~~ (vii) Trout: Open year-round.

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

(B) First Saturday in June through March 31:

(I) Limit 5; minimum length 12 inches.

(II) Up to 3 hatchery steelhead may be retained, except:

• From the mouth to the Lexington Drive/Sparks Road Bridge, release all steelhead August 1 through August 31.

• From the mouth to Lexington Drive/Sparks Road Bridge only one hatchery steelhead may be retained June 16 through July 31 and September 1 through October 31.

(III) Release wild cutthroat.

(C) April 1 through the Friday before the first Saturday in June: Release all fish, except anglers may retain up to 3 hatchery steelhead.

~~((vii))~~ (viii) Salmon:

(A) Open year-round.

(B) Limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(b) From the posted PUD sign on Peters Road to the Forest Road 1270 (old Jody's Bridge):

(i) Barbless hooks are required for salmon and steelhead.

(ii) Closed to all angling within posted "Closed Waters" signs around the adult fish release site.

(iii) September 1 through October 31: Anti-snagging rule applies and night closure in effect. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

~~((iii))~~ (iv) Open year-round: Release trout except anglers may retain up to 2 hatchery steelhead.

~~((iv))~~ (v) Salmon:

(A) Open year-round.

(B) Limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(23) Cowlitz River, Clear and Muddy Forks (Lewis County):

(a) Selective gear rules apply.

(b) Release cutthroat.

(24) Davis Lake (Lewis County): Open the fourth Saturday in April to last day in February.

(25) Deep River (Wahkiakum County):

(a) Game fish:

(i) Open year-round.

(ii) Trout: Release all trout except anglers may retain up to 2 hatchery steelhead.

(b) From mouth to town bridge:

(i) Channel catfish: No limit.

(ii) Walleye and bass: No limit and no size restriction.

(iii) Salmon:

(A) Open year-round.

(B) From March 1 through June 15, on days when the mainstem Columbia River recreational fishery below Bonneville Dam is open to the retention of Chinook salmon, the salmonid daily limit in Deep River is the same as in the adjacent mainstem Columbia. Otherwise:

(C) Limit 6, up to 2 may be adults.

(D) Only hatchery Chinook and hatchery coho may be retained.

(26) Delemeter Creek (Cowlitz County):

(a) Closed from 400 feet below to 200 feet above the temporary weir while the weir is installed in the creek.

(b) Release all fish except hatchery steelhead and hatchery cutthroat. Three hatchery trout limit. Mandatory hatchery steelhead retention.

(c) Selective gear rules apply.

(d) Salmon:

(i) Open August 1 through October 31.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(27) Dog Creek (Skamania County): From the falls upstream to the source, release all fish except trout.

(28) Drano Lake: In the waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Highway 14 Bridge:

(a) Barbless hooks are required for salmon and steelhead except from March 16 through June 30 and from October 1 through December 31.

(b) Closed on Wednesdays beginning the second Wednesday in April through June 30.

(c) Closed from 6 p.m. Tuesdays through 6 p.m. Wednesdays during the month of October.

(d) March 16 through ~~((June 30))~~ October 31: Night closure in effect.

(e) August 1 through December 31: Anti-snagging rule applies. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(f) May 1 through June 30 and October 1 through December 31:

(i) Each angler aboard a vessel may deploy salmon/steelhead angling gear until the salmon/steelhead limit for all anglers aboard has been achieved.

(ii) Two-pole fishing for salmon/steelhead is permissible so long as the angler possesses a two-pole endorsement.

(g) The area west of a line projected from the eastern-most pillar of the Highway 14 Bridge to a posted marker on the north shore is open only to bank fishing from April 16 through June 30.

(h) Open year-round.

(i) Bass: No limit and no size restriction.

(j) Channel catfish: No limit.

(k) Trout: Open January 1 through March 15; release trout, except anglers may retain up to 2 hatchery steelhead.

(l) Walleye: No limit and no size restriction.

(m) Salmon and steelhead: Open March 16 through December 31:

(i) From March 16 through (~~July 31~~) June 15: Limit 2 hatchery steelhead or 2 hatchery Chinook, or one of each.

(ii) From June 16 through July 31: Limit one hatchery steelhead or 2 hatchery Chinook, or one of each.

(iii) From August 1 through September 30: Limit 6; no more than 3 adult salmon, release all steelhead.

(iv) From (~~August 1 through December 31~~) October 1 through October 31: Limit 6; no more than 3 adults, of which only (~~2~~) one hatchery steelhead may be retained.

(v) From November 1 through December 31: Limit 6; no more than 3 adults, of which only 2 hatchery steelhead may be retained.

(29) Elochoman River (Wahkiakum County):

(a) The following areas are closed:

(i) From 200 feet above the department of fish and wildlife temporary weir downstream to Foster (Risk) Road Bridge while the weir is installed in the river.

(ii) September 1 through October 31: From 200 feet above the temporary weir upstream to the Elochoman Hatchery Bridge.

(b) From the mouth to West Fork:

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

(ii) August 1 through October 31: Anti-snagging rule, night closure, and stationary gear restriction apply. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(iii) August 1 through March 15: Barbless hooks are required for salmon and steelhead.

(iv) Trout: Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(c) From the mouth to the Elochoman Hatchery Bridge located 400 feet below the upper hatchery rack:

(i) Open the last Saturday in May through the Friday before the first Saturday in June for bass, channel catfish, salmon, steelhead, and walleye.

(ii) Selective gear rules apply.

(iii) Bass: No limit and no size restriction.

(iv) Channel catfish: No limit.

(v) Walleye: No limit and no size restriction.

(vi) Salmon and steelhead:

(A) Limit 6; up to 3 may be hatchery adult Chinook or hatchery steelhead, and no more than 2 may be salmon.

(B) Release wild Chinook salmon.

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

(vii) Salmon:

(A) Open the first Saturday in June through December 31.

(B) Limit 6; up to 2 may be adults.

(C) Only hatchery Chinook or hatchery coho may be retained.

(d) From West Fork upstream to the source:

(i) Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(iii) Salmon:

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

(B) Limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(30) Falls Creek (Cowlitz County):

(a) Selective gear rules apply.

(b) Bass: No limit and no size restriction.

(c) Channel catfish: No limit.

(d) Walleye: No limit and no size restriction.

(31) **Fort Borst Park Pond (Lewis County):** Open the fourth Saturday in April through the last day in February, except closed the Monday before Thanksgiving Day through Thanksgiving Day.

(32) **Franz Lake (Skamania County):** Closed.

(33) **Germany Creek (Cowlitz County)** and all tributaries including John and Loper creeks:

(a) Open the first Saturday in June through August 31 and November 1 through March 15.

(b) Selective gear rules apply.

(c) Bass: No limit and no size restriction.

(d) Channel catfish: No limit.

(e) Trout:

(i) Release all trout except anglers may retain up to 3 hatchery steelhead.

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

(f) Walleye: No limit and no size restriction.

(g) Salmon:

(i) Open November 1 through December 31.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(34) **Gobar Creek (tributary to Kalama River) (Cowlitz County):**

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

(b) Selective gear rules apply.

(c) Release all fish except adipose clipped trout as evidenced by a healed scar at the location of the adipose fin.

(d) Trout: No minimum size. Three hatchery fish limit.

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

(35) Goble Creek (Cowlitz County):

(a) Open the first Saturday in June through August 31 and November 1 through March 15.

(b) Release all fish except anglers may retain up to 3 hatchery steelhead.

(c) Selective gear rules apply.

(d) Salmon:

(i) Open November 1 through December 31.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(36) Grays River (Wahkiakum County): From the mouth to South Fork:

(a) Barbless hooks are required for salmon and steelhead.

(b) Open the first Saturday in June through March 15, except closed from Highway 4 Bridge to mouth of South Fork from October 16 through November 30.

(c) Closed from 400 feet below to 200 feet above the temporary weir while the weir is installed in the river.

(d) Anti-snagging rule, night closure and stationary gear restriction apply:

(i) From the mouth to the Highway 4 Bridge August 1 through November 15.

(ii) From the Highway 4 Bridge to the mouth of South Fork August 1 through October 15.

(iii) When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(e) Game fish:

(i) Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(iii) From the mouth to Highway 4 Bridge:

(A) Bass: No limit and no size restriction.

(B) Channel catfish: No limit.

(C) Walleye: No limit and no size restriction.

(f) From South Fork upstream to source, selective gear rules apply.

(g) Salmon:

(i) From the mouth to the Highway 4 Bridge: Open the first Saturday in June through December 31.

(A) Limit 6; up to 2 may be adults.

(B) Only hatchery Chinook or hatchery coho may be retained.

(C) Effective August 1, all Chinook must be adipose and/or ventral fin clipped to be kept.

(ii) From the Highway 4 Bridge to the South Fork: Open the first Saturday in June through October 15 and December 1 through December 31.

(A) Limit 6; up to 2 may be adults.

(B) Only hatchery Chinook or hatchery coho may be retained.

(C) Effective August 1, all Chinook must be adipose and/or ventral fin clipped to be kept.

(37) Grays River, East Fork (Wahkiakum County):

(a) Selective gear rules apply.

(b) Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(d) Salmon:

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

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(iv) Effective August 1, all Chinook must be adipose and/or ventral fin clipped to be kept.

(38) Grays River, South Fork (Wahkiakum County):

(a) Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(c) Selective gear rules apply.

(d) Salmon:

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

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(iv) Effective August 1, all Chinook must be adipose and/or ventral fin clipped to be kept.

(39) Grays River, West Fork (Wahkiakum County):

(a) Downstream from the hatchery intake/footbridge:

(i) Barbless hooks are required for salmon and steelhead.

(ii) Open the first Saturday in June through March 15, except closed October 16 through November 30 from the posted markers approximately 300 yards below the hatchery road bridge downstream to the mouth.

(iii) August 1 through November 15: Anti-snagging rule, night closure and stationary gear restriction apply. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(iv) From the first Sunday in June through March 15: Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(vi) Salmon: Open from first Saturday in June through December 31.

(A) Limit 6; up to 2 may be adults.

(B) Only hatchery Chinook or hatchery coho may be retained.

(C) Effective August 1, all Chinook must be adipose and/or ventral fin clipped to be kept.

(b) From the hatchery intake/footbridge upstream to source:

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

(ii) Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(c) Selective gear rules apply.

(d) Salmon:

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

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(iv) Effective August 1, all Chinook must be adipose and/or ventral fin clipped to be kept.

(40) Green River (Cowlitz County):

(a) From the mouth to Miner's Creek:

(i) Catch and release except up to 3 hatchery steelhead may be retained.

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

(iii) From August 1 through November 30, barbless hooks are required for salmon and steelhead.

(iv) The following areas are closed:

(A) From 400 feet above and 400 feet below the salmon hatchery rack (or from the posted signs above and below the salmon hatchery rack) when the rack is installed in the river.

(B) From 400 feet below to 400 feet above the water intake at the upper end of the hatchery grounds from September 1 through November 30.

(C) From the 2800 Bridge to Miner's Creek.

(v) September 1 through October 31: Anti-snagging rule applies and night closure in effect from the mouth to 400 feet below the salmon hatchery rack. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(vi) Open the last Saturday in May through November 30: From the last Saturday in May through the Friday before the first Saturday in June in the waters from the mouth to 400 feet below the Toutle Hatchery water intake: Selective gear rules apply.

(vii) Salmon:

(A) Open August 1 through November 30.

(B) Limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(b) From Miner's Creek upstream to the source:

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

(ii) Selective gear rules apply.

(iii) Catch and release only.

(41) Grizzly Lake (Skamania County): Closed.**(42) Hamilton Creek (Skamania County):**

(a) Selective gear rules apply.

(b) Bass: No limit and no size restriction.

(c) Channel catfish: No limit.

(d) Trout:

(i) Release all trout except anglers may retain up to 3 hatchery steelhead.

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

(e) Walleye: No limit and no size restriction.

(f) All tributaries downstream from the Highway 14 Bridge: Closed.

(g) Salmon:

(i) Open August 1 through October 31.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(43) Hemlock Lake (Trout Creek Reservoir) (Skamania County): Closed.**(44) Horseshoe Lake (Clark/Cowlitz counties):**

(a) Trout: It is unlawful to retain more than 2 trout 20 inches or more in length.

(b) Landlocked salmon rules apply.

(45) Icehouse Lake (Skamania County): It is unlawful to retain more than 2 trout 20 inches or greater in length.**(46) Indian Heaven Wilderness Lakes (Skamania County):** Trout limit 3.**(47) Johnson Creek (Lewis County) (Cowlitz River tributary):**

(a) Selective gear rules apply.

(b) Trout: Minimum length 10 inches.

(48) Kalama River (Cowlitz County):

(a) From boundary markers at the mouth upstream to 1,000 feet above the fishway at the upper salmon hatchery:

(i) Open year-round, except the following areas are closed:

(A) From 1,000 feet below to 1,000 feet above the fishway at upper salmon hatchery.

(B) From Modrow Bridge downstream to the markers 1,500 feet below the temporary rack when the rack is installed below Modrow Bridge.

(ii) Barbless hooks are required for salmon and steelhead.

(iii) Game fish:

(A) Release all fish except bass, channel catfish, trout, hatchery steelhead, and walleye.

(B) Bass: No limit and no size restriction.

(C) Channel catfish: No limit.

(D) Trout:

(I) Mandatory hatchery steelhead retention.

(II) No catch and release of hatchery steelhead.

(E) Walleye: No limit and no size restriction.

(iv) April 1 through October 31: Anti-snagging rule applies and night closure in effect from the railroad bridge below I-5 to the intake at the lower salmon hatchery. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(v) It is unlawful to fish from a floating device equipped with an internal combustion motor upstream of Modrow Bridge.

(vi) Open September 1 through October 31 for fly fishing only from the natural gas pipeline crossing to the posted deadline at the intake to the lower salmon hatchery.

(vii) From March 16 through the Friday before the first Saturday in June: Release all fish except anglers may retain up to 3 hatchery steelhead.

(viii) From the first Saturday in June through March 15: Release all fish except anglers may retain up to 3 adipose clipped trout as evidenced by a healed scar at the location of the adipose fin. No minimum size.

(ix) Salmon:

(A) Open year-round.

(B) Limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(b) From 1,000 feet above the fishway at the upper salmon hatchery, upstream to Summers Creek:

(i) Open year-round.

(ii) It is unlawful to fish from a floating device equipped with a motor.

(iii) Selective gear rules apply.

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

(v) From March 16 through the Friday before the first Saturday in June: Release all fish except anglers may retain up to 3 hatchery steelhead.

(vi) From the first Saturday in June through March 15: Release all fish except anglers may retain up to 3 adipose clipped trout as evidenced by a healed scar at the location of the adipose fin. No minimum size.

(c) From Summers Creek upstream to Kalama Falls:

(i) Closed from the 6420 Road (approximately one mile above the gate at the end of the county road) to Kalama Falls.

(ii) Open the first Saturday in June through March 31 for fly fishing only.

(iii) Release all fish, except anglers may retain up to 3 adipose clipped trout as evidenced by a healed scar at the location of the adipose fin.

(A) No minimum size.

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

(d) From Kalama Falls upstream to source: Open.

(49) **Kanaka Creek (Skamania County):** Selective gear rules apply.

(50) **Kidney Lake (Skamania County):** Open the fourth Saturday in April through last day in February.

(51) **Klineline Ponds (Clark County):**

(a) Closed the Monday before Thanksgiving Day through Thanksgiving Day.

(b) It is unlawful to retain more than 2 trout 20 inches or more in length.

(52) **Kress Lake (Cowlitz County):**

(a) Closed the Monday before Thanksgiving Day through Thanksgiving Day.

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

(c) It is unlawful to retain more than 2 trout 20 inches or more in length.

(d) Landlocked salmon rules apply.

(53) **Lacamas Creek (Clark County):**

(a) From the mouth to the footbridge at the lower falls:

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

(ii) Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(iv) Selective gear rules apply.

(b) From the footbridge at the lower falls upstream to the source: It is permissible to fish up to the base of Lacamas Lake Dam.

(c) From footbridge at lower falls and from Round Lake upstream to source and all tributaries (Clark County) including Spring Branch, Big Ditch, Fifth Plain Creek, Matney Creek, Buck Creek, David Creek, North Fork and East Fork Lacamas Creek (Clark County): Statewide season, minimum size, and limits apply.

(54) **Lacamas Creek, tributary of Cowlitz River (Lewis County):**

(a) Selective gear rules apply.

(b) Trout: Limit 3.

(c) Release all trout except anglers may retain hatchery steelhead and hatchery cutthroat.

(d) Salmon:

(i) Open August 1 through October 31.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(55) **Lewis River (Clark County):**

(a) Mouth to the mouth of Colvin Creek:

(i) Open year-round except the following areas are closed:

(A) From Johnson Creek upstream May 1 through May 31.

(B) Those waters shoreward of the cable buoy and cork-line at the mouth of the Lewis River Salmon Hatchery fish ladder.

(ii) Barbless hooks are required for salmon and steelhead.

(iii) Fishing 2 poles is permissible from Railroad Bridge near Kuhns Road upstream to Johnson Creek, so long as the angler possesses a two-pole endorsement.

(iv) Anti-snagging rule applies and night closure in effect from Johnson Creek to Colvin Creek June 1 through November 30 and April 1 through April 30. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(v) From mouth of Lewis River to the mouth of the East Fork Lewis River, night closure in effect June 16 through October 31 for all species.

(vi) Trout:

(A) Release all trout except anglers may retain up to 3 hatchery steelhead, except:

(I) From the mouth of the Lewis River to the mouth of the East Fork Lewis River, release all steelhead August 1 through August 31.

(II) From the mouth of the Lewis River to the mouth of the East Fork Lewis River, only one hatchery steelhead may be retained from June 16 through July 31 and September 1 through October 31.

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

~~((vi))~~ (vii) Salmon:

(A) Open January 1 through April 30: Limit 6 hatchery Chinook; only one may be an adult.

(B) Open August 1 through the fourth Friday in September:

(I) Limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(C) Open the fourth Saturday in September through December 31:

(I) Limit 6; up to 2 may be adults.

(II) Only Chinook and hatchery coho may be retained.

~~((viii))~~ (viii) Bass: No limit and no size restriction.

~~((viii))~~ (ix) Channel catfish: No limit.

~~((ix))~~ (x) Walleye: No limit and no size restriction.

(b) From the mouth of Colvin Creek to the overhead powerlines at Merwin Dam:

(i) Barbless hooks are required for salmon and steelhead.

(ii) Open June 1 through October 31 and December 16 through April 30.

(iii) Anti-snagging rule applies and night closure in effect April 1 through April 30 and June 1 through October

31. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(iv) Bass: No limit and no size restriction.

(v) Channel catfish: No limit.

(vi) Trout:

(A) Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(vii) Walleye: No limit and no size restriction.

(viii) Salmon:

(A) Open August 1 through October 31 and December 16 through April 30.

(B) From January 1 through April 30: Limit 6 hatchery Chinook; only one may be an adult.

(C) From August 1 through the fourth Friday in September:

(I) Limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(D) From the fourth Saturday in September through October 31 and December 16 through December 31:

(I) Limit 6; up to 2 may be adults.

(II) Only Chinook and hatchery coho may be retained.

(c) From the overhead powerlines below Merwin Dam to Merwin Dam: Closed.

(d) From the cable crossing 1,300 feet below Yale Dam to Yale Dam: Closed.

(e) From the old Lewis River streambed between Swift No. 1 Powerhouse and Swift No. 2 Powerhouse and Lewis River Power Canal upstream to fishing pier: Closed.

(f) Within Lewis River Power Canal from the fishing pier to the access road at Swift Dam:

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

(ii) It is unlawful to fish from a floating device.

(iii) Trout: Limit 5; no minimum size.

(A) From Eagle Cliff Bridge to the lower falls, including all tributaries: Selective gear rules apply.

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

(C) Catch and release only.

(g) From lower falls upstream and all tributaries including Copper, Alec, Quartz, Straight (tributary of Quartz), Snagtooth (tributary of Quartz), French (tributary of Quartz), Tillicum, Steamboat, Pin, Pass, Swampy, Riley, No Name (tributary of Riley), Big Spring (tributary of Riley), Mutton (tributary of Riley), and Boulder creeks (Skamania Co.): Statewide season, minimum size, and limits.

(56) Lewis River, East Fork (Clark/Skamania counties):

(a) The following areas are closed:

(i) From the posted markers at the lower end of Big Eddy to 100 feet above Lucia Falls.

(ii) From 400 feet below to 400 feet above Moulton Falls.

(iii) From 400 feet below Horseshoe Falls upstream, including all tributaries above Horseshoe Falls.

(b) From the mouth to 400 feet below Horseshoe Falls:

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

(ii) Barbless hooks are required for salmon and steelhead.

(iii) Release all trout except anglers may retain up to 3 hatchery steelhead.

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

(c) Salmon:

(i) Open August 1 through December 31.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(d) From the mouth to the top boat ramp at Lewisville Park:

(i) Additional hatchery steelhead season from April 16 through the Friday before the first Saturday in June.

(ii) Selective gear rules apply.

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

(iv) Release all fish except anglers may retain up to 3 hatchery steelhead.

(57) Little Ash Lake (Skamania County): It is unlawful to retain more than 2 trout 20 inches or more in length.

(58) Little Washougal River (Clark County):

(a) Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(c) Selective gear rules apply.

(d) Salmon:

(i) Open August 1 through October 31.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(59) Little White Salmon River (Skamania County) and all tributaries including Rock, Lapham, Lava, Moss, Wilson, Cabbage, Berry, Lusk, Homes, and Beetle creeks:

(a) Open the Saturday before Memorial Day through October 31, except Little White Salmon River is closed from the orange fishing boundary markers at Drano Lake upstream to the intake near the north boundary of the Little White Salmon National Fish Hatchery.

(b) Release all fish except trout.

(c) Trout: Limit 5.

(60) Love Lake (Clark County): Closed.

(61) Mayfield Lake (Reservoir) (Lewis County):

(a) Open from the Mayfield Dam to Onion Rock Bridge.

(b) From the Tacoma Power safety signs at Onion Rock Bridge to Mossyrock Dam: Closed.

(c) Trout:

(i) Minimum length 8 inches.

(ii) Release cutthroat and rainbow trout, except it is permissible to retain rainbow trout with a clipped adipose fin and a healed scar at the site of the clipped fin.

(iii) September 1 through last day in February: Limit 10.

(d) Salmon open September 1 through December 31:

(i) Minimum length 8 inches.

(ii) Limit 6, no more than 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(62) Merrill Lake (Cowlitz County):

- (a) Open for fly fishing only.
- (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (c) Catch and release only.

(63) Merwin Lake (Reservoir) (Clark/Cowlitz counties):

- (a) Landlocked salmon rules apply.
- (b) Kokanee: Limit 10; kokanee do not count as part of the trout limit.

(64) Merwin Lake (Reservoir) (Clark/Cowlitz counties) tributaries including Marble, Cape Horn, Day, Jim, Indian George, Squaw, Buncombe Hollow, Rock creeks, Speelyai Creek and its tributaries, Brooks, and West Fork creeks (except Canyon Creek): Statewide season, minimum size, and limits apply.**(65) Mill Creek (Cowlitz County):**

- (a) Open the first Saturday in June through August 31 and November 1 through March 15.
- (b) Selective gear rules apply.
- (c) Bass: No limit and no size restriction.
- (d) Channel catfish: No limit.
- (e) Trout:
 - (i) Release all trout except anglers may retain up to 3 hatchery steelhead.
 - (ii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
- (f) Walleye: No limit and no size restriction.
- (g) Salmon:
 - (i) Open November 1 through December 31.
 - (ii) Limit 6; up to 2 may be adults.
 - (iii) Only hatchery Chinook and hatchery coho may be retained.

(66) Mill Creek (Lewis County): From the mouth to the hatchery road crossing culvert.

- (a) Selective gear rules apply.
- (b) Open the first Saturday in June through October 31 and from December 1 through December 31.
- (c) Anti-snagging rule applies and night closure in effect December 1 through December 31. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.
- (d) Release all fish except anglers may retain up to 3 trout.
- (e) Release all trout except hatchery steelhead and hatchery cutthroat.
- (f) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
- (g) Salmon:
 - (i) Open August 1 through October 31 and December 1 through December 31.
 - (ii) Limit 6; up to 2 may be adults.
 - (iii) Only hatchery Chinook and hatchery coho may be retained.

(67) Mineral Lake (Lewis County): Open the fourth Saturday in April through September 30.**(68) Mulholland Creek (Cowlitz County):**

- (a) Open first Saturday in June through August 31 and November 1 through March 15.

- (b) Catch and release except anglers may retain up to 3 hatchery steelhead.

(c) Selective gear rules apply.**(d) Salmon:**

- (i) Open November 1 through December 31.
- (ii) Limit 6; up to 2 may be adults.
- (iii) Only hatchery Chinook and hatchery coho may be retained.

(69) Nelson Creek (Skamania County): Selective gear rules apply.**(70) Ohanapecosh Creek (tributary to Cowlitz River) (Lewis/Pierce counties):****(a) Selective gear rules apply.****(b) Trout:** Minimum length 12 inches.**(71) Olequa Creek (Lewis/Cowlitz counties):**

- (a) Closed from 400 feet below to 200 feet above the temporary weir while the weir is installed in the creek.

(b) Trout: Limit 3.

- (c) Release all trout except hatchery steelhead and hatchery cutthroat.

(d) Selective gear rules apply.

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

(f) Salmon:

- (i) Open August 1 through October 31.
- (ii) Limit 6; up to 2 may be adults.
- (iii) Only hatchery Chinook and hatchery coho may be retained.

(72) Ostrander Creek (Cowlitz County): Selective gear rules apply.**(73) Outlet Creek (Cowlitz County):****(a) First Saturday in June through November 30.****(b) Trout:**

- (i) Release all trout except anglers may retain up to 3 hatchery steelhead.

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

(c) Selective gear rules apply.**(d) Salmon:**

- (i) Open August 1 through November 30.
- (ii) Limit 6; up to 2 may be adults.
- (iii) Only hatchery Chinook and hatchery coho may be retained.

(74) Packwood Lake (Lewis County):

- (a) Closed: All inlet streams and the outlet from the log boom to the dam.

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

(c) Selective gear rules apply.

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

(e) Trout: Minimum length 10 inches.**(75) Plummer Lake (Lewis County):** Open the fourth Saturday in April through the last day in February.**(76) Rainey Creek (Lewis County):****(a) Open from the mouth to Highway 12.**

- (b) Trout limit 5; release cutthroat and rainbow trout, except it is permissible to retain rainbow trout that have a clipped adipose fin and a healed scar at the location of the clipped fin.

(77) Riffe Lake (Reservoir) (Lewis County):

(a) Open from Mossyrock Dam to Cowlitz Falls Dam, except closed from Cowlitz Falls Dam downstream to the Lewis County PUD safety signs located approximately 800 feet below the dam.

(b) It is permissible to fish up to the base of Swofford Pond Dam.

(c) Landlocked salmon rules apply.

(78) Riffe Lake (Reservoir) tributaries (Lewis County) (excluding Rainey Creek), including Sulphur, Simmons, Swigert, Shelton, Steel Canyon, Indian, Sand, Landers, Peterson, Goat, and Tumwater creeks: Statewide season, minimum size, and limits apply.

(79) Rock Creek (Skamania County):

(a) Open from the mouth to the falls at approximately river mile one.

(i) From the first Saturday in June through March 15.

(ii) Bass: No limit and no size restriction.

(iii) Channel catfish: No limit.

(iv) Walleye: No limit and no size restriction.

(v) Trout:

(A) Release all trout except anglers may retain up to 3 hatchery steelhead.

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

(b) Barbless hooks are required for salmon and steelhead.

(c) Salmon:

(i) Open August 1 through December 31.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(d) From the falls upstream to source/headwaters and all tributaries including Spring Creek, Hot Springs, Budweiser Creek, Forest Creek, Steep Creek, North Fork Rock Creek, and Snag Creek: Statewide seasons, minimum size, limits apply.

(80) Salmon Creek (Clark County): From the mouth to 182nd Avenue Bridge:

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

(b) Bass: No limit and no size restriction.

(c) Channel catfish: No limit.

(d) Walleye: No limit and no size restriction.

(e) Trout:

(i) Release all trout except anglers may retain up to 3 hatchery steelhead.

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

(f) Barbless hooks are required for salmon and steelhead.

(g) Salmon:

(i) Open August 1 through December 31.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(81) Salmon Creek (Lewis County):

(a) Release all fish except anglers may retain up to 3 hatchery trout.

(b) Release all trout except hatchery steelhead and hatchery cutthroat.

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

(d) Selective gear rules apply.

(e) Salmon:

(i) Open August 1 through October 31.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook or hatchery coho may be retained.

(82) Silver Lake (Cowlitz County): Crappie limit 10; minimum length 9 inches.

(83) Silver Creek (tributary to Cowlitz River) (Lewis County):

(a) Open from the mouth to USFS Road 4778.

(b) Selective gear rules apply.

(c) Trout: Minimum length 14 inches.

(84) Skamokawa Creek (Wahkiakum County):

(a) Open the first Saturday in June through August 31 and November 1 through March 15.

(b) Bass: No limit and no size restriction.

(c) Channel catfish: No limit.

(d) Walleye: No limit and no size restriction.

(e) Trout:

(i) Release all trout except anglers may retain up to 3 hatchery steelhead.

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

(f) Selective gear rules apply.

(g) Salmon:

(i) Open November 1 through December 31.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(85) Skate Creek (tributary to Cowlitz River) (Lewis County):

(a) Release all cutthroat.

(b) Selective gear rules apply.

(86) South Lewis County Park Pond (Lewis County): Closed the Monday before Thanksgiving Day through Thanksgiving Day.

(87) Spirit Lake (Skamania County): Closed.

(88) Stillwater Creek (Lewis County):

(a) Trout: Limit 3.

(i) Release all trout except hatchery steelhead and hatchery cutthroat.

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

(b) Selective gear rules apply.

(c) Salmon:

(i) Open August 1 through October 31.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(89) Swift Reservoir (Skamania County):

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

(b) Release all trout, except rainbow trout with a clipped adipose fin and a healed scar at the site of the clipped fin may be retained.

(c) From the posted markers approximately 3/8 mile below Eagle Cliff Bridge to the bridge: Selective gear rules apply.

(d) From the dam to the markers approximately 3/8 mile below Eagle Cliff Bridge: Trout limit 10 from September 1 through November 30.

(e) Salmon:

(i) Open the first Saturday in June through November 30.

(ii) Landlocked salmon rules apply.

(iii) Maximum length 15 inches.

(90) **Swift Reservoir tributaries (Skamania County)** including Ole, Swift, Worm, Diamond, Marble, Range, Drift, and Camp creeks: Selective gear rules apply.

(91) **Swofford Pond (Lewis County):** It is unlawful to fish from a floating device equipped with an internal combustion motor.

(92) **Tilton River (Lewis County):**

(a) Open year-round from the mouth to the West Fork, except closed to all angling within posted "Closed Waters" signs around the adult fish release site.

(b) Barbless hooks are required for salmon and steelhead.

(c) First Saturday in June through July 31: Selective gear rules apply.

(d) September 1 through October 31: Anti-snagging rule applies and night closure in effect. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(e) Release all trout except 2 hatchery steelhead may be retained.

(f) Salmon:

(i) Open year-round.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(93) **Tilton River, East, North, South and West Forks (Lewis County):**

(a) Selective gear rules apply.

(b) Trout: Minimum length 12 inches.

(94) **Toutle River (Cowlitz County):** From the mouth to the forks, and the North Fork from the mouth to the posted deadline below the fish collection facility:

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

(b) September 1 through October 15: Anti-snagging rule applies and night closure in effect on the North Fork from the confluence with the South Fork to the mouth of Green River. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(c) Barbless hooks are required for salmon and steelhead.

(d) Game fish:

(i) Release all fish except anglers may retain up to 3 hatchery steelhead.

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

(e) Salmon open August 1 through November 30:

(i) Limit 6; up to 2 may be adults.

(ii) Only hatchery Chinook and hatchery coho may be retained.

(95) **Toutle River, South Fork (Cowlitz County):**

(a) Release all fish except anglers may retain up to 3 hatchery steelhead.

(b) Trout:

(i) Barbless hooks are required for salmon and steelhead from August 1 through November 30.

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

(c) Salmon:

(i) Open August 1 through November 30.

(ii) Limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(d) From the mouth to 4700 Road Bridge:

(i) Open the last Saturday in May to the Friday before the first Saturday in June.

(ii) Selective gear rules apply.

(e) From the mouth to the 4100 Road Bridge:

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

(ii) From December 1 through March 15 selective gear rules apply.

(f) From 4100 Road Bridge upstream to source: Open the first Saturday in June through November 30.

(96) **Tunnel Lake (Skamania County):** It is unlawful to retain more than 2 trout 20 inches or more in length.

(97) **Vancouver Lake and all other waters west of Burlington Northern Railroad from the Columbia River drawbridge near Vancouver downstream to Lewis River (Clark County):**

(a) Vancouver Lake flushing channel and the lake shoreline 400 feet east and west of the channel exit: Closed April 1 through May 31.

(b) Chumming is permissible.

(c) Trout: Release all trout except anglers may retain up to 2 hatchery steelhead.

(98) **Walupt Lake (Lewis County):**

(a) All inlet streams are closed.

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

(c) Selective gear rules apply.

(d) Trout: Minimum length 10 inches.

(99) **Washougal River (Clark County):** From the mouth to the bridge at Salmon Falls:

(a) Closed from 1,000 feet (or posted markers) below to 200 feet above the temporary weir when the weir is installed in the river.

(b) Open the first Saturday in June through March 15.

(c) Barbless hooks are required for salmon and steelhead.

(d) Night closure in effect:

(i) Year-round from the mouth to Mount Norway Bridge.

(ii) August 1 through October 31 from Mount Norway Bridge upstream.

(e) Anti-snagging rule applies:

(i) July 1 through October 31 from the mouth to Mount Norway Bridge; and

(ii) August 1 through October 31 from Mount Norway Bridge upstream.

(iii) When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

- (f) Bass: No limit and no size restriction.
- (g) Channel catfish: No limit.
- (h) Trout:
- (i) Release all trout except anglers may retain up to 3 hatchery steelhead.
- (ii) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
- (i) Walleye: No limit and no size restriction.
- (j) Open from April 16 through the Friday before the first Saturday in June:
 - (i) Selective gear rules apply.
 - (ii) Bass: No limit and no size restriction.
 - (iii) Channel catfish: No limit.
 - (iv) Trout:
 - (A) Release all trout except anglers may retain up to 3 hatchery steelhead.
 - (B) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
 - (v) Walleye: No limit and no size restriction.
- (k) Salmon:
 - (i) Open August 1 through December 31.
 - (ii) Limit 6; up to 2 may be adults.
 - (iii) Only hatchery Chinook and hatchery coho may be retained.
- (100) Washougal River, West (North) Fork (Clark/Skamania counties):**
 - (a) From the mouth to the water intake at the department hatchery: Closed.
 - (b) From the intake at the department hatchery to the source:
 - (i) Open the first Saturday in June through March 15.
 - (ii) Trout:
 - (A) Release all trout except anglers may retain up to 3 hatchery steelhead.
 - (B) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
 - (c) Salmon:
 - (i) Open August 1 through December 31.
 - (ii) Limit 6; up to 2 may be adults.
 - (iii) Only hatchery Chinook and hatchery coho may be retained.
 - (d) Barbless hooks are required for salmon and steelhead.
- (101) Willame Lake (Lewis 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 2; minimum length 15 inches.
- (102) Wind River (Skamania County):**
 - (a) From the mouth to 100 feet above Shipherd Falls:
 - (i) Barbless hooks are required for salmon and steelhead except from March 16 through June 30.
 - (ii) Closed from 400 feet below to 100 feet above Shipherd Falls fish ladder, including all tributaries.
 - (iii) ~~(March)~~ June 16 through ((June 30)) October 31: Night closure in effect.
 - (iv) March 16 through 31: Closed from the Highway 14 Bridge upstream.

- (v) August 1 through October 31: Anti-snagging rule applies. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.
- (vi) May 1 through June 30:
 - (A) Anti-snagging rule applies from the Highway 14 Bridge upstream. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.
 - (B) From the mouth to the Highway 14 Bridge, each angler aboard a vessel may deploy salmon/steelhead angling gear until the salmon/steelhead limit for all anglers aboard has been achieved and two-pole fishing for salmon/steelhead is permissible so long as the angler possesses a two-pole endorsement.
 - (C) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.
- (vii) Open year-round.
- (viii) Bass: No limit and no size restriction.
- (ix) Channel catfish: No limit.
- (x) Trout:
 - (A) Open November 1 through March 15.
 - (B) Release all trout except anglers may retain up to 3 hatchery steelhead.
 - (xi) Salmon and steelhead:
 - (A) Open March 16 through ~~((July 31))~~ June 15:
 - (I) Limit 2; no more than 2 salmon, or 2 hatchery steelhead, or one of each, may be retained.
 - (II) Release wild Chinook.
 - (B) Open June 16 through July 31:
 - (I) Limit 2; no more than 2 salmon, or one adult salmon and one hatchery steelhead, may be retained.
 - (II) Release wild Chinook.
 - (C) Open August 1 through October 31:
 - (I) From the mouth to the Highway 14 Bridge, the limit and retention regulations for hatchery and wild fish follows the most liberal regulations of the mainstem Columbia and Wind rivers when both areas are open concurrently for salmon.
 - (II) From August 1 through August 31: Limit 6; up to 2 adult((s)) salmon may be retained. Release all steelhead.
 - (III) From September 1 through October 31: Limit 6; up to 2 adult salmon or one adult salmon and one hatchery steelhead may be retained.
 - (IV) Only hatchery Chinook or hatchery coho may be retained.
 - (II) Only hatchery Chinook or hatchery coho may be retained.
 - (xii) Walleye: No limit and no size restriction.
 - (b) From 100 feet above Shipherd Falls to Moore Bridge:
 - (i) The following areas are closed: All tributaries; from 400 feet below to 100 feet above Coffey Dam.
 - (ii) From 100 feet above Shipherd Falls to 800 yards downstream from Carson National Fish Hatchery:
 - (A) Open September 16 through November 30:
 - (I) Catch and release only.
 - (II) Selective gear rules apply.
 - (B) Salmon and steelhead open May 1 through June 30:
 - (I) Limit 2; no more than 2 salmon, or 2 hatchery steelhead, or one of each, may be retained;
 - (II) Mandatory hatchery steelhead retention. No catch and release of hatchery steelhead;
 - (III) Anti-snagging rule applies;
 - (IV) Only fish hooked inside the mouth may be retained;

(V) Night closure in effect.

(iii) From 800 yards downstream from Carson National Fish Hatchery to Moore Bridge open September 16 through November 30:

(A) Catch and release only.

(B) Selective gear rules apply.

(103) **Winston Creek (tributary to Cowlitz River)**

(Lewis County):

(a) Selective gear rules apply.

(b) Trout: Minimum length 10 inches.

(104) **Yale Reservoir (Cowlitz County):**

(a) Kokanee: Limit 16; kokanee do not count toward the trout limit.

(b) Landlocked salmon rules apply.

(105) **Yale Reservoir tributaries (Cowlitz and Clark counties)** excluding Cougar Creek and including Dog, Dry, Siouxon and its tributaries including North Siouxon, West, Horseshoe, Wildcat, Chinook, and Calamity creeks: State-wide season, minimum size and limits apply.

(106) **Yellowjacket Creek (tributary to Cispus River)**

(Lewis County):

(a) Selective gear rules apply.

(b) Trout: Minimum length 12 inches.

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

WAC 220-312-050 Freshwater exceptions to statewide rules—Eastside. (1) **Countywide freshwater exceptions to statewide rules:**

(a) All lake, pond, and reservoir inlets and outlets and irrigation canals, wasteways, and drains in Grant and Adams counties (except Crab Creek, Rocky Ford Creek and Ponds, Columbia Basin Hatchery Creek, Bobcat Creek, Coyote Creek, Hays Creek, Red Rock Creek, Sand Hollow Creek, and Lake Lenore inlet and outlet) are open year-round.

(b) In Adams, Douglas, Franklin, Grant, and Okanogan counties, except Zosel Dam (Okanogan River) and Enloe Dam (Similkameen River): It is permissible to fish up to the base of all dams.

(c) In Ferry, Lincoln, and Stevens counties: Unless otherwise provided in this section, all tributaries to Lake Roosevelt between Grand Coulee Dam and the Canadian border are open the Saturday before Memorial Day through October 31.

(2) **Aeneas Lake (Okanogan County):**

(a) Open the fourth Saturday in April through October 31 for fly fishing only.

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

(c) Trout: Limit one.

(3) **Ahtanum Creek, including North and Middle Forks (Yakima County):**

(a) Selective gear rules apply.

(b) Trout minimum length ten inches.

(c) In the North Fork, open from the mouth to Grey Rock Trailhead Bridge crossing and upstream from the mouth of Shellneck Creek.

(d) In the Middle Fork, open from the mouth to the A2000 Road Spur Road Bridge in NE Section 34 and

upstream of the A2800 Road Bridge at Tree Phones Campground.

(4) **Alta Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(5) **Amber Lake (Spokane County):**

(a) Selective gear rules apply.

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

(c) Open March 1 through November 30.

(i) From March 1 through the Friday before fourth Saturday in April, and October 1 through November 30: Catch and release only.

(ii) From the fourth Saturday in April through September 30:

(A) Trout: Limit two; minimum length fourteen inches.

(B) Release rainbow trout with a clipped adipose fin and a healed scar at the site of the clipped fin.

(6) **American River (Yakima County):**

(a) Selective gear rules apply.

(b) From the Highway 410 Bridge at river mile 5.4 to the Mesatchee Creek Trail crossing at river mile 15.8:

(i) Open the first Saturday in June to July 15.

(ii) Open September 16 to October 31.

(c) From the mouth to the Highway 410 Bridge at river mile 5.4 and upstream of the Mesatchee Creek Trail river crossing at river mile 15.8: Open the first Saturday in June through October 31.

(d) Trout minimum length ten inches in the mainstem only.

(e) American River tributaries, except Union and Kettle creeks: Open.

(7) **Amon Wasteway (Benton County):**

(a) Selective gear rules apply.

(b) Trout minimum length ten inches.

(8) **Asotin Creek, mainstem and forks (Asotin County):**

(a) It is unlawful to fish for steelhead.

(b) From SR 129 Bridge upstream to the forks: It is permissible to fish up to the base of Headgate Dam.

(c) Asotin mainstem and the mainstem North Fork from the mouth upstream to the USFS boundary: Selective gear rules apply.

(d) North Fork from the USFS boundary upstream and all other tributaries: Closed.

(e) South Fork and tributaries: Closed.

(9) **B.C. Mill Pond (Stevens County):** Open the fourth Saturday in April through October 31.

(10) **Badger Lake (Spokane County):** Open the fourth Saturday in April through September 30.

(11) **Banks Lake (Grant County):**

(a) Chumming is permissible.

(b) Crappie: Limit 10; minimum size 9 inches.

(c) Perch: Limit twenty-five.

(12) **Bayley Lake (Stevens County):**

(a) Inlet stream: Closed.

(b) Fly fishing only.

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

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

(i) From the fourth Saturday in April through July 4: Trout limit one; minimum length 14 inches.

(ii) From July 5 through October 31: Catch and release only.

(13) **Bear Creek (Yakima County) (tributary to South Fork Tieton River):** Open upstream of the Bear Creek Falls, approximately 3/4 mile upstream of USFS Road ((+070) 1000.

(14) **Bear Lake (Spokane County):** Open to juvenile anglers, licensed adults accompanied by a juvenile, and anglers with a disability who possess a designated harvester companion card only.

(15) **Beaver Lake (Columbia County):**

(a) Open March 1 through October 31.

(b) It is unlawful to fish from any floating device.

(16) **Beaver Lake (Big) (Okanogan County):** Open the fourth Saturday in April through October 31.

(17) **Beaver Lake (Little) (Okanogan County):** Open the fourth Saturday in April through October 31.

(18) **Beda Lake (Grant County):**

(a) Selective gear rules apply.

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

(c) Trout: Limit one.

(19) **Beehive (Lake) Reservoir (Chelan County):**

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

(b) From July 5 through October 31:

(i) Selective gear rules apply.

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

(iii) Catch and release only.

(20) **Bennington Lake (Mill Creek Reservoir) (Walla Walla County):**

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

(b) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(21) **Beth Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(22) **Big Four Lake (Columbia County):**

(a) Open March 1 through October 31 for fly fishing only.

(b) It is unlawful to fish from any floating device.

(c) Trout: Limit two.

(23) **Big Meadow Creek (Chelan County):** From the mouth upstream:

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) Trout:

(i) Rainbow trout: Catch and release only.

(ii) 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 for trout.

(d) Big Meadow Creek tributaries from the mouth of Big Meadow Creek upstream: Open the Saturday before Memorial Day through October 31.

(24) **Big Meadow Lake (Pend Oreille County):**

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

(b) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(25) **Big Tiffany Lake (Okanogan County):**

(a) Eastern brook trout: No limit; eastern brook trout do not count toward the trout limit.

(b) Cutthroat: Limit two.

(26) **Big Twin Lake (Okanogan 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.

(27) **Bird Creek (Klickitat County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Trout: Limit 5.

(28) **Blackbird Island Pond (Chelan County):** Open July 1 through September 30 for juvenile anglers only.

(29) **Black Lake (Okanogan County):**

(a) Selective gear rules apply.

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

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

(31) **Blockhouse Creek (Klickitat County):** Trout limit five.

(32) **Blue Lake (Columbia County):**

(a) It is unlawful to fish from any floating device.

(b) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(33) **Blue Lake (Grant County):** Open the fourth Saturday in April through September 30.

(34) **Blue Lake (near Sinlahekin) (Okanogan 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) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(e) Trout: Limit one.

(35) **Blue Lake (near Wannacut Lake) (Okanogan 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.

(36) **Bobcat Creek and Ponds (Adams County):** Open April 1 through September 30.

(37) **Bonaparte Creek (Okanogan County):** From the falls upstream to river mile 1.0, including all tributaries:

(a) Open the Saturday before Memorial Day through October 31.

- (b) Bass: No limit and no size restrictions.
- (c) Channel catfish: No limit.
- (d) Walleye: No limit and no size restrictions.
- (38) **Bonaparte Lake (Okanogan County):**
 - (a) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.
 - (b) Trout: It is unlawful to retain more than one trout over twenty inches in length.
- (39) **Boulder Creek and tributaries (Okanogan County):**
 - (a) From the mouth to the barrier falls at river mile 1.0:
 - (i) Open the Saturday before Memorial Day through August 15:
 - (ii) Selective gear rules apply.
 - (iii) Catch and release only.
 - (b) From barrier falls at river mile 1.0 upstream, including all tributaries:
 - (i) Open the Saturday before Memorial Day through October 31:
 - (ii) Eastern brook trout: Limit 10; eastern brook trout do not count toward the trout limit.
 - (c) Cutthroat: Limit 2.
- (40) **Bowman Creek (Klickitat County):** From Canyon Creek upstream to source: Trout limit 5.
- (41) **Box Canyon Creek and tributaries (Kittitas County):** Upstream from the 20 foot waterfall approximately 2 miles upstream of the mouth to the USFS Road #4930 Bridge: Selective gear rules apply. Open the first Saturday in June through October 31.
- (42) **Browns Creek (Pend Oreille County):**
 - (a) Open the Saturday before Memorial Day until October 31.
 - (b) Fly fishing only.
- (43) **Browns Lake (Pend Oreille County):**
 - (a) Open the fourth Saturday in April through October 31.
 - (b) Fly fishing only.
 - (c) It is unlawful to fish from a floating device equipped with a motor.
 - (d) Trout: It is unlawful to retain more than one trout greater than 11 inches in length.
- (44) **Buck Creek and tributaries (Chelan County):**
 - (a) Open the Saturday before Memorial Day through October 31 from the mouth of Buck Creek upstream.
 - (b) Selective gear rules apply.
 - (c) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (45) **Bumping Lake (Reservoir) (Yakima County):**
 - (a) It is permissible to fish two poles, so long as the angler possesses a valid two-pole endorsement.
 - (b) Chumming is permissible.
 - (c) Kokanee: Limit sixteen; kokanee do not count towards the trout limit.
- (46) **Bumping River (Yakima County):**
 - (a) It is permissible to fish up to the base of Bumping Dam.
 - (b) From the mouth to Bumping Reservoir, including all tributaries except American River:
 - (i) Selective gear rules apply.
 - (ii) Trout minimum size ten inches.
- (c) From Bumping Lake upstream, including all tributaries except Deep Creek: Open the Saturday before Memorial Day through October 31.
- (47) **Burbank Slough (Walla Walla County):** It is unlawful to fish from any floating device in the area east and north of Highway 12, except for the channel east of Highway 12 up to the fish screen at the Number 3 Pumping Station.
- (48) **Burke Lake (Grant County):** Open March 1 through July 31.
- (49) **Buttermilk Creek (Okanogan County), including all tributaries:**
 - (a) Open the Saturday before Memorial Day through August 15.
 - (b) Catch and release only.
 - (c) Selective gear rules apply.
- (50) **Buzzard Lake (Okanogan County):**
 - (a) Open the fourth Saturday in April through October 31.
 - (b) Selective gear rules apply.
 - (c) Trout: Limit one.
- (51) **Caldwell Lake (Pend Oreille County):**
 - (a) Open the fourth Saturday in April through October 31.
 - (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
 - (c) Trout: Limit two; minimum length twelve inches.
- (52) **Caliche Lakes, Upper (Grant County):** Open March 1 through July 31.
- (53) **Calispell Creek (Calispell River) (Pend Oreille County):**
 - (a) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.
 - (b) From the mouth to Calispell Lake: Open year-round.
 - (c) From Calispell Lake upstream to the source:
 - (i) Selective gear rules apply.
 - (ii) Open the Saturday before Memorial Day through October 31.
- (54) **Calispell Creek tributaries (Pend Oreille County):**
 - (a) Open the Saturday before Memorial Day through October 31.
 - (b) Selective gear rules apply.
 - (c) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.
- (55) **Campbell Lake (Okanogan County):**
 - (a) Open year-round.
 - (b) April 1 through August 31.
 - (i) Selective gear rules apply.
 - (ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.
 - (iii) Catch and release only.
- (56) **Carl's Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.
- (57) **Cascade Lake (Grant County):** Open March 1 through July 31.
- (58) **Cattail Lake (Grant County):** Open April 1 through September 30.

(59) Cedar Creek (Okanogan County):

(a) From the mouth to Cedar Falls: Open the Saturday before Memorial Day through August 15.

(i) Selective gear rules apply.

(ii) Catch and release only.

(b) Cedar Creek and all tributaries above Cedar Falls:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(60) Cedar Creek and tributaries (Pend Oreille County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.

(61) **Cedar Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(62) Chain Lake (Pend Oreille County):

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

(b) Release kokanee.

(63) Chapman Lake (Spokane County):

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

(b) Chumming is permissible.

(c) Kokanee: Limit ten; kokanee do not count toward the trout limit.

(64) Chelan Lake (Chelan County):

(a) South of a line from Purple Point at Stehekin and Painted Rocks:

(i) Within 400 feet of all tributaries: Closed.

(ii) Trout:

(A) Release wild cutthroat.

(B) Kokanee and lake trout do not count toward the trout limit.

(iii) Kokanee: Limit 10; no minimum size.

(iv) Lake trout: No limit; no minimum size.

(v) Salmon open year-round: Daily limit 1; no minimum size.

(b) North of a line between Purple Point at Stehekin and Painted Rocks:

(i) Lake trout open year-round: No limit.

(ii) Salmon open year-round: Limit 1; minimum length 15 inches.

(iii) From August 1 through March 31:

(A) Trout:

(I) Release wild cutthroat.

(II) Kokanee and lake trout do not count toward the trout limit.

(B) Kokanee: Limit 10.

(65) Chelan Lake tributaries (Chelan County):

(a) Open August 1 through September 30 from the mouths upstream one mile, except Stehekin River.

(b) Selective gear rules apply.

(c) Trout: Release wild cutthroat.

(66) **Chelan River (Chelan County):** From the railroad bridge to the Chelan ((P.U.D.)) PUD safety barrier below the power house:

(a) Open May 15 through August 31.

(b) July 1 through October 15: Anti-snagging rule and night closure in effect.

(c) Trout: Catch and release only.

(d) Salmon:

(i) Open July 1 through October 15.

(ii) Barbless hooks required.

(iii) Minimum size 12 inches; limit 4; no more than 2 adult hatchery Chinook may be retained.

(iv) Release ((sookeye,)) coho and wild adult Chinook.

(67) Chewuch River (Okanogan County):

(a) From the mouth to Eight Mile Creek:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

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

(iv) Catch and release only.

(b) From the mouth to Pasayten Wilderness boundary falls: Open December 1 through March 31 for whitefish only; whitefish gear rules apply.

(c) From the Pasayten Wilderness boundary falls upstream, including tributaries: Open the Saturday before Memorial Day through October 31.

(68) Chikamin Creek and all tributaries (Chelan County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) Trout:

(i) Rainbow trout are catch and release only.

(ii) 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 for trout.

(69) Chiwaukum Creek and all tributaries from Fool Hen Creek upstream, not including Fool Hen Creek (Chelan County):

(a) Selective gear rules apply.

(b) Open the Saturday before Memorial Day through October 31.

(c) Chiwaukum Creek tributaries from mouth of Chiwaukum Creek to Fool Hen Creek, including Fool Hen Creek: Open the Saturday before Memorial Day through October 31.

(70) Chiwawa River and all tributaries from Buck Creek upstream, including Buck Creek (Chelan County):

(a) Selective gear rules apply.

(b) Open the Saturday before Memorial Day through October 31.

(c) Chiwawa River tributaries from the mouth to Buck Creek, except Big Meadow, Buck, Chikamin, Clear, Phelps and Rock creeks: Open the Saturday before Memorial Day through October 31.

(71) Chopaka Lake (Okanogan County):

(a) Open the fourth Saturday in April through October 31 for fly fishing only.

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

(c) Trout: Limit one.

(72) **Chumstick Creek (Chelan County):** From the mouth upstream:

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) Trout:

(i) Rainbow trout, catch and release only.

(ii) Eastern brook trout: Limit 16. 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 for trout.

(d) Chumstick Creek tributaries from the mouth of Chumstick Creek upstream: Open the Saturday before Memorial Day through October 31.

(73) **Clear Creek (Chelan County):** Closed.

(74) **Clear Lake (Chelan County):**

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

(b) From July 5 through October 31:

(i) Selective gear rules apply.

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

(c) Catch and release only.

(75) **Clear Lake (Spokane County):** Open the fourth Saturday in April through October 31.

(76) **Cle Elum Lake (Reservoir) (Kittitas County):**

(a) Trout: Lake trout, brown trout, and eastern brook trout are not included in the trout limit.

(b) Kokanee: Minimum length 9 inches and maximum length 15 inches.

(77) **Cle Elum River (Kittitas County):**

(a) From the mouth to Cle Elum Dam:

(i) Open year-round.

(ii) Selective gear rules apply.

(iii) Trout: Catch and release only.

(iv) It is permissible to fish up to the base of Cle Elum Dam.

(v) December 1 through January 31: Whitefish gear rules apply.

(b) From above Cle Elum Lake to outlet of Hyas Lake (not including Tucquala Lake):

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) Trout minimum size ten inches.

(c) All tributaries to Cle Elum River above Cle Elum Lake to outlet of Hyas Lake not otherwise provided for in this section: Open the Saturday before Memorial Day through October 31.

(78) **Cliff Lake (Grant County):** Open March 1 through July 31.

(79) **Coffee Pot Lake (Lincoln County):**

(a) Open March 1 through September 30.

(b) Selective gear rules apply.

(c) Crappie: Limit ten; minimum length nine inches.

(d) Trout: Limit one; minimum length eighteen inches.

(80) **Columbia Basin Hatchery Creek (Grant County):**

(a) Open April 1 through September 30 from the hatchery outflow to the confluence with Rocky Coulee Wasteway.

(b) Open to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

(c) Trout: Limit 3; no minimum size.

(81) **Columbia Park Pond (Benton County):**

(a) Open to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

(b) All species: Limit 5 fish combined.

(82) **Columbia River tributaries (all independent tributaries in Kittitas County between Wanapum Dam and Chelan County boundary line):**

(a) Selective gear rules apply.

(b) Trout minimum size ten inches.

(83) **Colville River (Stevens County):**

(a) From the mouth to the bridge at town of Valley:

(i) Open year-round.

(ii) Trout:

(A) Limit 5.

(B) From October 1 through November 30, no more than 2 brown trout may be retained.

(iii) Walleye: Limit 16; no size restrictions.

(b) All tributaries to Colville River, from the mouth to the bridge at the town of Valley, open the Saturday before Memorial Day through October 31.

(c) From the bridge at the town of Valley upstream, including tributaries:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(84) **Conconully Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(85) **Conconully Reservoir (Okanogan County):** Open the fourth Saturday in April through October 31.

(86) **Conger Pond (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(87) **Conner Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(88) **Coot Lake (Grant County):** Open April 1 through September 30.

(89) **Corral Creek (Benton County):**

(a) Selective gear rules apply.

(b) Trout minimum size ten inches.

(90) **Cottonwood Creek (Lincoln County):** Open year-round.

(91) **Cottonwood Creek (Walla Walla County):** Closed.

(92) **Cougar Lake (Pasayten Wilderness) (Okanogan County):**

(a) Selective gear rules apply.

(b) It is permissible to fish two poles so long as the angler possesses a two-pole endorsement.

(93) **Cougar Lake (near Winthrop) (Okanogan County):**

(a) Open year-round.

(b) Selective gear rules apply.

(c) From April 1 through August 31:

(i) Catch and release only.

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

(94) **Coyote Creek and Ponds (Adams County):** Open April 1 through September 30.

(95) **Crab Creek (Adams/Grant/Lincoln counties):**

(a) From the mouth to Morgan Lake Road in Section 36: Open April 1 through September 30.

(b) From Morgan Lake Road in Section 36 to O'Sullivan Dam (including Marsh Unit I and II impoundments): Closed.

(c) From the confluence of the Moses Lake outlets to Sand Dune Rd. (including all tributaries):

(i) Open year-round.

(ii) For minimum size and limits see Potholes Reservoir Rules (Eastside Lakes).

(iii) All species from March 1 through May 31: Only one single-point hook 3/4 inch or less measured from point to shank may be used.

(d) From the fountain buoy and shoreline markers or 150' downstream of the Alder Street fill to Grant County Rd. 7 (including all tributaries except Columbia Basin Hatchery Creek):

(i) Open year-round.

(ii) For minimum size and limits see Moses Lake Rules (Eastside Lakes).

(iii) All species from March 10 through May 31: Only one single-point hook 3/4 inch or less measured from point to shank may be used.

(e) Above Grant County Rd. 7 (including all tributaries, except Goose Creek in the city of Wilbur): Open year-round.

(96) **Crawfish Lake (Okanogan 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.

(97) **Crescent Lake (Pend Oreille County):** Open the Fourth Saturday in April through October 31.

(98) **Crystal Lake (Grant County):** Open March 1 through July 31.

(99) **Cup Lake (Grant County):** Open March 1 through July 31.

(100) **Curl Lake (Columbia County):**

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

(b) It is unlawful to fish from any floating device.

(c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(101) **Dalton Lake (Franklin County):** It is unlawful to retain more than 2 trout over 13 inches in length.

(102) **Davis Lake (Ferry County):** Open the fourth Saturday in April through October 31.

(103) **Davis Lake (Okanogan County):**

(a) Open year-round.

(b) April 1 through August 31:

(i) Selective gear rules apply.

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

(iii) Catch and release only.

(104) **Davis Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(105) **Dayton Pond (Columbia County):**

(a) Open to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

(b) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(106) **Deadman Lake (Adams County):** Open April 1 through September 30.

(107) **Deep Creek (tributary to Bumping Lake) (Yakima County):** Upstream from the waterfall approximately 1/3 mile above the second bridge crossing on USFS Road 1808 upstream: Open the Saturday before Memorial Day through October 31.

(108) **Deep Lake (Grant County):** Open the fourth Saturday in April through September 30.

(109) **Deep Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(110) **Deer Lake (Columbia County):**

(a) Open March 1 through October 31.

(b) It is unlawful to fish from any floating device.

(c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(111) **Deer (Deer Springs) Lake (Lincoln County):** Open the fourth Saturday in April through September 30.

(112) **Deer Lake (Stevens County):**

(a) Open March 1 through October 31.

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

(113) **Diamond Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(114) **Dog Lake (Yakima County):** It is unlawful to retain more than 1 trout over 14 inches in length.

(115) **Domerie Creek (Kittitas County):**

(a) Selective gear rules apply.

(b) Trout minimum size ten inches.

(116) **Downs Lake (Lincoln/Spokane counties):**

(a) Open March 1 through September 30.

(b) Crappie: Limit ten; minimum length nine inches.

(117) **Dry Falls Lake (Grant County):**

(a) Open April 1 through November 30.

(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.

(118) **Dune Lake (Grant County):**

(a) Selective gear rules apply.

(b) Trout: Limit one.

(119) **Dusty Lake (Grant County):**

(a) Open March 1 through November 30.

(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.

(120) **Early Winters Creek (Okanogan County):**

From the mouth upstream; including all tributaries except Cedar Creek:

(a) Open the Saturday before Memorial Day through August 15.

(b) Selective gear rules apply.

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

- (d) Catch and release only.
- (121) **East Little Walla Walla River (Walla Walla County):** Closed.
- (122) **Eightmile Lake (Chelan County):** It is unlawful to retain more than two mackinaw as part of the trout limit.
- (123) **Elbow Lake (Stevens County):** Open the fourth Saturday in April through October 31.
- (124) **Ell Lake (Okanogan 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.
- (125) **Ellen Lake (Ferry County):**
- (a) Open the fourth Saturday in April through October 31.
- (b) Release all fish, except anglers may retain up to five rainbow trout.
- (126) **Eloika Lake (Spokane County):** Crappie limit ten; minimum length nine inches.
- (127) **Lake Entiat (Col.R.) tributaries (Chelan/Douglas County):** Open the Saturday before Memorial Day through October 31 from Rocky Reach Dam to Wells Dam, except the Entiat River, Chelan River and Chelan Hatchery Creek.
- (128) **Entiat River (Chelan County):**
- (a) From mouth (railroad bridge) to the boundary marker/markers located approximately 1,500 feet upstream of the upper Roaring Creek Road Bridge (immediately downstream of the Entiat National Fish Hatchery): Salmon open July ((25)) 15 through September 30.
- (i) Selective gear rules apply.
- (ii) Night closure in effect.
- (iii) Minimum size 12 inches; limit 2 adult hatchery Chinook salmon.
- (iv) Release coho and wild adult Chinook.
- (b) From mouth (railroad bridge) to Entiat Falls: Whitefish open December 1 through March 31; Whitefish gear rules apply.
- (c) Entiat River tributaries from the mouth to Entiat Falls, except the Mad River and Roaring Creek: Open the Saturday before Memorial Day through October 31.
- (d) Entiat River and all tributaries above Entiat Falls:
- (i) Open the Saturday before Memorial Day through October 31.
- (ii) Selective gear rules apply.
- (iii) Trout:
- (A) Limit 5; it is unlawful to retain more than one trout greater than 12 inches in length.
- (B) Eastern brook trout: Limit 10. 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 for trout.
- (129) **Ephrata Lake (Grant County):** Closed.
- (130) **Empire Lake (Ferry County):** Open the fourth Saturday in April through October 31.
- (131) **Esquatzel Coulee (Franklin County):** Open year-round.
- (132) **Esquatzel Coulee, West Branch (Franklin County):** Open year-round.
- (133) **Fan Lake (Pend Oreille County):**
- (a) Open the fourth Saturday in April through September 30.
- (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (134) **Ferry Lake (Ferry County):** It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.
- (135) **Fio Rito Lakes (Kittitas County):** It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (136) **Fish Lake (Chelan County):**
- (a) Perch: Limit 25.
- (b) Trout: It is unlawful to retain more than 2 trout over 15 inches in length.
- (137) **Fish Lake (Ferry County):** Open the fourth Saturday in April through October 31.
- (138) **Fish Lake (Okanogan County):** Open the fourth Saturday in April through October 31.
- (139) **Fish Lake (Spokane County):**
- (a) Open the fourth Saturday in April through September 30.
- (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (140) **Fishhook Pond (Walla Walla County):**
- (a) Open March 1 through October 31.
- (b) It is unlawful to fish from a floating device.
- (c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.
- (141) **Fishtrap Lake (Lincoln/Spokane counties):** Open the fourth Saturday in April through September 30.
- (142) **Forde Lake (Okanogan County):** Open the fourth Saturday in April through October 31.
- (143) **Fourth of July Lake (Adams/Lincoln counties):**
- (a) Open the first Friday after Thanksgiving through March 31.
- (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (c) Trout: It is unlawful to retain more than two trout over fourteen inches in length.
- (144) **Frater Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.
- (145) **Frenchman Hills Lake (Grant County):** Open February 1 through September 30.
- (146) **Gadwall Lake (Grant County):** Open April 1 through September 30.
- (147) **Garfield Juvenile Pond (Whitman County):** Open to juvenile anglers only.
- (148) **Gillette Lake (Stevens County):** Open the fourth Saturday in April through October 31.
- (149) **Goat Creek (Okanogan County):** From the mouth upstream including all tributaries:
- (a) Open the Saturday before Memorial Day through August 15.
- (b) Selective gear rules apply.
- (c) Catch and release only.
- (150) **Golf Course Pond (Asotin County):** It is unlawful to retain more than 2 trout over 13 inches in length.

(151) **Goose Creek (Lincoln County), within the city limits of Wilbur:** Open year-round to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

(152) **Goose Lake, Lower (Grant County):**

(a) Bluegill: It is unlawful to retain more than five fish over six inches in length.

(b) Crappie: Limit ten; minimum length nine inches.

(153) **Grande Ronde River (Asotin County):**

(a) General river rules:

(i) For all portions of the Grande Ronde River and its tributaries that are open to game fish angling:

(A) Bass: No limit.

(B) Channel catfish: No limit.

(C) Walleye: No limit and no size restrictions.

(ii) From September 15 through March 15: It is unlawful to fish from a floating device equipped with an internal combustion motor.

(b) Rules by river section:

(i) From the mouth to County Road Bridge, about 2.5 miles upstream:

(A) Open year-round for game fish other than trout.

(B) September 1 through May 31: Selective gear rules apply.

(C) Trout:

(I) Minimum length 10 inches.

(II) No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(III) From January 1 through April 15: Mandatory hatchery steelhead retention; daily limit 2, except anglers may retain up to 3 hatchery steelhead.

(IV) From April 16 through December 31: Maximum length 20 inches; steelhead catch and release only.

(ii) From County Road Bridge upstream to the Oregon state line and all tributaries, except Wenaha River tributaries:

(A) Open the first Saturday in June through October 31:

(I) Trout: No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(II) Anglers may retain up to 3 hatchery steelhead.

(B) From the first Saturday in June through August 31: Selective gear rules apply.

(C) From September 1 through April 15: It is unlawful to use anything other than barbless hooks.

(D) Open November 1 through April 15, except all tributaries are closed.

(E) Release all fish except anglers may retain up to 15 whitefish and 3 hatchery steelhead.

(F) From January 1 through April 15 mandatory hatchery steelhead retention. No catch and release of hatchery steelhead.

(154) **Granite Creek and tributaries (Pend Oreille County):** Closed.

(155) **Green Lake (Upper) (Okanogan County):**

(a) Open year-round.

(b) March 1 through November 30:

(i) Selective gear rules apply.

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

(iii) Catch and release only.

(156) **Green Lake (Lower) (Okanogan County):**

(a) Open year-round.

(b) March 1 through November 30:

(i) Selective gear rules apply.

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

(iii) Catch and release only.

(157) **Grimes Lake (Douglas County):**

(a) Open June 1 through August 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.

(158) **Halfmoon Lake (Adams County):** Open April 1 through September 30.

(159) **Halfmoon Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(160) **Hampton Lakes, Lower and Upper (Grant County):**

(a) Open April 1 through September 30.

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

(161) **Harris Lake (Grant County):**

(a) Selective gear rules apply.

(b) Trout: Limit one.

(162) **Harvey Creek (tributary to Sullivan Lake) (Pend Oreille County) and tributaries:**

(a) From the mouth to Bridge 4830 on county road (about 1 1/2 miles): Closed.

(b) From Bridge 4830 upstream: Selective gear rules apply.

(163) **Hatch Lake (Stevens County):**

(a) Open the first Friday after Thanksgiving through March 31.

(b) Release all fish, except up to five rainbow trout may be retained.

(164) **Hawk Creek and tributaries (Lincoln County) upstream of the Falls at Hawk Creek Campground:** Open year-round.

(165) **Hays Creek and Ponds (Adams County):** Open April 1 through September 30.

(166) **Headgate Pond (Asotin County):** Open the fourth Saturday in April through October 31 to juvenile anglers, seniors, and anglers with a disability who possess a designated harvester companion card only.

(167) **Hen Lake (Grant County):** Open April 1 through September 30.

(168) **Heritage Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(169) **Hog Canyon Creek (Spokane County):** Open year-round from the Hog Canyon Dam to Scroggie Road.

(170) **Hog Canyon Lake (Spokane County):**

(a) Open the first Friday after Thanksgiving through March 31.

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

(171) **Homestead Lake (Grant County):**

(a) Selective gear rules apply.

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

(c) Trout: Limit one.

(172) Horseshoe Lake (Pend Oreille County):

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

(b) Kokanee: Limit ten; kokanee do not count toward the trout limit.

(173) **Horsethief Lake (Klickitat County):** Open the fourth Saturday in April through October 31.

(174) **Hourglass Lake (Grant County):** Open April 1 through September 30.

(175) **Huff Lake (Pend Oreille County):** Closed.

(176) **Hutchinson Lake (Adams County):**

(a) Open April 1 through September 30.

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

(177) **I-82 Ponds, 1 through 7 (Yakima County):** It is unlawful to fish from a floating device equipped with an internal combustion motor.

(178) Icicle River and all tributaries (Creek) (Chelan County):

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

(b) From the mouth to 500 feet below Leavenworth National Fish Hatchery:

(i) Open for hatchery Chinook salmon only.

(ii) Open May 15 to July 31; night closure in effect.

(iii) Minimum length 12 inches.

(iv) Limit 2; it is unlawful to retain more than 2 hatchery Chinook.

(c) From shoreline markers where Cyo Road would intersect the Icicle River at the Sleeping Lady Resort to the Icicle Peshastin Irrigation District footbridge (approximately 750 feet upstream of the "Snow Lakes Trailhead" parking lot):

(i) Trout:

(A) Open the Saturday before Memorial Day through October 31; selective gear rules apply.

(B) Trout: Eastern brook trout: Daily limit 16. 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 for trout.

(ii) Salmon:

(A) Open for hatchery Chinook only.

(B) Open May 15 to July 31; night closure in effect.

(C) Minimum length 12 inches.

(D) Limit 2; it is unlawful to retain more than 2 hatchery Chinook.

(iii) Other gamefish:

(A) Open the Saturday before Memorial Day through October 31.

(B) Selective gear rules apply.

(d) From the Icicle Irrigation Peshastin District footbridge upstream to Leland Creek, and all tributaries including Leland Creek:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(ii) Trout: Eastern brook trout: Limit 16. 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 for trout.

(e) From Leland Creek upstream, including all tributaries except Leland Creek: Open the Saturday before Memorial Day through October 31.

(179) Indian Creek and tributaries (Pend Oreille County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10. Once an angler has retained 2 trout other than eastern brook trout, the entire trout limit has been taken and the angler must cease fishing for trout.

(180) Indian Creek (Yakima County): Upstream of the waterfall approximately 6 miles upstream from the mouth:

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout:

(i) No limit and no length restrictions.

(ii) Eastern brook trout do not count toward the trout limit.

(181) Ingalls Creek and all tributaries upstream of the Alpine Lakes Wilderness boundary (Chelan County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Ingalls Creek tributaries from the mouth of Ingalls Creek to the Alpine Lakes Wilderness boundary: Open the Saturday before Memorial Day through October 31.

(182) Jameson Lake (Douglas County): Open the fourth Saturday in April through July 4 and October 1 through October 31.

(183) Jasmine Creek (Okanogan County): Open year-round to juvenile anglers only.

(184) Jefferson Park Pond (Walla Walla County):

(a) Open to juvenile fishers only.

(b) It is unlawful to retain more than 2 trout over 13 inches in length.

(185) Jolanda, Lake (Chelan County): Closed.

(186) Jump-Off Joe Lake (Stevens County): Open the fourth Saturday in April through October 31.

(187) Kachess Lake (Reservoir) (Kittitas County):

(a) Chumming is permissible.

(b) Kokanee limit ten; kokanee do not count toward the trout limit.

(c) Trout limit 2; minimum length 12 inches.

(188) Kachess River (Kittitas County):

(a) From the mouth to Kachess Dam:

(i) It is permissible to fish up to the base of Kachess Dam.

(ii) Selective gear rules apply.

(iii) Trout minimum size ten inches.

(b) Kachess Lake tributaries, except Box Canyon Creek: Open.

(c) Upstream of impassable 50 to 60 foot fall about 1/2 mile upstream of Mineral Creek: Open.

(189) Kalispell Creek and tributaries (Pend Oreille County):

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

(b) Selective gear rules apply.

(190) Keechelus Lake (Reservoir) (Kittitas County):

(a) Chumming is permissible.

(b) Trout limit 2; minimum length 12 inches.

(c) Kokanee limit 10; kokanee do not count toward the trout limit.

(191) Keechelus Lake tributaries, except Gold Creek:

Open the Saturday before Memorial Day through October 31.

(192) Kettle River (Stevens County):

(a) The tributaries from the mouth to Barstow Bridge: Open from the Saturday before Memorial Day through October 31.

(b) From Barstow Bridge upstream:

(i) Open the Saturday before Memorial Day until October 31.

(ii) Selective gear rules apply, except for juvenile anglers, from the Canadian border upstream to Highway 21 Bridge at Curlew.

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

(iv) Trout: Minimum length 12 inches.

(v) Open November 1 through May 31 for whitefish only. Whitefish gear rules apply.

(c) Tributaries to Kettle River, from Barstow Bridge upstream: Open from the Saturday before Memorial Day through October 31.

(193) Kings Lake and tributaries (Pend Oreille County): Closed.

(194) Kiwanis Pond (Kittitas County): Open to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

(195) Klickitat River (Klickitat County):

(a) From the mouth (Burlington Northern Railroad Bridge) to Fisher Hill Bridge:

(i) Game fish open April 1 through January 31.

(A) Release all fish except hatchery steelhead from April 1 through May 31 and December 1 through January 31.

(B) June 1 through January 31: Anglers may retain up to 3 hatchery steelhead.

(C) Bass: No limit and no size restriction.

(D) Channel catfish: No limit.

(E) Walleye: No limit and no size restriction.

(ii) Barbless hooks are required for salmon and steelhead, except from September 1 through December 31.

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

(iv) Anti-snagging rule in effect and night closure applies April 1 through May 31 and August 1 through January 31. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(v) Salmon and steelhead: Open April 1 through May 31 on Sundays, Mondays, Wednesdays and Saturdays only:

(A) Limit 2; no more than 2 hatchery steelhead, or 2 salmon, or one of each, may be retained.

(B) Release wild Chinook.

(vi) Salmon: Open June 1 through January 31.

(A) June 1 through July 31: Limit 6 fish; no more than 2 adults may be retained. Release wild Chinook.

(B) August 1 through January 31: Limit 6 fish, no more than 3 may be adults, of which only 2 may be coho.

(b) From Fisher Hill Bridge to the boundary markers above Klickitat Salmon Hatchery, the following waters are closed: From Fishery Hill Bridge to 400 feet above #5 fishway, all tributaries except Bird, Blockhouse, Bowman, Spring, Outlet creeks and the Little Klickitat River, and the waters from the boundary markers above Klickitat Salmon Hatchery to the boundary markers below the hatchery.

(c) From 400 feet above #5 fishway to the boundary markers below Klickitat Salmon Hatchery:

(i) Barbless hooks are required for salmon and steelhead.

(ii) Game fish open June 1 through November 30:

(A) Daily limit 3 trout of which only 2 may be other than hatchery steelhead.

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

(C) Trout minimum length twelve inches.

(ii) Whitefish open December 1 through March 31: Whitefish gear rules apply.

(iv) Salmon open June 1 through November 30:

(A) June 1 through July 31:

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

(II) Release wild Chinook.

(B) From August 1 through November 30: Limit 6 fish; no more than 3 may be adults, of which only 2 may be coho.

(d) From the boundary markers above Klickitat Salmon Hatchery to the Yakama Indian Reservation boundary:

(i) Game fish open June 1 through November 30:

(A) Daily limit 3 trout of which no more than 2 may be other than hatchery steelhead.

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

(C) Trout minimum length 12 inches.

(ii) Whitefish open December 1 through March 31: Whitefish gear rules apply.

(iii) Barbless hooks are required for salmon and steelhead.

(196) Lake Creek (Okanogan County):

(a) From the mouth to Black Lake: Closed.

(b) From Black Lake to Three Prong Creek: Closed.

(197) Latah (Hangman) Creek (Spokane County):

From the mouth upstream to Idaho state line: Open year-round.

(198) Latah (Hangman) Creek Tributaries (Spokane County) including all tributaries within this system: Open the Saturday before Memorial Day through October 31 from the mouths upstream.

(199) Le Clerc Creek and tributaries (Pend Oreille County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10. Once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.

(200) Ledbetter Lake (Pend Oreille County): Open the fourth Saturday in April through October 31.

(201) Ledking Lake (Pend Oreille County): Open the fourth Saturday in April through October 31.

(202) Leech Lake (Yakima County):

- (a) Open for fly fishing only.
- (b) It is unlawful to fish from a floating device equipped with a motor.

(c) Trout: It is unlawful to retain more than one trout over 14 inches in length.

(203) **Lemna Lake (Grant County):** Open April 1 through September 30.

(204) Lenice Lake (Grant County):

- (a) Open March 1 through November 30.
- (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.

(205) Lenore Lake (Grant County):

(a) The waters within a 200 yard radius of the trash rack leading to the irrigation pumping station (on the south end of the lake) and the area approximately 100 yards beyond the mouth of inlet stream to State Highway 17: Closed.

- (b) Selective gear rules apply.
- (c) It is unlawful to fish from a floating device with an internal combustion motor.
- (d) Open from March 1 through November 30:
- (i) From March 1 through May 31: Catch and release only.

(ii) June 1 through November 30: Trout limit one.

(206) **Leo Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(207) **Liberty Lake (Spokane County):** Open March 1 through October 31.

(208) Lilly Lake (Chelan County):

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

- (b) July 5 through October 31:
- (i) Selective gear rules apply.
- (ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (iii) Catch and release only.

(209) Lions Park Pond (Walla Walla County):

- (a) Open to juvenile anglers only.
- (b) It is unlawful to retain more than 2 trout over 13 inches in length.

(210) Little Klickitat River (Klickitat County):

- (a) Within Goldendale city limits:
- (i) Open the fourth Saturday in April through October 31.

(ii) Open the fourth Saturday in April through May 31 to juvenile and senior fishers only.

(iii) Trout: Limit five; no minimum length.

(b) All other waters including tributaries: Open first Saturday in June through October 31.

(211) **Little Lost Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(212) Little Pend Oreille River (Stevens County):

(a) Open the Saturday before Memorial Day through October 31.

(b) From the Little Pend Oreille wildlife refuge boundary approximately one mile downstream from the refuge headquarters office, to Crystal Falls:

- (i) Selective gear rules apply.

(ii) Release all fish except anglers may retain up to 5 eastern brook trout.

(c) All tributaries to the Little Pend Oreille River are open the Saturday before Memorial Day through October 31.

(213) Little Spokane River (Spokane County):

(a) Open year-round from the mouth to the SR 291 Bridge.

(b) From the SR 291 Bridge upstream to the West Branch:

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

(ii) Open December 1 through March 31 for whitefish only; whitefish gear rules apply; limit 15 whitefish; no minimum size.

(c) From the West Branch upstream:

(i) Closed from the inlet of Chain Lake upstream one-quarter mile to the railroad crossing culvert.

(ii) Open the Saturday before Memorial Day through October 31.

(iii) Kokanee: It is unlawful to retain kokanee taken upstream from the bridge at (~~Fridegar~~) Frideger Road, including Chain Lake.

(d) Unless otherwise provided in this section, all tributaries to the Little Spokane River are open the Saturday before Memorial Day through October 31.

(214) Little Twin Lake (Okanogan 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.

(215) **Little Twin Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(216) Little Wenatchee River (Chelan County):

(a) From the falls below USFS Rd. 6700 Bridge upstream: Open the Saturday before Memorial Day through October 31.

(b) Little Wenatchee tributaries from the mouth upstream, except Rainy Creek: Open the Saturday before Memorial Day through October 31.

(217) Long Lake (Ferry County):

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

(b) Fly fishing only.

(c) It is unlawful to use flies containing lead.

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

(218) **Long Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(219) **Long Lake (Spokane County):** Landlocked salmon rules apply.

(220) Loon Lake (Stevens County):

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

(b) Kokanee: Limit ten; kokanee do not count toward the trout limit.

(c) Trout (except kokanee): Limit five, except it is unlawful to retain more than two trout over twenty inches in length.

(221) **Lost Lake (Kittitas County):** It is unlawful to retain more than one trout over 14 inches in length.

(222) **Lost Lake (Okanogan County):**

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

(b) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(223) **Lost River (Okanogan County):**

(a) From the mouth to the mouth of Monument Creek: Closed.

(b) Lost River and all tributaries from the mouth of Monument Creek to the outlet of Cougar Lake, including Monument Creek:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

(iii) Catch and release only.

(iv) Trout: Minimum length 14 inches; it is permissible to retain Dolly Varden/Bull Trout with a minimum length of 14 inches as part of the trout limit.

(224) **Lucky Duck Pond (Stevens County):** Open to juvenile anglers only.

(225) **Mad River and all tributaries from mouth to Jimmy Creek, including Jimmy Creek (Chelan County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) Trout:

(i) Rainbow trout, catch and release only.

(ii) 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 for trout.

(d) Mad River and all tributaries from Jimmy Creek upstream, not including Jimmy Creek: Open the Saturday before Memorial Day through October 31.

(226) **Marshall Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(227) **Martha Lake (Grant County):** Open March 1 through July 31.

(228) **Mattoon Lake (Kittitas County):** It is unlawful to fish from a floating device equipped with an internal combustion motor.

(229) **McCabe Pond (Kittitas County):**

(a) It is unlawful to fish from any floating device equipped with a motor.

(b) Five fish limit for all game fish species combined.

(230) **McDowell Lake (Stevens County):**

(a) Open the fourth Saturday in April through October 31 for fly fishing only.

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

(c) Catch and release only.

(231) **McManaman Lake (Adams County):** Open April 1 through September 30.

(232) **Medical Lake (Spokane County):**

(a) Open March 1 through October 31.

(b) Selective gear rules apply.

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

(d) Trout: Limit two; minimum length fourteen inches.

(233) **Medical Lake, West (Spokane County):** Open the fourth Saturday in April through September 30.

(234) **Mercer Creek (Kittitas County):**

(a) Open to juvenile anglers only within the Ellensburg city limits.

(b) Trout ten inch minimum length.

(c) Selective gear rules apply.

(235) **Merritt Lake (Chelan County):**

(a) Trout limit sixteen, except eastern brook trout. Eastern brook trout do not count towards the trout limit.

(b) Eastern brook trout: No minimum size and no limit.

(236) **Merry Lake (Grant County):**

(a) Open March 1 through November 30.

(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.

(237) **Methow River (Okanogan County):**

(a) From County Road 1535 (Burma Road) Bridge to Gold Creek:

(i) Open the Saturday before Memorial Day through September 15.

(ii) Selective gear rules apply.

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

(iv) Catch and release only.

(b) From Gold Creek to Foghorn Dam:

(i) Open the Saturday before Memorial Day through September 30.

(ii) Selective gear rules apply.

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

(iv) Catch and release only.

(c) Methow River tributaries from Gold Creek to Foghorn Dam; except Twisp River and Chewuch River:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

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

(iv) Trout:

(A) Catch and release rainbow trout.

(B) Eastern brook trout: Limit 16. 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 for trout.

(d) From Foghorn Dam to Weeman Bridge:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

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

(iv) Trout:

(A) Catch and release only for rainbow trout.

(B) Eastern brook trout: Limit 16. 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 for trout.

(e) Methow River tributaries from Weeman Bridge to the falls above Brush Creek; excluding Lost River, Goat Creek, and Early Winters Creek.

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

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

(iv) Catch and release only.

(f) Methow River and tributaries above the falls above Brush Creek: Open the Saturday before Memorial Day through October 31.

(g) From Gold Creek to the falls above Brush Creek:

(i) Open December 1 through March 31 for whitefish only.

(ii) Whitefish gear rules apply.

(h) Methow River tributaries not otherwise provided for in this section:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

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

(238) Mill Creek and tributaries (Pend Oreille County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10.

(c) Once an angler has retained 2 trout other than eastern brook trout, the entire trout limit has been taken.

(239) Mill Creek (Walla Walla County):

(a) From the mouth to Bennington Dam, including tributaries: Closed waters.

(b) From Bennington Dam upstream: All tributaries: Closed waters.

(c) Selective gear rules apply.

(d) Release steelhead.

(240) Mill Pond (Pend Oreille County): Open the fourth Saturday in April through October 31.

(241) Mineral Creek (tributary to upper Kachess River) (Kittitas County): Statewide rules apply upstream of the Wilderness Boundary.

(242) Molson Lake (Okanogan County):

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

(b) Trout: Limit 2.

(243) Monument Creek (Okanogan County), including tributaries: Selective gear rules apply.

(244) Morgan Lake (Adams County): Open April 1 through September 30.

(245) Moses Lake (Grant County):

(a) Bluegill: Limit five; minimum length eight inches.

(b) Crappie: Limit ten; minimum length nine inches.

(c) Yellow perch: Limit 25.

(246) Mud Lake (Yakima County):

(a) Selective gear rules apply.

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

(c) Trout: Limit one.

(247) Mudgett Lake (Stevens County): Open the fourth Saturday in April through October 31.

(248) Muskegon Lake (Pend Oreille 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 two.

(249) Myron Lake (Yakima County):

(a) Selective gear rules apply.

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

(c) Trout: Limit one.

(250) Myrtle Lake (Chelan County): Eastern brook trout no minimum size and no limit.

(251) Mystic Lake (Pend Oreille County): Open the fourth Saturday in April through October 31.

(252) Naches River (Yakima/Kittitas counties):

(a) From the mouth to Little Naches River:

(i) Selective gear rules apply.

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

(iii) Trout:

(A) Minimum length twelve inches, maximum length twenty inches.

(B) Release trout from the confluence with Tieton River to the confluence of the Little Naches River and Bumping River (origin of Naches River).

(b) From the mouth to the Tieton River:

(i) December 1 through January 31.

(ii) Only whitefish may be retained;

(iii) Whitefish gear rules apply.

(253) Naches River tributaries except Bumping River, Tieton River and Rattlesnake Creek:

(a) Selective gear rules apply.

(b) Trout: Minimum size ten inches.

(254) Naneum Creek and tributaries (Kittitas County):

(a) Selective gear rules apply.

(b) Trout: Minimum size ten inches.

(255) Naneum Pond (Kittitas County): Open to juvenile anglers only.

(256) Napeequa River and all tributaries from Twin Lakes Creek upstream (Chelan County): Open.

(257) Nason Creek (Chelan County):

(a) From Smith Brook to Stevens Creek:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) Eastern brook trout: Limit 16. 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 for trout.

(b) Nason Creek and all tributaries from Stevens Creek upstream, including Stevens Creek:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Eastern brook trout: Limit 16. 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 for trout.

(c) Nason Creek tributaries from mouth of Nason Creek to Smith Brook, including Smith Brook, except the Mill Creek drainage:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Eastern brook trout: Limit 16. 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 for trout.

(258) **Negro Creek (Whitman County):** Open the fourth Saturday in April through July 15.

(259) **Nile Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(260) **No Name Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(261) **North Elton Pond (Yakima County):**

(a) Open the first Friday after Thanksgiving through March 31.

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

(c) Trout: Limit two.

(262) **North Fork Teanaway River tributaries from mouth to Beverly Creek, including Beverly Creek:**

(a) Selective gear rules apply.

(b) Trout: Minimum size ten inches.

(263) **North Potholes Reserve Ponds (Grant County):**

(a) Open February 1 through the day before waterfowl season begins.

(b) It is unlawful to fish from any floating device, except it is permissible to fish using float tubes.

(264) **Nunnally Lake (Grant County):**

(a) The outlet stream of Nunnally Lake is closed.

(b) Open March 1 through November 30:

(i) Selective gear rules apply.

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

(iii) Trout: Limit one.

(265) **Okanogan River (Okanogan County):**

(a) Within the mainstem or tributaries open for game fish angling:

(i) It is unlawful to fish for salmon and steelhead using anything other than barbless hooks.

(ii) Bass: No limit and no size restrictions.

(iii) Channel catfish: No limit.

(iv) Walleye: No limit and no size restrictions.

(b) From the mouth to Highway 97 Bridge immediately upstream of the mouth:

(i) Open year-round.

(ii) July 1 through October 15: Anti-snagging rule applies and night closure in effect.

(iii) ~~(Trout: Catch and release only.)~~ Hatchery trout: Open July 1 through August 15. Minimum size 12 inches. Daily limit 10. Barbless hooks required.

(iv) Salmon:

(A) Open July 1 through October 15.

(B) It is permissible to fish two poles from July 1 through August 31 so long as the angler possesses a two-pole endorsement.

(C) Limit 4; no more than 2 adult hatchery Chinook may be retained.

(D) Release (~~(sockeye,)~~) coho and wild adult Chinook.

(c) From Highway 97 Bridge immediately upstream of the mouth to the highway bridge at Malott:

(i) Open year-round.

(ii) July 1 through September 15: Anti-snagging rule applies and night closure in effect.

(iii) Trout: Catch and release only.

(iv) Salmon:

(A) Open July 1 through September 15.

(B) Limit 4; no more than 2 adult hatchery Chinook may be retained.

(C) Release (~~(sockeye,)~~) coho and wild adult Chinook.

(d) From the highway bridge at Malott upstream:

(i) From Zosel Dam downstream to the first Highway 97 Bridge downstream of the dam: Closed.

(ii) Open the Saturday before Memorial Day through September 15.

(iii) July 1 through September 15: Anti-snagging rule applies and night closure in effect.

(iv) Trout: Catch and release only.

(v) Salmon:

(A) Open July 1 through September 15.

(B) Limit 4; no more than 2 adult hatchery Chinook may be retained.

(C) Release (~~(sockeye,)~~) coho and wild adult Chinook.

(e) All Okanogan River tributaries, except Salmon Creek, Jasmine Creek, Bonaparte Creek, and the Similkameen River:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

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

(iv) Trout: Catch and release trout.

(266) **Outlet Creek (Klickitat County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Trout: Limit 5.

(267) **Palouse River (Whitman County):**

(a) Open year-round from the mouth to the base of Palouse Falls.

(b) Bass: No limit.

(c) Channel catfish: No limit.

(d) Trout: Open June 16 through March 31 only.

(i) From June 16 through August 31:

(A) Limit 6; minimum length 10 inches.

(B) No minimum size for trout with clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(C) Anglers may retain up to 3 hatchery steelhead. Mandatory steelhead retention. No catch and release of hatchery steelhead.

(D) It is permissible to fish with two poles so long as the angler possesses a valid two-pole endorsement.

- (ii) From September 1 through March 31:
 - (A) Limit 6; minimum length 10 inches.
 - (B) No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.
 - (C) Anglers may retain up to 3 hatchery steelhead. Mandatory steelhead retention. No catch and release of hatchery steelhead.
 - (D) It is unlawful to fish for steelhead using anything other than barbless hooks.
 - (e) Walleye: No limit.
- (268) **Palouse River (Whitman County) mainstem above Palouse Falls and tributaries (Washington waters only), except Rock Creek:** Open year-round.
- (269) **Pampa Pond (Whitman County):**
 - (a) Open March 1 through September 30.
 - (b) It is unlawful to fish from any floating device.
 - (c) Trout: It is unlawful to retain more than two over 13 inches in length.
- (270) **Para-Juvenile Lake (Adams/Grant counties):** Open April 1 through September 30 to juvenile anglers only.
- (271) **Park Lake (Grant County):** Open the fourth Saturday in April through September 30.
- (272) **Parker Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.
- (273) **Pataha Creek (Garfield County):**
 - (a) Bass: No limit.
 - (b) Channel catfish: No limit.
 - (c) Walleye: No limit.
 - (d) Within the city limits of Pomeroy: Open to juvenile anglers only.
 - (e) From the city limits of Pomeroy upstream:
 - (i) Selective gear rules apply.
 - (ii) Trout:
 - (A) Eastern brook trout: Limit 10.
 - (B) Once an angler has retained 2 trout other than Eastern brook trout, the entire trout limit has been taken.
- (274) **Pearrygin Lake (Okanogan County):** Open the fourth Saturday in April through October 31.
- (275) **Pend Oreille River (Pend Oreille County):**
 - (a) In the mainstem:
 - (i) Open year-round.
 - (ii) All sloughs within the boundaries of the Kalispel Reservation, except Calispell Slough: Closed.
 - (iii) Two pole fishing is permissible so long as the angler possesses a two-pole endorsement.
 - (b) Pend Oreille River tributaries are open the Saturday before Memorial Day through October 31, unless otherwise provided for in this section.
- (276) **Perch Lake (Grant County):** Open the fourth Saturday in April through September 30.
- (277) **Peshastin Creek and all tributaries from Ruby Creek upstream, not including Ruby Creek (Chelan County):**
 - (a) Open the Saturday before Memorial Day through October 31.
 - (b) Selective gear rules apply.
 - (c) Trout:
 - (i) Rainbow trout, catch and release only.

- (ii) 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 for trout.
- (d) Peshastin Creek tributaries from the mouth of Peshastin Creek to Ruby Creek (including Ruby Creek), except Ingalls Creek: Open the Saturday before Memorial Day through October 31.
- (278) **Petit Lake (Pend Oreille 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.
- (279) **Phalon Lake (Stevens County):** Closed.
- (280) **Phelps Creek and all tributaries from the mouth to the barrier falls (mile 1) (Chelan County):**
 - (a) Open the Saturday before Memorial Day through October 31.
 - (b) Selective gear rules apply.
 - (c) From the barrier falls (mile 1) upstream, including all tributaries: Open the Saturday before Memorial Day through October 31.
- (281) **Phillips Lake (Stevens County):** Open the fourth Saturday in April through October 31.
- (282) **Pierre Lake (Stevens County):** It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.
- (283) **Pillar Lake (Grant County):** Open April 1 through September 30.
- (284) **Ping Pond (Grant County):**
 - (a) Open the third Saturday in April through Labor Day to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.
 - (b) Limit 5 game fish; no minimum size restrictions.
- (285) **Pit Lake (Douglas County):** Open to juvenile anglers only.
- (286) **Poacher Lake (Grant County):** Open April 1 through September 30.
- (287) **Potholes Reservoir (Grant County):**
 - (a) Crappie: Minimum length nine inches.
 - (b) Crappie and bluegill: Combined limit of twenty-five fish.
 - (c) Perch: Limit twenty-five fish.
- (288) **Potter's Pond (Stevens County):** Open the fourth Saturday in April through October 31.
- (289) **Powerline Lake (Franklin County):** Trout limit 2.
- (290) **Priest Lake tributaries (Pend Oreille County):** Open the Saturday before Memorial Day through October 31, including Upper Priest Lake tributaries, except as otherwise provided in this section.
- (291) **Priest River tributaries (Pend Oreille County):** Open the Saturday before Memorial Day through October 31.
- (292) **Quail Lake (Adams County):**
 - (a) Open for fly fishing only.
 - (b) It is unlawful to fish from any floating device equipped with a motor.
 - (c) Catch and release only.
- (293) **Quarry Pond (Walla Walla County):**
 - (a) It is unlawful to fish from any floating device.

(b) It is unlawful to retain more than 2 trout over 13 inches in length.

(294) **Quincy Lake (Grant County):** Open March 1 through July 31.

(295) **Rainbow Lake (Columbia County):**

(a) Open March 1 through October 31.

(b) It is unlawful to fish from any floating device.

(c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(296) **Rainy Creek (Chelan County):** From the mouth of Rainy Creek upstream:

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(297) **Rat Lake (Okanogan County):**

(a) Open year-round.

(b) From April 1 to November 30:

(i) Selective gear rules apply.

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

(iii) Catch and release only.

(298) **Rattlesnake Creek (Yakima County):**

(a) Selective gear rules apply.

(b) Catch and release only for all species in the main-stem.

(299) **Rattlesnake Creek tributaries:**

(a) Selective gear rules apply.

(b) Trout minimum size 10 inches.

(300) **Red Rock Creek (Grant County):** Open April 1 through September 30.

(301) **Reflection Pond (Okanogan County):** Open the fourth Saturday in April through October 31.

(302) **Renner Lake (Ferry County):** Open the fourth Saturday in April through October 31.

(303) **Rigley Lake (Stevens 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 two, minimum length twelve inches.

(304) **Rimrock Lake (Reservoir) (Yakima County):**

(a) It is permissible to fish using two poles, so long as the angler possesses a valid two-pole endorsement.

(b) Chumming is permissible.

(c) Kokanee: Limit sixteen; kokanee do not count toward the trout limit.

(305) **Roaring Creek (Entiat River Tributary) and all tributaries (Chelan County):** From the mouth of Roaring Creek upstream:

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(c) Trout:

(i) Rainbow trout are catch and release only.

(ii) The eastern brook trout limit of 5 fish does 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 for trout.

(306) **Rock Creek (Adams/Whitman counties):**

(a) From the mouth to Endicott West Road: Open year-round.

(b) From Endicott West Road to the bridge on Jordan Knott Road at Revere:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Selective gear rules apply.

(iii) Catch and release only.

(c) From the bridge on Jordan Knott Road upstream: Open year-round.

(307) **Rock Creek (Chelan County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

(308) **Rock Creek (Klickitat County):**

(a) From Army Corps of Engineers Park upstream to the source: Closed waters.

(b) Open year-round from the mouth to the Army Corps of Engineers Park. Limits, size restrictions and gear restrictions are the same as those in the adjacent portion of the Columbia River.

(309) **Rock Island Pool (Col.R.) tributaries (Chelan/Douglas County):** Open the Saturday before Memorial Day through October 31 from Rock Island Dam to Rocky Reach Dam, except the Wenatchee River.

(310) **Rocky Ford Creek and Ponds (Grant County):**

(a) Open to fly fishing and fishing from the bank only (no wading).

(b) Catch and release only.

(311) **Rocky Lake (Stevens County):**

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

(b) From June 1 through October 31:

(i) Selective gear rules apply.

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

(iii) Catch and release only.

(312) **Roosevelt Lake (Grant/Ferry/Lincoln/Stevens counties):**

(a) The following areas are closed:

(i) From the Little Dalles power line crossing upstream approximately one mile to the marked rock point, and from Northport power line crossing upstream to the most upstream point of Steamboat Rock, from March 1 through the Friday before Memorial Day.

(ii) The Kettle arm upstream to Barstow Bridge from April 1 through the Friday before Memorial Day.

(b) Carp: It is unlawful to fish for carp with bow and arrow.

(c) From Grand Coulee Dam to the Little Dalles power line crossing:

(i) Kokanee: Limit 6; no more than 2 with intact adipose fins may be retained.

(ii) Salmon: Landlocked salmon rules apply.

(iii) Trout (except kokanee): Limit 5; it is unlawful to retain trout with an intact adipose fin.

(iv) Walleye: No size restrictions; limit 16 fish.

(d) From the Little Dalles power line crossing to the Canadian border:

(i) Kokanee: Limit 6; no more than 2 with intact adipose fins may be retained.

(ii) Salmon: Landlocked salmon rules apply.

(iii) Trout (except kokanee): Limit 2; minimum size 18 inches.

(iv) Walleye: No size restrictions; limit 16 fish.

(313) **Round Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(314) **Rowland Lake, North (Klickitat County):** Open the fourth Saturday in April through the last day in February, except closed the Monday before Thanksgiving Day through Thanksgiving Day.

(315) **Royal Lake (Adams County):** Closed.

(316) **Royal Slough (including Marsh Unit IV impoundments) (Adams County):** Closed.

(317) **Ruby Creek and tributaries (Pend Oreille County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken and the angler must cease fishing for trout.

(318) **Rufus Woods Lake (Douglas/Okanogan counties):**

(a) From Grand Coulee Dam downstream to State Route 155 Bridge: Closed.

(b) Trout: Limit 2; only uninjured trout caught using artificial lures or flies with single-point barbless hooks may be released.

(c) Tributaries to Rufus Woods Lake: Open the Saturday before Memorial Day through October 31.

(319) **Sacheen Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(320) **Saddle Mountain Lake (Grant County):** Closed.

(321) **Sago Lake (Grant County):** Open April 1 through September 30.

(322) **Salmon Creek, mainstem (Okanogan County):**

(a) Open the Saturday before Memorial Day 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: Catch and release only.

(323) **Salmon Creek, North Fork and West Fork from mouth to South Fork (Okanogan County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Selective gear rules apply.

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

(324) **San Poil River (Ferry County):**

(a) From the western shoreline at the mouth of the San Poil Arm (as marked by a regulatory buoy) directly eastward across the San Poil Arm to the eastern shoreline of the San Poil Arm (as marked by a regulatory buoy) upstream to the north shore of the outlet of French Johns Lake (Manila Creek) northeast across the San Poil Arm to the north shore of the outlet of Dick Creek:

(i) Open June 1 through January 31 for kokanee, smallmouth bass, trout, and walleye:

(A) Kokanee: Limit 2 fish in addition to the trout limit; no minimum size requirement.

(B) Trout: Limit 5; it is unlawful to retain trout with an intact adipose fin.

(C) Walleye: Limit 16; no size restrictions.

(ii) Open year-round for other game fish, salmon, and carp:

(A) Carp: It is unlawful to fish for carp with bow and arrow.

(B) Salmon: Landlocked salmon rules apply.

(b) From the north shore of the outlet of French Johns Lake (Manila Creek) northeast across the San Poil Arm to the north shore of the outlet of Dick Creek to approximately 5 miles upstream from the outlet of French Johns Lake, as marked by regulatory buoys:

(i) It is unlawful to fish for or retain trout.

(ii) Open June 1 through January 31 for walleye and smallmouth bass: Walleye: Limit 16; no size restrictions.

(iii) Open year-round for other game fish, salmon, and carp:

(A) Carp: It is unlawful to fish for carp with bow and arrow.

(B) Salmon: Landlocked salmon rules apply.

(c) The waters from approximately 5 miles upstream from the outlet of French Johns Lake, as marked by regulatory buoys, to all waters north of the regulatory buoy line at or above 1,310 feet mean sea level elevation are managed under the regulatory authority of the Colville Confederated Tribe of Indians.

(d) From above the Colville Confederated Tribe of Indians Reservation northern boundary, upstream to the headwaters, including tributaries: Open the Saturday before Memorial Day through October 31.

(325) **Sand Hollow Creek (Grant County) including all tributaries:** Open April 1 through September 30 from State Route 243 upstream.

(326) **Sarg Hubbard Park Pond (Reflection Pond) (Yakima County):** Open to juvenile anglers and anglers with a disability who possess a designated harvester companion card only.

(327) **Schaefer Lake (Chelan County):**

(a) Trout limit sixteen, except eastern brook trout. Eastern brook trout do not count towards the trout limit.

(b) Eastern brook trout: No minimum size and no limit.

(328) **Scootney Reservoir (Franklin County):** Walleye limit 8; minimum size 12 inches. It is unlawful to retain more than one walleye over 22 inches in length.

(329) **Sedge Lake (Grant County):**

(a) Selective gear rules apply.

(b) Trout: Limit one.

(330) **Sherman Creek (Ferry County) and all tributaries:**

(a) From the hatchery boat dock to 400 feet upstream of hatchery water diversion dam: Closed.

(b) Open the Saturday before Memorial Day through October 31.

(331) **Sherry Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(332) **Shiner Lake (Adams County):**

(a) Open April 1 through September 30.

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

(333) **Shoveler Lake (Grant County):** Open April 1 through September 30.

(334) **Sidley Lake (Okanogan County):** Trout limit two.

(335) **Silver Lake (Spokane County):** Crappie limit ten; minimum length nine inches.

(336) **Silver Nail Lake (Okanogan County):** Open to juvenile anglers only.

(337) **Similkameen River (Okanogan County):**

(a) Barbless hooks required for salmon and steelhead.

(b) From the mouth to Enloe Dam:

(i) Closed from Enloe Dam downstream 400 feet.

(ii) July 1 through September 15:

(A) Anti-snagging rule applies.

(B) Night closure in effect.

(iii) Salmon:

(A) Open July 1 through September 15.

(B) Limit 4; no more than 2 adult hatchery Chinook may be retained.

(C) Release (~~soekeye~~) coho and wild adult Chinook.

(iv) Open December 1 through March 31 for whitefish only; whitefish gear rules apply.

(c) From Enloe Dam to the Canadian border, including tributaries, except Sinlahekin Creek:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Open December 1 through March 31 for whitefish only; whitefish gear rules apply.

(338) **Sinlahekin Creek (Okanogan County):**

(a) From Palmer Lake to Cecile Creek Bridge:

(i) Open the Saturday before Memorial Day through August 31.

(ii) Selective gear rules apply.

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

(iv) Open December 1 through March 31 for whitefish only; whitefish gear rules apply.

(b) From Cecile Creek Bridge upstream, including all tributaries: Open the Saturday before Memorial Day through October 31.

(339) **Skookum Lake, North (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(340) **Skookum Lake, South (Pend Oreille County):** It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(341) **Slate Creek and tributaries (Pend Oreille County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.

(342) **Snake River:**

(a) Columbia River rules apply downstream of the Burbank-to-Pasco railroad bridge at Snake River mile 1.5.

(b) Open year-round, except the following areas are closed:

(i) Within 400 feet of the base of any dam;

(ii) Within a 400 foot radius around the fish ladder entrance at Lyons Ferry Hatchery;

(iii) Within a 200 foot radius upstream of the fish ladder exit above Lower Granite Dam; and

(iv) Within an area 1,200 feet downstream from the base of the west lock gate at Little Goose Dam on the south bank of the Snake River and 100 feet out into the river from the south river bank.

~~((b))~~ (c) Bass: No limit and no size restrictions.

~~((e))~~ (d) Channel catfish: No limit.

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

(i) Open June 16 through March 31.

(ii) April 1 through June 15: Catch and release only.

(iii) Limit 6; minimum length 10 inches.

(iv) From mouth of Snake River to Bridge Street bridge in Clarkston (Blue Bridge) it is unlawful to retain more than 3 hatchery steelhead(-

~~(v))~~, except it is unlawful to retain more than one hatchery steelhead August 1 through March 31:

(A) August 1 through March 31 release all steelhead longer than 30 inches.

(B) Barbless hooks required for steelhead.

~~((e))~~ (v) Release all steelhead upstream of Bridge Street bridge in Clarkston (Blue Bridge).

(f) Walleye: No limit and no size restrictions.

(343) **Snipe Lake (Grant County):** Open April 1 through September 30.

(344) **Snipes Creek (Benton County):**

(a) Selective gear rules apply.

(b) Trout minimum length ten inches.

(345) **South Salmo River (Pend Oreille County), including tributaries:** Open the Saturday before Memorial Day through October 31.

(346) **Spearfish Lake (Klickitat County):** Open the fourth Saturday in April through last day in February.

(347) **Spectacle Lake (Okanogan County):** Open April 1 through September 30.

(348) **Spokane River (Spokane County):**

(a) From SR 25 Bridge upstream to 400 feet below Little Falls Dam:

(i) It is permissible to fish with two poles so long as the angler possesses a two-pole endorsement.

(ii) Open year-round:

(A) Kokanee: Limit 6; no more than 2 with intact adipose fins may be retained. Kokanee does not count towards the trout limit.

(B) Salmon: Landlocked salmon rules apply.

(C) Trout: Limit 5, it is unlawful to retain trout with an intact adipose fin.

(D) Walleye: Limit 16; no size restrictions.

(b) From the Little Falls Dam to the upstream boundary of the Plese Flats Day Use Area (Riverside State Park), except Long Lake (Nine Mile Dam to Long Lake Dam): Open year-round.

(i) Landlocked salmon rules apply.

(ii) Trout: Limit 5; no more than 2 trout over 20 inches in length may be retained.

(c) From the upstream boundary at Plese Flats Day Use Area (Riverside State Park) upstream to the Monroe Street Dam:

- (i) Selective gear rules apply.
- (ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (iii) Open June 1 through March 15:
 - (A) Salmon: Landlocked salmon rules apply.
 - (B) Trout:
 - (I) Limit one; minimum length 8 inches.
 - (II) Release wild trout (only rainbow trout with a clipped adipose fin and a healed scar at the site of the clipped fin may be retained).

(d) From Monroe Street Dam upstream to Upriver Dam:

- (i) Open year-round.
- (ii) Landlocked salmon rules apply.

(e) From Upriver Dam upstream to the Idaho/Washington state line:

- (i) Selective gear rules apply.
- (ii) Open the first Saturday in June through March 15.
- (iii) Catch and release only.
- (f) Unless otherwise provided in this section, all tributaries to the Spokane River (Washington waters only) are open the Saturday before Memorial Day through October 31.

(349) Sprague Lake (Adams/Lincoln counties):

- (a) The following waters are closed:
 - (i) Cow Creek;
 - (ii) The marsh at the southwest end of the lake from the lakeside edge of the reeds to Danekas Road;
 - (iii) The small bay at the southeast end of the lake; and
 - (iv) Those waters within 50 feet of Harper Island.
- (b) All other waters southwest of the southwest tip of Harper Island: Closed from October 1 through April 30.
- (c) Crappie: Minimum length nine inches.
- (d) Crappie and bluegill: Combined limit of twenty-five fish.

(e) Trout: Limit 5; it is unlawful to retain more than two trout over twenty inches in length.

(350) Spring Creek (Benton County):

- (a) Selective gear rules apply.
- (b) Trout minimum length ten inches.

(351) Spring Creek (Klickitat County):

- (a) Goldendale Hatchery: Open the Saturday before Memorial Day through October 31. Trout: Limit 5.
- (b) All other waters: Open the first Saturday in June through October 31.

(352) Spring Hill Reservoir (Black Lake, Lower Wheeler Reservoir) (Chelan County):

- (a) Open the fourth Saturday in April through October 31.
- (b) July 5 through October 31: Selective gear rules apply.
- (c) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (d) Catch and release only.

(353) Spring Lake (Columbia County):

- (a) It is unlawful to fish from any floating device.
- (b) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(354) Spring Lakes (Grant County): Open March 1 through July 31.

(355) Stan Coffin Lake (Grant County): Bass: Catch and release only.

(356) Starvation Lake (Stevens County):

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

(b) From June 1 through October 31:

- (i) Selective gear rules apply.
- (ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (iii) Catch and release only.

(357) Stehekin River (Chelan County):

(a) From the mouth to Agnes Creek:

- (i) Selective gear rules apply.
- (ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (iii) Open July 1 through October 31: Trout minimum length fifteen inches; release cutthroat.

(iv) Open March 1 through June 30: Catch and release only.

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

(358) Stratford/Brook Lake (Grant County): Open February 1 through September 30.

(359) Sullivan Creek (Pend Oreille County):

(a) From the mouth to Mill Pond: Open the Saturday before Memorial Day through October 31.

- (i) Barbless hooks are required.
- (ii) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.

(iii) Release cutthroat.

(b) From Mill Pond upstream and tributaries:

- (i) Selective gear rules apply.
- (ii) Release cutthroat.
- (iii) Open the Saturday before Memorial Day through October 31.

(iv) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken.

(360) Sullivan Lake (Pend Oreille County):

(a) Kokanee: Limit ten; kokanee do not count toward the trout limit.

(b) Trout (except kokanee): Limit two trout.

(361) Sullivan Lake tributaries (Pend Oreille County), except as otherwise provided in this section: Open the Saturday before Memorial Day through October 31.

(362) Summit Lake (Stevens County): Open the fourth Saturday in April through October 31.

(363) Swan Lake (Ferry County):

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

(b) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(364) Tacoma Creek and tributaries (Pend Oreille County):

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: Limit 10; once an angler retains 2 trout other than eastern brook trout, the entire trout limit has been taken and the angler must cease fishing for trout.

(365) **Teal Lakes (North and South) (Grant/Adams counties):** Open April 1 through September 30.

(366) **Teanaway River (Kittitas County), and tributaries except North Fork:**

- (a) Selective gear rules apply.
- (b) Trout minimum length ten inches.

(367) **Teanaway River, North Fork (Kittitas County):** From the mouth to Beverly Creek:

- (a) Selective gear rules apply.
- (b) Trout: Catch and release only.

(368) **Tern Lake (Grant County):**

- (a) Selective gear rules apply.
- (b) Trout: Limit one.

(369) **Thomas Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(370) **Tieton River (Yakima County):**

(a) From the mouth to Tieton Dam, including all tributaries:

(i) It is permissible to fish up to the base of Tieton (Rimrock) Dam.

- (ii) Selective gear rules apply.
- (iii) Trout minimum length ten inches.

(b) Tributaries upstream of Tieton Dam except North Fork Tieton River, South Fork Tieton River and Indian Creek: Open the Saturday before Memorial Day through October 31.

(371) **Tieton River, North Fork (Yakima County):**

(a) Mainstem including that portion of the river that flows through the dry lakebed of Rimrock Reservoir, upstream to the USFS Road 740 Bridge below Clear Lake Dam:

(i) Open the Saturday before Memorial Day through August 15.

- (ii) Selective gear rules apply.
- (b) Mainstem upstream of Clear Lake:

(i) Open the Saturday before Memorial Day through August 15.

- (ii) Selective gear rules apply.

(c) All North Fork Tieton tributaries, including Clear Creek: Open the Saturday before Memorial Day through October 31.

(372) **Tieton River, South Fork (Yakima County):** From the bridge on USFS Road 1070 upstream and all tributaries, except Bear Creek and Spruce Creek: Open the Saturday before Memorial Day through October 31.

(373) **Touchet River (Columbia/Walla Walla counties):**

(a) General river rules: For all portions of the Touchet River and its tributaries that are open to game fish angling:

- (i) Bass: No limit.
- (ii) Channel catfish: No limit.
- (iii) Walleye: No limit and no size restrictions.
- (iv) Release wild steelhead.

(b) Rules by river section:

(i) From the mouth to the confluence of Coppei Creek:

(A) Open the first Saturday in June through October 31:

(I) No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(II) Steelhead: Open September 1 through October 31; limit 3. It is unlawful to use anything other than barbless hooks when fishing for steelhead.

(B) Open November 1 through April 15:

(I) Release all fish except hatchery steelhead and brown trout.

(II) Limit 3 hatchery steelhead and brown trout combined.

(III) It is unlawful to use anything other than barbless hooks.

(ii) From the mouth of Coppei Creek to the confluence of North and South Forks and all tributaries:

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

(B) No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(C) Steelhead:

(I) Open September 1 through October 31; mandatory hatchery steelhead retention, limit 3. No catch and release of hatchery steelhead. Release wild steelhead. It is unlawful to use anything other than barbless hooks when fishing for steelhead.

(II) Open November 1 through April 15. Release all fish except hatchery steelhead and brown trout. Limit 3 hatchery steelhead and brown trout combined. It is unlawful to use anything other than barbless hooks when fishing for steelhead.

(iii) From the confluence of the North and South Forks upstream:

(A) Selective gear rules apply.

(B) Release steelhead.

(iv) From mouth of North Fork, upstream to Spangler Creek:

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

(B) Trout: No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(v) North Fork upstream of Spangler Creek:

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

(B) Trout: No minimum size for trout with a clipped adipose fin.

(vi) Wolf Fork from the mouth to Coates Creek:

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

(B) No minimum size for trout with a clipped adipose fin.

(vii) Wolf Fork above Coates Creek:

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

(B) No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(viii) Robinson Fork:

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

(B) No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(ix) South Fork, from the mouth to Griffin Fork:

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

(B) No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(x) South Fork, upstream from Griffin Creek: Open the first Saturday in June through August 31.

(374) **Trapper Lake (Chelan County):** Trout: Limit two.

(375) **Trout Lake (Ferry County):** Open the fourth Saturday in April through October 31.

(376) **Trout Lake (tributary to Big White Salmon River) (Klickitat County) including all tributaries:** Open the first Saturday in June through October 31.

(377) **Tucannon River (Columbia County):**

(a) Unless otherwise provided in this section, all tributaries are closed, except Pataha Creek.

(b) Mouth upstream to Turner Road Bridge at Marengo:

(i) First Saturday in June through October 31.

(A) Bass: No limit and no size restrictions.

(B) Channel catfish: No limit.

(C) Trout:

(I) No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(II) Steelhead: Limit 2 hatchery fish.

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

(D) Walleye: No limit and no size restrictions.

(ii) November 1 through last day in February.

(A) Release all fish, except anglers may retain up to 2 hatchery steelhead and 15 whitefish.

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

(C) Barbless hooks required.

(c) Turner Road Bridge at Marengo to Tucannon Hatchery Bridge:

(i) First Saturday in June through August 31.

(ii) Selective gear rules apply.

(iii) Bass: No limit and no size restrictions.

(iv) Trout:

(A) No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(B) Steelhead: Limit 2 hatchery fish.

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

(v) Channel catfish: No limit.

(vi) Walleye: No limit and no size restrictions.

(d) Tucannon Hatchery Bridge to 500 feet above intake for Rainbow Lake: Closed to fishing.

(e) 500 feet above intake for Rainbow Lake to Cow Camp Bridge:

(i) First Saturday in June through August 31.

(ii) Selective gear rules apply.

(iii) Bass: No limit and no size restrictions.

(iv) Channel catfish: No limit.

(v) Trout:

(A) No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(B) Release steelhead.

(vi) Walleye: No limit and no size restrictions.

(f) Cow Camp Bridge upstream: Closed to fishing.

(378) **Tucquala Lake (Kittitas County):**

(a) Open the Saturday before Memorial Day through October 31.

(b) Eastern brook trout: No limit; eastern brook trout do not count towards the trout limit.

(379) **Twin Lakes (Chelan County) and tributaries and outlet stream to junction with the Napeequa River:** Closed.

(380) **Twisp River (Okanogan County):** Mouth to War Creek:

(a) Open the Saturday before Memorial Day through August 15.

(b) Selective gear rules apply.

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

(d) Catch and release only.

(e) Twisp River Tributaries from the mouth to War Creek; including Buttermilk Creek and Little Bridge Creek:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

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

(iv) Catch and release only.

(f) Twisp River tributaries from War Creek to the North Fork Twisp River, including War Creek, South Fork Twisp River, North Creek to Twisp River Road Bridge, and North Fork Twisp River to the falls:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules apply.

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

(iv) Catch and release only.

(g) North Fork Twisp River above the falls and North Creek above Twisp River Road Bridge are open from the Saturday before Memorial Day to October 31.

(381) **Union Creek (Yakima County):** Open upstream of the falls (approximately 1/4 mile from the mouth).

(382) **Upper Wheeler Reservoir (Chelan County):**

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

(b) Fly fishing only.

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

(d) Catch and release only.

(383) **Vanes Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.

(384) **Vic Meyers (Rainbow) Lake (Grant County):** Open the fourth Saturday in April through September 30.

(385) **Waitts Lake (Stevens County):** Open the fourth Saturday in April through last day in February.

(386) **Walla Walla River (Walla Walla County):**

(a) General rules in the mainstem:

(i) Bass: No limit and no size restrictions.

(ii) Channel catfish: No limit.

(iii) Walleye: No limit and no size restrictions.

(b) Rules by river section:

(i) From the mouth to McDonald Road Bridge:

(A) Open year-round, except all tributaries other than the Touchet River are closed.

(B) Trout:

(I) Open first Saturday in June through March 31.

(II) No minimum size for trout with a clipped adipose fin and healed scar at the location of the adipose fin.

(III) It is unlawful to fish for steelhead using anything other than barbless hooks.

(IV) Mandatory hatchery steelhead retention, limit 3. No catch and release of hatchery steelhead.

(ii) From the McDonald Road Bridge upstream to the Oregon state line:

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

(B) Selective gear rules apply.

(C) No minimum size for trout with a clipped adipose fin as evidenced by a healed scar at the location of the adipose fin.

(D) Limit 3 hatchery steelhead.

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

(F) From November 1 through March 31:

(I) Selective gear rules apply.

(II) Release all fish, except anglers may retain up to 3 hatchery steelhead.

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

(387) **Wanapum Pool (Columbia River) tributaries (Chelan/Douglas County):** Open the Saturday before Memorial Day through October 31 from Wanapum Dam to Rock Island Dam.

(388) **Wannacut Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(389) **Wapato Lake (Chelan County):**

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

(b) All other game fish: Open the fourth Saturday in April through October 31.

(390) **Ward Lake (Ferry County):** Open the fourth Saturday in April through October 31.

(391) **Warden Lake (Grant County):** Open the fourth Saturday in April through September 30.

(392) **Warden Lake, South (Grant County):** Open the fourth Saturday in April through September 30.

(393) **Washburn Island Pond (Okanogan County):**

(a) Open April 1 through September 30.

(b) It is unlawful to fish with use of an internal combustion motor. An internal combustion motor may be attached to a floating device, but must not be used.

(394) **Washburn Lake (Okanogan County):**

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

(b) Trout: Limit one.

(c) Selective gear rules apply.

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

(395) **Watson Lake (Columbia County):**

(a) Open March 1 through October 31.

(b) It is unlawful to fish from any floating device.

(c) Trout: It is unlawful to retain more than 2 trout over 13 inches in length.

(396) **Wenaha River tributaries within Washington:**

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

(b) Selective gear rules apply.

(c) Trout: Release steelhead.

(397) **Wenas Creek (Yakima County):**

(a) From the mouth to Wenas Lake, including all tributaries:

(i) Selective gear rules apply.

(ii) Trout: Minimum size ten inches.

(b) Upstream of Wenas Lake, including all tributaries:

Open the Saturday before Memorial Day to October 31.

(398) **Wenatchee Lake (Chelan County):**

(a) Open year-round; selective gear rules apply.

(b) Release bull trout, steelhead trout, sockeye, and Chinook salmon.

(c) Trout: Limit two; minimum length twelve inches.

(399) **Wenatchee River (Chelan County):** From the mouth to 400 feet below Dryden Dam and from the mouth of Peshastin Creek (above Dryden Dam) to the Icicle River Road Bridge:

(a) Salmon open August 1 through September 30.

(b) Selective gear rules apply.

(c) Night closure in effect.

(d) Limit 4; it is unlawful to retain more than 2 adult hatchery Chinook.

(e) Release coho and wild adult Chinook salmon.

(f) Minimum length 12 inches.

(400) **West Evans Pond (Asotin County):** It is unlawful to retain more than 2 trout over 13 inches in length.

(401) **White River (Chelan County), from ~~((the mouth upstream to))~~ White River Falls upstream:** Open the Saturday before Memorial Day through October 31, including White River tributaries from the mouth of the White River upstream, except Panther Creek and the Napeequa River.

(402) **White Salmon River (Klickitat/Skamania counties):**

(a) From the mouth (Burlington Northern Railroad Bridge) to the county road bridge below the former location of the powerhouse:

(i) It is unlawful to fish for salmon and steelhead using anything other than barbless hooks.

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

(iii) Open year-round.

(iv) August 1 through December 31: Anti-snagging rule applies. When the anti-snagging rule is in effect, fish must be hooked inside the mouth to be retained.

(v) June 16 through October 31: Night closure in effect for all species.

(vi) Bass: No limit and no size restriction.

~~((vi))~~ (vii) Channel catfish: No limit.

~~((vii))~~ (viii) Salmon and steelhead open year-round:

(A) From April 1 through ~~((July 31))~~ June 15:

(I) Limit 2; no more than 2 salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release wild Chinook.

(B)(I) From June 16 through July 31:

(II) Limit 2; no more than 2 salmon or one hatchery steelhead, or one of each, may be retained.

(C) From August 1 through March 31:

(I) From August 1 through August 31: Limit 6; no more than 2 adult salmon, release all steelhead.

(II) October 1 through October 31: Limit 6; no more than 2 adult salmon or one hatchery steelhead and one hatchery salmon.

(III) From November 1 through March 31: Limit 6; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

~~((H))~~ (IV) Salmon: Only hatchery Chinook and hatchery coho may be retained.

~~((viii))~~ (ix) Walleye: No limit and no size restriction.

(b) From the county road bridge below the former location of the powerhouse upstream to the Northwestern Road Bridge:

(i) Open April 1 through October 31:

(A) Catch and release, except up to 3 hatchery steelhead may be retained.

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

(C) Selective gear rules.

(ii) Salmon and steelhead:

(A) April 1 through July 31:

(I) Daily limit 3 fish, of which no more than 2 may be salmon.

(II) Release wild Chinook.

(B) August 1 through October 31: Limit 6; up to 3 may be adults of which no more than 2 may be hatchery salmon.

(c) From the Northwestern Road Bridge upstream to Big Brothers Falls (river mile 16):

(i) From Big Brothers Falls downstream 400 feet: Closed.

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

(iii) Selective gear rules apply.

(iv) From the first Saturday in June through July 31, release all fish, except anglers may retain up to 3 hatchery steelhead.

(v) Salmon and steelhead: From August 1 through October 31: Limit 6, and up to 3 may be adults of which no more than 2 may be hatchery salmon.

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

(d) Big Brothers Falls upstream to the source, including all tributaries: Open the first Saturday in June through October 31.

(403) **Wide Hollow Creek (Yakima County):** Open to juvenile anglers only.

(404) **Widgeon Lake (Grant County):** Open April 1 through September 30.

(405) **Williams Lake (Spokane County):** Open the fourth Saturday in April through September 30.

(406) **Williams Lake (Stevens County):**

(a) Open the first Friday after Thanksgiving through March 31.

(b) Release all fish except anglers may retain up to five rainbow trout.

(407) **Wilson Creek (Kittitas County):**

(a) Selective gear rules apply.

(b) Trout: Minimum size ten inches.

(c) Two branches within Ellensburg city limits: Open to juvenile anglers only.

(408) **Winchester Wasteway (Grant County) (that portion within the Winchester Game Reserve):** Open February 1 through September 30.

(409) **Yakima River (Yakima County):**

(a) General river rules:

(i) Release steelhead in the mainstem and tributaries.

(ii) Downstream of Highway 240 Bridge, Columbia River rules apply.

(iii) In the mainstem and tributaries:

(A) Bass: No limit and no size restrictions.

(B) Channel catfish: No limit.

(C) Walleye: No limit and no size restrictions.

(b) Rules by river section:

(i) From the Highway 240 Bridge to 400 feet below Prosser Dam:

(A) Open March 1 through October 22.

(B) From ~~((the WDFW white markers 200))~~ 400 feet downstream to 400 feet upstream of the USBR Chandler Powerhouse/Pumping Station ~~((spillway chute to the powerline crossing immediately upstream of the powerhouse))~~: Open March 1 through August 31.

(C) From March 1 through August 31; for all open species except sturgeon: It is permissible to fish with two poles so long as the angler possesses a valid two-pole endorsement.

(D) Chumming is permissible.

(E) Trout: Catch and release only.

(F) Salmon:

(I) Open September 1 through October 22.

(II) Night closure in effect.

(III) It is unlawful to fish for salmon using anything other than barbless hooks.

(IV) Limit 6; it is unlawful to retain more than 2 adults.

(V) Fishing from a floating device is prohibited from the Grant Avenue Bridge in Prosser downstream approximately 1.25 miles to the downstream side of the westbound Interstate 82 Bridge.

(ii) From Prosser Dam to Highway 223 Bridge:

(A) Open May 1 through October 31.

(B) Trout: Catch and release only.

(iii) From Highway 223 Bridge to 400 feet below Sunnyside Dam: Trout: Minimum length is 12 inches, maximum length is 20 inches.

(iv) From Sunnyside Dam to 3,500 feet below Roza Dam:

(A) Closed from Yakima Avenue-Terrace Heights Bridge upstream 400 feet.

(B) Selective gear rules apply.

(C) It is unlawful to fish from a floating device equipped with an internal combustion motor from the I-82 Bridge at Selah Gap to 3,500 feet below Roza Dam.

(D) Trout: Minimum length 12 inches, maximum length 20 inches.

(E) Open December 1 through January 31 for whitefish only; whitefish gear rules apply.

(v) From Roza Dam to 400 feet below Easton Dam:

(A) Open year-round.

(B) It is permissible to fish from floating devices equipped with motors only from the U.S. Bureau of Reclamation restricted area signs at Roza Dam upstream to the boat launch ramp on the Roza Access Area (approximately 1.3 river miles).

(C) Selective gear rules apply.

(D) Trout: Catch and release.

(E) Open December 1 through January 31 for whitefish only; whitefish gear rules apply.

(vi) From Easton Dam to the base of Keechelus Dam:

(A) Selective gear rules apply.

(B) Trout: Catch and release only, except anglers may retain eastern brook trout. There is no limit and no minimum size restriction for eastern brook trout.

(vii) For all Yakima River tributaries from Roza Dam to Keechelus Dam not otherwise provided for in this section:

(A) Selective gear rules apply.

(B) Trout: Minimum length ten inches.

(C) Wilson Creek downstream of BNSF railroad bridge: Yakima River rules apply.

(410) **Yakima Sportsmen's Park Ponds (Yakima County):** Open to juvenile anglers only.

(411) **Yellowhawk Creek (Walla Walla County):** Closed.

(412) **Yocum Lake (Pend Oreille County):**

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

(b) It is unlawful to use lead weights or lead jigs that measure 1.5 inches or less along the longest axis.

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

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

WAC 220-312-060 Freshwater exceptions to state-wide rules—Columbia. The following exceptions to state-wide rules apply to the Columbia River, including impoundments and all connecting sloughs, except Wells Ponds:

(1) **General Columbia River rules:**

(a) In the concurrent waters of the Columbia River between Washington and Oregon, the license of either state is valid when fishing from a vessel.

(i) Anglers must comply with the fishing regulations of the state in which they are fishing.

(ii) This subsection does not allow an angler licensed in Oregon to fish on the Washington shore, or in the sloughs or tributaries in Washington except as otherwise provided by department rule.

(iii) Anglers fishing the Columbia River are restricted to one limit, as defined by the laws of the state in which they are fishing, even if they are licensed by both states.

(b) It is unlawful to possess in the field salmon or steelhead mutilated so that size, species, or fin clip cannot be determined until the angler has reached their automobile or principal means of land transportation and completed his or her daily angling.

(c) Salmon and trout handling rules provided in WAC 220-56-118 apply to the Columbia River, except from February 15 through June 15 in the mainstem Columbia from the

Rocky Point/Tongue Point line upstream to the Washington-Oregon border where WAC 220-56-118 applies only to anglers fishing from vessels less than 30 feet in length (as substantiated by Coast Guard documentation or Marine Board registration).

(d) From Buoy 10 to the Washington/Oregon border:

(i) From March 1 through May 15, the mainstem Columbia River is open for retention of adipose fin-clipped steelhead and shad only during days and in areas that are open for the retention of adipose fin-clipped spring Chinook salmon.

(ii) From August 1 through December 31, each angler aboard a vessel may deploy salmon/steelhead angling gear until the salmon/steelhead limit for all anglers aboard has been achieved.

(iii) From June 16 through July 31, upstream of the Megler-Astoria Bridge to McNary Dam, night closure in effect for all anglers except those enrolled in the Pikeminnow Sport Reward Program fishing and targeting pikeminnow.

(iv) From August 1 through December 31, upstream to McNary Dam, night closure in effect for all anglers except those enrolled in the Pikeminnow Sport Reward Program fishing and targeting pikeminnow.

(e) Open year-round unless otherwise provided.

(f) Barbless hooks are required for salmon and steelhead.

(g) Walleye and bass: No limit and no size restriction.

(h) Channel catfish: No limit.

(2) **Rules by river section:**

(a) **From a true north-south line through Buoy 10, upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank:**

(i) Fishing from the north jetty is permissible when Marine Area 1 or Buoy 10 areas are open for salmon, and the limit and minimum size restrictions follow the most liberal regulations if both areas are open. Only single point barbless hooks may be used for salmon and steelhead.

(ii) Release all trout, except anglers may retain hatchery steelhead.

(iii) Salmon and steelhead:

(A) Open June 16 through July 31:

(I) Closed to fishing for salmon and steelhead from Buoy 10 to the Megler-Astoria Bridge.

(II) Limit 6; no more than 2 adult salmon, or ~~((2))~~ one adult salmon and one hatchery steelhead~~((, or one of each)),~~ may be retained.

(III) Release all salmon other than sockeye and hatchery Chinook.

(B) Open August 1 through September ~~((5))~~ 4:

(I) Limit 2, of which only one Chinook and/or one hatchery steelhead may be retained except from August 1 through August 31 release all steelhead.

(II) Release all salmon except Chinook and hatchery coho.

(III) Chinook minimum length 24 inches.

(IV) ~~((On Sundays and Mondays, all Chinook must be adipose fin clipped to be retained.~~

~~((V)))~~ Coho minimum length 16 inches.

(C) Open September ~~((6))~~ 5 through September 30:

(I) Limit 2, of which only one hatchery steelhead may be retained.

- (II) Release all salmon other than hatchery coho.
- (III) Coho minimum length 16 inches.
- (D) Open October 1 through December 31:
- (I) Limit 6; no more than 2 adult salmon, or one adult salmon and one hatchery steelhead, may be retained.
- (II) Release all salmon except Chinook and hatchery coho.
- (E) Open January 1 through March 31:
- (I) Limit 6; no more than 2 adult hatchery Chinook, or 2 hatchery steelhead, or one of each, may be retained.
- (II) Release all salmon except hatchery Chinook.
- (iv) Shad open May 16 through March 31.
- (v) Forage fish and bottomfish: Marine Area 1 general rules apply; eulachon closed.
- (b) From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank, upstream to the I-5 Bridge:**
- (i) Trout:
- (A) Open May 16 through March 31.
- (B) Release all trout except hatchery cutthroat and hatchery steelhead (the limit is as provided under (b)(v) of this subsection).
- (I) Anglers may retain up to 2 hatchery cutthroat.
- (II) Hatchery cutthroat minimum length 12 inches.
- (III) Barbless hooks are required for cutthroat trout.
- (ii) Salmon and steelhead:
- (A) Open May 16 through June 15:
- (I) Release all salmon except hatchery jack Chinook.
- (II) Limit 6; no more than 2 hatchery steelhead may be retained.
- ~~(B) Open ((May)) June 16 through July 31:~~
- (I) Release all salmon except hatchery Chinook and sockeye.
- (II) Limit 6; no more than 2 adult salmon, or ~~((2)) one adult salmon and one hatchery steelhead~~~~((, or one of each))~~, may be retained.
- ~~((III) Release sockeye and adult Chinook May 16 through June 15.~~
- ~~((B))~~ (C) Open August 1 through September 30:
- (I) Upstream of Warrior Rock line: Limit 6; no more than 2 adult salmon, or one adult salmon and one hatchery steelhead, may be retained. Release all salmon except Chinook and hatchery coho. From August 1 through August 31 release all steelhead.
- (II) Downstream of Warrior Rock line: Limit 6; no more than 2 adult salmon, or one adult salmon and one hatchery steelhead, may be retained. Only one may be an adult Chinook. Release wild Chinook from September ~~((10)) 8~~ through September 14, and release all Chinook from September 15 through September 30. From August 1 through August 31 release all steelhead.
- ~~((C))~~ (D) For the purpose of this subsection, "Warrior Rock line" is defined as a line projected from the Warrior Rock Lighthouse, through Red Buoy 4, to the orange marker atop the dolphin on the Washington shore.
- ~~((D))~~ (E) Open October 1 through December 31:
- (I) Limit 6; no more than 2 adult salmon, or one adult salmon and one hatchery steelhead, may be retained.

- (II) Release all salmon except Chinook and hatchery coho.
- ~~((E))~~ (F) Open January 1 through March 31:
- (I) Limit 6 fish; no more than 2 adult hatchery Chinook, or 2 hatchery steelhead, or one of each, may be retained.
- (II) Release all salmon except hatchery Chinook.
- (iii) Shad open May 16 through March 31.
- (c) From the I-5 Bridge to Bonneville Dam:**
- (i) The following waters are closed:
- (A) From the upstream line of Bonneville Dam to boundary markers 600 feet below the fish ladder at the powerhouse.
- (B) January 1 through April 30 from a line between the upstream end of Sand Island (near Rooster Rock) on the Columbia River, to the boundary marker on the Oregon shore, downstream to a line between the lower end of Sand Island and the boundary marker on the Oregon shore.
- (C) Closed to angling from a floating device or by any method except hand-casted gear from shore from Bonneville Dam downstream to a line from the Hamilton Island boat ramp to an Oregon boundary marker on the westernmost tip of Robins Island.
- (ii) Camas Slough:
- (A) It is permissible for an angler licensed in Oregon or Washington to fish from a floating device.
- (B) In the waters of the Columbia River downstream from the mouth of the Washougal River, north of Lady Island, and downstream of the Highway 14 Bridge at the upstream end of Lady Island:
- (I) From August 1 through December 31: It is permissible to fish with two poles so long as the angler possesses a valid two-pole endorsement.
- (II) From August 1 through December 31: Each angler aboard a vessel may deploy salmon/steelhead angling gear until the salmon/steelhead limit for all anglers aboard has been achieved.
- (III) Open for salmon when the adjacent mainstem Columbia or Washougal rivers are open for salmon.
- (IV) The limit for salmon is the same as the most liberal regulation of either area, except anglers may only retain hatchery Chinook and hatchery coho; release all other salmon.
- (iii) Release all trout except hatchery steelhead.
- (iv) Salmon and steelhead:
- (A) Open June 16 through July 31:
- (I) Limit 6; no more than 2 adult salmon, or ~~((2)) one adult salmon and one hatchery steelhead~~~~((, or one of each))~~, may be retained.
- (II) Release all salmon except hatchery Chinook and sockeye.
- (B) Open August 1 through December 31:
- (I) Limit 6; no more than 2 adult salmon, or one adult salmon and one hatchery steelhead, may be retained, except August 1 through August 31 release all steelhead.
- (II) Release all salmon except Chinook and hatchery coho.
- (III) Closed to fishing for salmon and steelhead November 1 through December 31 from Beacon Rock to Bonneville Dam.
- (v) Steelhead: Open January 1 through March 31. Daily limit 2 hatchery steelhead.

(vi) Shad: Open May 16 through March 31.

(d) From Bonneville Dam to The Dalles Dam:

(i) Closed waters:

(A) Within one quarter mile of the USFWS Spring Creek Hatchery Grounds, between posted markers located one quarter mile on either side of the fish ladder entrance.

(B) At The Dalles between the upstream line of The Dalles Dam to the upstream side of the Interstate 197 Bridge, except that bank fishing is permitted up to the downstream navigation lock wall on the Washington shore.

(ii) Release all trout, except anglers may retain hatchery steelhead.

(iii) Salmon and steelhead:

(A) When open from March 16 through June 15:

(I) Bank fishing only from Bonneville Dam to Tower Island powerlines (approximately 6 miles below The Dalles Dam).

(II) Only hand-cast lines may be used. It is unlawful to use a floating device to set lines for salmon and steelhead.

(B) Open June 16 through July 31:

(I) Limit 6; no more than 2 adult salmon, or ~~((2))~~ one adult salmon and one hatchery steelhead~~((, or one of each))~~, may be retained.

(II) Release all salmon except sockeye and hatchery Chinook.

(C) Open August 1 through December 31:

(I) August 1 through October 15: Anti-snagging rule applies ~~((and night closure in effect))~~. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(II) Limit 6; no more than 2 ~~((adults, of which no more than 2 adult salmon or 2))~~ adult salmon, one adult salmon and one hatchery steelhead~~((, or one of each))~~ may be retained, except ~~((September 1 through December 31 when no more than one hatchery steelhead may be retained))~~ from August 1 through August 31 release all steelhead.

(III) Release all salmon except Chinook and coho.

(IV) Release wild coho from Bonneville Dam to Hood River Bridge.

(iv) Steelhead: Open January 1 through March 31. Daily limit 2 hatchery steelhead.

(e) From The Dalles Dam to McNary Dam:

(i) Closed waters:

(A) At John Day Dam between the upstream line of John Day Dam to markers approximately 3,000 feet downstream, except that bank fishing is permitted up to 400 feet below the fishway entrance on the Washington shore.

(B) At McNary Dam between the upstream line of McNary Dam downstream to a line across the river from the red and white marker on the Oregon shore on a line that intersects the downstream end of the wing-wall of the boat lock near the Washington shore.

(ii) Release all trout except hatchery steelhead.

(iii) Salmon and steelhead:

(A) When open from March 16 through June 15:

(I) Anglers may possess up to 4 hatchery adult Chinook salmon in fresh form.

(II) Anglers aboard a boat may only possess one daily limit of salmon in fresh form.

(B) Open June 16 through July 31:

(I) Limit 6; no more than 2 adult salmon, or ~~((2))~~ one adult salmon and one hatchery steelhead~~((, or one of each))~~, may be retained.

(II) Release all salmon except hatchery Chinook and sockeye.

(C) Open August 1 through December 31:

(I) August 1 through October 15: Anti-snagging rule applies ~~((and night closure in effect))~~. When the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

(II) Limit 6; no more than 2 adults, of which no more than 2 may be adult salmon or ~~((2))~~ one adult salmon and one hatchery steelhead~~((, or one of each))~~, except ~~((September 1 through December 31 when no more than one hatchery steelhead may be retained))~~ release all steelhead from The Dalles Dam upstream to John Day Dam September 1 through September 30 and from John Day Dam upstream to McNary Dam September 1 through October 31.

(III) Release all salmon except Chinook and coho.

(iv) Steelhead: Open January 1 through March 31. Daily limit 2 hatchery steelhead.

(f) From McNary Dam to Highway 395 Bridge at Pasco:

(i) ~~((The Snake River Confluence Protection Area includes waters of the Columbia River from the railroad bridge between Burbank and Kennewick, upstream approximately 2.1 miles to the first power line crossing the Columbia upstream of the navigation light on the point of Sacajawea State Park. For all species, limits, seasons, size restrictions and gear restrictions are the same as those in the adjacent portion of the Snake River.))~~ Columbia River rules apply downstream of the Burbank-to-Pasco railroad bridge at Snake River mile 1.5.

(ii) From June 16 through December 31, night closure in effect for all anglers except anglers enrolled in the Pikeminnow Reward Program fishing and targeting pikeminnow.

~~((iii))~~ (iii) Release all trout except hatchery steelhead.

~~((iv))~~ (iv) Salmon and steelhead:

(A) When open from March 16 through June 15 from McNary Dam to the Washington/Oregon border:

(I) Anglers may possess up to 4 hatchery adult Chinook in fresh form.

(II) Anglers aboard a boat may only possess one daily limit of salmon in fresh form.

(B) Open June 16 through July 31:

(I) Limit 6; no more than 2 adult salmon, or ~~((2))~~ one adult salmon and one hatchery steelhead~~((, or one of each))~~, may be retained.

(II) Release all salmon except hatchery Chinook and sockeye.

(C) Open August 1 through December 31:

(I) Limit 6; no more than 2 adult salmon or ~~((2))~~ one adult salmon and one hatchery steelhead ~~((or one of each))~~ may be retained, except ~~((November 1 through December 31 when no more than one hatchery steelhead may be retained))~~ October 1 through November 30 release all steelhead.

(II) Release all salmon except Chinook and coho.

~~((iv))~~ (III) Each angler aboard a vessel may deploy salmon/steelhead angling gear until the salmon/steelhead limit for all anglers aboard has been achieved.

(v) Steelhead: Open January 1 through March 31. Daily limit 2 hatchery steelhead.

(g) From the Highway 395 Bridge at Pasco to the Interstate 182 Bridge:

(i) Closed waters: Within a 400 foot radius of the Columbia Irrigation District (CID) fish barrier at the mouth of the CID wasteway at Columbia Park.

(ii) For all open species except sturgeon: It is permissible to fish with two poles so long as the angler possesses a two-pole endorsement.

(iii) From October 1 through December 31, night closure in effect for all anglers except anglers enrolled in the Pike-minnow Reward Program fishing and targeting pikeminnow.

(iv) Trout:

(A) October 1 through ~~((October))~~ December 31 release all trout, except ((2)) one hatchery steelhead with both the adipose and a ventral fin clipped may be retained.

(B) ~~((November))~~ January 1 through March 31 release all trout, except anglers may retain ~~((up to 2))~~ one hatchery steelhead.

~~((iv))~~ (v) Salmon:

(A) Open June 16 through August 15:

(I) Limit ((3)) 4; no more than ((4)) one adult hatchery Chinook salmon and no more than 2 sockeye salmon may be retained.

(II) Release wild adult Chinook ~~((and sockeye salmon)).~~

(B) Open August 16 through October ~~((31))~~ 22: Limit 6; no more than ((3)) 2 adult salmon may be retained. Once the adult salmon or steelhead limit is retained, anglers may not continue to fish for either species the remainder of the day.

(h) From the Interstate 182 Bridge to the Old Hanford townsite wooden powerline towers, in Sec. 30, T13N, R28E:

(i) Closed waters:

(A) The area of the Columbia River between the markers located 100 feet upstream and 100 feet downstream of the Ringold Springs Hatchery Creek, and extending 100 feet towards the middle of the river.

(B) September 1 through November 30: West Branch Esquatzel Coulee Block 1 Irrigation Wasteway Lagoon in the Columbia River.

(ii) Ringold Area Bank Fishery waters, from WDFW markers 1/4 mile downstream from the Ringold wasteway outlet, to WDFW markers 1/2 mile upstream from Spring Creek:

(A) Fishing is allowed only from the bank and only on the hatchery side of the river.

(B) Release all trout, except anglers may retain ~~((up to 2))~~ one hatchery steelhead from April 1 through April 15.

(iii) For all open species except sturgeon: It is permissible to fish with two poles so long as the angler possesses a two-pole endorsement.

(iv) From October 1 through December 31, night closure in effect for all anglers except anglers enrolled in the Pike-minnow Reward Program fishing and targeting pikeminnow.

(v) Trout:

(A) October 1 through ~~((October))~~ December 31 release all trout, except ((2)) one hatchery steelhead with both the adipose and a ventral fin clipped may be retained.

(B) ~~((November))~~ January 1 through March 31 release all trout, except anglers may retain ~~((up to 2))~~ one hatchery steelhead.

~~((v))~~ (vi) Salmon:

(A) Open June 16 through August 15:

(I) Limit ((4)) 6; no more than 2 adult hatchery Chinook and no more than 3 sockeye salmon may be retained.

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

(B) Open August 16 through October ~~((31))~~ 22: Limit 6; no more than ((3)) 2 adult salmon may be retained. Once the adult salmon or steelhead daily limit has been retained, anglers may not continue to fish for either species the remainder of the day.

(i) From the Old Hanford townsite wooden power line towers, in Sec. 30, T13N, R28E, to Vernita Bridge, (Highway 24):

(i) Open February 1 through October 22.

(ii) For all open species except sturgeon: It is permissible to fish with two poles so long as the angler possesses a two-pole endorsement.

(iii) Trout: Catch and release only.

(iv) Salmon:

(A) Open June 16 through August 15:

(I) Limit ((4)) 6; no more than 2 adult hatchery Chinook and no more than 3 sockeye salmon may be retained.

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

(B) Open August 16 through October 22: Limit 6; no more than ((3)) 2 adult salmon may be retained.

(j) From Vernita Bridge (Highway 24) to Priest Rapids Dam:

(i) Closed waters:

(A) At Priest Rapids Dam; waters between the upstream line of Priest Rapids Dam downstream to the boundary markers 650 feet below the fish ladders.

(B) At Jackson (Moran) Creek, or Priest Rapids Hatchery Outlet Creek; waters of the Priest Rapids Hatchery system to the outlet on the Columbia River, extending to mid-stream Columbia River between boundary markers located 100 feet upstream and 400 feet downstream of the mouth.

(ii) For all open species except sturgeon: It is permissible to fish with two poles so long as the angler possesses a two-pole endorsement.

(iii) Trout: Catch and release only.

(iv) Salmon:

(A) Open June 16 through August 15:

(I) Limit ((4)) 6; no more than 2 adult hatchery Chinook and no more than 3 sockeye salmon may be retained.

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

(B) Open August 16 through October 22: Limit 6; no more than ((3)) 2 adult salmon may be retained.

(k) From Priest Rapids Dam to Rock Island Dam:

(i) Closed waters:

(A) Wanapum Dam, between the upstream line of Wanapum Dam to the boundary markers 750 feet downstream of the east fish ladder and 500 feet downstream of the west fish ladder.

(B) Rock Island Dam, between the upstream line of Rock Island Dam to boundary markers 400 feet downstream of the fish ladders.

(ii) July 1 through August 31: Fishing two poles is permissible so long as the angler possesses a two-pole endorsement.

(iii) Release all trout.

(iv) Salmon:

(A) Open July 1 through August 31:

(I) Minimum size 12 inches; limit 4; no more than 2 adult hatchery Chinook may be retained.

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

(B) Open September 1 through October 22: Open for Chinook only; limit 6, no more than 3 adults may be retained. (~~(Fishing two poles is permissible so long as the angler possesses a two-pole endorsement.)~~)

(l) **From Rock Island Dam to Wells Dam:**

(i) Closed waters:

(A) At Rocky Reach Dam between the upstream line of the dam to boundary markers 400 feet downstream of the fish ladders.

(B) At Wells Dam, between the upstream line of Wells Dam to boundary markers 400 feet downstream of the spawning channel discharge (on Chelan County side) and fish ladder (on Douglas County side).

(ii) July 1 through August 31: Fishing two poles is permissible so long as the angler possesses a two-pole endorsement.

(iii) Release all trout.

(iv) Salmon open July 1 through October 15:

(A) Minimum size 12 inches; limit 4; no more than 2 adult hatchery Chinook may be retained.

(B) Release (~~((soekeye,))~~) coho and wild adult Chinook.

(m) **From Wells Dam to Highway 173 Bridge at Brewster:**

(i) July 16 through August 31: Fishing two poles is permissible so long as the angler possesses a two-pole endorsement.

(ii) (~~((Release all trout.))~~) Hatchery trout: Open July 16 through August 15. Minimum size 12 inches. Daily limit 10. Barbless hooks required.

(iii) Salmon open July 16 through August 31:

(A) Minimum size 12 inches; limit 4; no more than 2 adult hatchery Chinook may be retained.

(B) Release (~~((soekeye,))~~) coho and wild adult Chinook.

(n) **From Highway 173 Bridge at Brewster to Chief Joseph Dam:**

(i) Closed waters:

(A) From the Okanogan County shore between Chief Joseph Dam and the Highway 17 Bridge.

(B) From the Douglas County shore from Chief Joseph Dam to the rock jetty at the upstream shoreline of Foster Creek.

(ii) July 1 through August 31: Fishing two poles is permissible so long as the angler possesses a two-pole endorsement.

(iii) It is unlawful to fish from a floating device downstream of Chief Joseph Dam from the boundary marker to the Corps of Engineers safety zone marker.

(iv) (~~((Release all trout.))~~) Hatchery trout: Open July 1 through August 15. Minimum 12 inches. Daily limit 10. Barbless hooks required.

(v) Salmon: Open July 1 through October 15:

(A) Minimum size 12 inches; limit 4; no more than 2 adult hatchery Chinook may be retained.

(B) Release (~~((soekeye,))~~) coho and wild adult Chinook.

(o) **Above Chief Joseph Dam:** See Rufus Woods Lake in WAC 220-310-195.

(p) **Above Grand Coulee Dam:** See Lake Roosevelt in WAC 220-310-195.

WSR 17-17-030

PERMANENT RULES

LIQUOR AND CANNABIS

BOARD

[Filed August 9, 2017, 10:56 a.m., effective September 9, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: As part of the board's ongoing rules review process, this chapter is being reviewed for relevance, clarity, and accuracy. Rules are also being proposed to address alcohol purchases using mobile applications.

Citation of Rules Affected by this Order: Amending WAC 314-03-020, 314-03-030, 314-03-035, and 314-03-040.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 17-09-088 on April 19, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 9, 2017.

Jane Rushford
Chairman

AMENDATORY SECTION (Amending WSR 10-04-018, filed 1/25/10, effective 2/25/10)

WAC 314-03-020 Consumer orders, internet sales, and delivery for grocery stores and beer and wine specialty shops. A grocery store or beer and wine specialty shop licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Liquor shall not be for resale.

(2) **Stock location.** Liquor must come directly from a licensed retail location.

(3) **How to place an order.** Liquor may be ordered in person at a licensed location, by mail, telephone or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. ~~((A third-party service may not solicit customer business on behalf of a licensee.))~~ The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The sale must be made by the licensee;

(ii) The licensee processes payment for the sale; and

(iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell liquor via the internet, a new license applicant must request internet-sales privileges in his or her application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Liquor may be delivered each day of the week between the hours of six a.m. and two a.m. Delivery must be fully completed by two a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned to the licensee.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of liquor must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory-sealed containers is prohibited. Delivery of malt liquor in kegs or other containers capable of holding four gallons or more of liquid is allowed, provided that kegs or containers are factory sealed and that the keg sales requirements (see WAC 314-02-115) are met prior

to delivery. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at a licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Times and dates of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of liquor must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.

AMENDATORY SECTION (Amending WSR 12-23-003, filed 11/7/12, effective 12/8/12)

WAC 314-03-030 Consumer orders, internet sales, and delivery for spirits retail licensees. A spirit retail licensee may accept orders for spirits from, and deliver spirits to, customers.

(1) **Resale.** Spirits shall not be for resale.

(2) **Stock location.** Spirits must come directly from a licensed retail location.

(3) **How to place an order.** Spirits may be ordered in person at a licensed location, by mail, telephone, or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a spirits retail licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a spirits retail licensee, except for transmittal of payment through a third-party service. ~~((A third-party service may not solicit customer business on behalf of a spirits retail licensee.))~~ The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The sale must be made by the licensee;

(ii) The licensee processes the payment for the sale; and

(iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) **Payment method.** Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) **Internet.** To sell spirits via the internet, a new spirits retail license applicant must request internet-sales privileges in his or her application. An existing spirits retail licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated spirits retail licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Spirits may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Under chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned to the licensee.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of spirits must be factory sealed in bottles. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of liquor must display the spirits retail licensee's registered trade name.

(12) **Accountability.** A spirits retail licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

AMENDATORY SECTION (Amending WSR 15-21-097, filed 10/21/15, effective 11/21/15)

WAC 314-03-035 Consumer orders, internet sales, and delivery for on-premises beer and/or wine liquor licensees. An on-premises beer and/or wine licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Beer and wine shall not be for resale.

(2) **Stock location.** Beer and wine must come directly from a licensed on-premises retail location.

(3) **How to place an order.** Beer and wine may be ordered in person at a licensed location, by mail, telephone, internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. ~~((A third-party service may not solicit customer business on behalf of a licensee.))~~ The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The sale must be made by the licensee;

(ii) The licensee processes the payment; and

(iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) **Payment method.** Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) **Internet.** To sell beer and wine via the internet, a new license applicant must request internet-sales privileges in his or her application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States Postal Service; however, the board may grant an exception to this rule at its discretion. A residence includes

a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Beer and wine may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of beer and wine.

(b) A delivery person must verify the age of the person accepting delivery before handing over beer and wine.

(c) If no person twenty-one years of age or older is present to accept a beer and wine order at the time of delivery, the beer and wine shall be returned to the licensee.

(8) **Intoxication.** Delivery of beer and wine is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of beer and wine must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory sealed containers is prohibited. Delivery of malt liquor in kegs or other containers capable of holding four gallons or more of liquid is allowed, provided that kegs or containers are factory sealed and that the keg sales requirements (see WAC 314-02-115) are met prior to delivery. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a beer and wine package, delivered by a third party, must have language stating that:

- (i) The package contains liquor;
- (ii) The recipient must be twenty-one years of age or older; and
- (iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at a licensed premises. Each delivery sales record shall include the following:

- (i) Name of the purchaser;
- (ii) Name of the person who accepts delivery;
- (iii) Street addresses of the purchaser and the delivery location; and
- (iv) Times and dates of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives beer and wine upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of beer and wine must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of beer and wine made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.

AMENDATORY SECTION (Amending WSR 16-07-025, filed 3/9/16, effective 4/9/16)

WAC 314-03-040 Consumer orders, internet sales, and delivery for beer and/or wine gift delivery licenses. A beer and/or wine gift delivery licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Liquor shall not be for resale.

(2) **Stock location.** Liquor must come directly from a licensed retail location.

(3) **How to place an order.** Liquor may be ordered in person at a licensed location, by mail, telephone or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. ~~((A third-party service may not solicit customer business on behalf of a licensee.))~~ The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The sale must be made by the licensee;

(ii) The licensee processes the payment; and

(iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell liquor via the internet, a new license applicant must request internet-sales privileges in his or her application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Liquor may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned to the licensee.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of liquor must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory sealed containers is prohibited. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of liquor must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.

questions of each other except in sexual misconduct hearings where the questions are submitted to the conduct review officer, whom may ask or reject the questions, if deemed irrelevant or inappropriate. A student who is interim suspended will receive an emergency appeal hearing with the vice president for student affairs within ten business days of the served suspension.

Citation of Rules Affected by this Order: New WAC 172-121-121, 172-121-122 and 172-121-123; and amending WAC 172-121-020, 172-121-070, 172-121-075, 172-121-080, 172-121-100, 172-121-105, 172-121-110, 172-121-120, 172-121-130, 172-121-140, and 172-121-200.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 17-14-054 on June 28, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 9, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 9, 2017.

Chelsea L. Goss
Policy Administrator
Title IX and University Compliance

WSR 17-17-031

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed August 9, 2017, 11:27 a.m., effective September 9, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending chapter 172-121 WAC, Student conduct code, to codify rules related to the conduct hearing process for students of Eastern Washington University (EWU). Recent state appellate court case, *Arish [Arishi] v. Washington State University*, established that if a sanction could lead to suspension, expulsion or if the charges rise to the level of a felony under Washington criminal law, universities must offer a full adjudicative hearing. EWU will now offer three types of hearings. Summary hearing, for allegations that are less than a suspension, and council hearings, for allegations other than sexual misconduct, will be presided over by the conduct review officer. A single administrative law judge will now preside over all sexual misconduct hearings. Complainants, respondents and their advisors may ask

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-020 Definitions. For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

(~~"Accused" refers to any student or student organization that is accused of violating the student conduct code under this chapter.~~)

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any (~~accused~~) respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

"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 university when the university files the complaint.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or a designee of the dean of students.

"Director of SRR" refers to the director of student rights and responsibilities, or designated representative.

~~("Harassment" encompasses harassment, sexual harassment, gender-based harassment, and stalking for the purposes of WAC 172-121-030 through 172-121-140. These terms are further defined in WAC 172-121-200.)~~

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the dean of student's office, sending them via United States mail, properly addressed, postage prepaid, to 300 Showalter Hall, or emailing them to studentrights@ewu.edu.

"Hearing authority" refers to the university official or student disciplinary council who holds a conduct review hearing.

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's university email account, by leaving a message on his or her personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant and the respondent.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, university policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Respondent" refers to any student or student organization that is accused of violating the student conduct code under this chapter.

"Serve" means to post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Sexual misconduct" encompasses sexual harassment, domestic violence, relationship violence, stalking, and acts of sexual violence for the purposes of WAC 172-121-030 through 172-121-140. These terms are further defined in WAC 172-121-200.

"Sexual misconduct hearing" refers to a full conduct review hearing before a university official for allegations of sexual misconduct which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension

or expulsion, or that rise to the level of felony-level sexual misconduct.

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person currently enrolled at the university;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"Summary hearing" refers to a ~~(conduct)~~ brief review hearing before the conduct review officer.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or a designee of the university president.

"Vice president for student affairs" refers to the vice president for student affairs or their designated representative.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-070 Conduct review officials. (1) The director of SRR shall:

(a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;

(b) Manage the proceedings as described in this chapter;

(c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;

(d) Ensure complaints ~~((of harassment or sexual misconduct involving students))~~ are promptly investigated and resolved as required by federal and state laws.

(e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives and whether the conduct process should be initiated.

(2) Conduct review officer (CRO): The university president shall designate one or more conduct review officers. The director of ~~((OSRR))~~ SRR may be designated as a conduct review officer. The conduct review officer(s) shall ~~(=~~

~~(a))~~ preside over conduct review proceedings under this chapter~~(= and~~

~~(b) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit~~

of its objectives)). For sexual misconduct cases where the possible sanction may be suspension, expulsion, or involve felony-level sexual misconduct, the CRO also acts as the decision-maker as set forth in WAC 172-121-123.

As the presiding officer, the conduct review officer has authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas pursuant to RCW 34.05.446;
- (d) Rule on procedural matters, objections, and motions;
- (e) Rule on motions for summary judgment;
- (f) Rule on offers of proof and receive relevant evidence;
- (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;
- (j) Take official notice of facts pursuant to RCW 34.05.-452(5);
- (k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (m) Issue an order of default;
- (n) Hold prehearing conferences; and
- (o) Take any other action necessary and authorized by any applicable statute or rule.

(3) Student disciplinary council: The student disciplinary council hears cases of student conduct code violations that do not involve sexual misconduct as described in WAC 172-121-120. The council also serves as an appeal authority under WAC 172-121-130.

(a) Council pool: For each academic year, a pool of council members shall be established. All members of the council pool are appointed by the university president. Appointment of council pool members is as follows:

- (i) Faculty (~~members shall be selected by the faculty senate for three-year terms;~~
- (ii) Staff members shall be appointed by the university president for three-year terms;
- (iii) Students shall be appointed by the president of the ASEWU for one-year terms. Student appointments shall be made with the advice and consent of the associated students' legislature, as described in the constitution of the ASEWU. Students holding a position with any of the associated student courts, or who are in any way affiliated with any judicial, quasi-judicial, or advocacy position with the courts of the ASEWU, may not be appointed to the council pool;
- (iv) Community members: One or more members of the local community may be appointed by the university president. Community members serve until either the community member or the university president elects to sever the appointment, up to a maximum appointment period of three years. Community members shall be considered school offi-

cial while acting in their capacities as community members on the student disciplinary council and shall sign statements indicating they will comply with the confidentiality requirements of the Family Education Rights and Privacy Act;

~~(v)) and staff members are appointed for three-year terms. Student members are appointed for one-year terms;~~

(ii) Council chair: The director of SRR, or designee, shall serve as chair of council proceedings but will not have the right to vote, except in the case of a tie;

~~((vi)) (iii) Vacancies: Council pool vacancies shall be filled as needed ((by the designated appointing authority)) through presidential appointment.~~

(b) Session council: When a student disciplinary council is needed for a hearing or an appeal, ~~((council members shall be selected from the council pool as follows:~~

(i) Composition: A session council will typically consist of one nonvoting chair, two student members, and two faculty or staff members. The faculty/staff members may be both faculty, both staff, or one faculty and one staff member. The number of council members may vary, so long as quorum requirements are met. A community member may also serve on a session council, at the discretion of the director of SRR;

~~(ii) Selection:)) the director of SRR shall select available members from the council pool to serve as the session council(;~~

~~(iii) Quorum: A quorum consists of three voting members which must include at least one student and one faculty/staff member). Each session council must include a quorum. A quorum is three voting members, which must include at least one student and one faculty/staff member.~~

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-075 Conflicts of interest. (1) Individuals who play a role in receiving, investigating, and otherwise processing complaints shall not have any conflict of interest in the process. In the event such a conflict arises in the process, the person shall disclose such interest to the parties. Parties to the complaint who believe a university official involved in the process has a conflict of interest may report such concerns to the director of SRR or the dean of students. The director or dean shall determine whether a conflict of interest exists and take appropriate action.

(2) Anyone who serves as an investigator or advocate, or someone who is subject to the authority, direction, or discretion of such a person, may not serve as the conduct review officer for a full adjudicative hearing.

(3) Challenges to council membership. Members of the student disciplinary council and the conduct review officer shall not participate in any case in which they are the ~~((accused))~~ respondent, the complainant, a victim, or a witness; in which the respondent, complainant, victim, or a witness is a family member or friend; in which they have a personal interest or bias; or in which they have acted previously in an investigatory, advisory, or adjudicatory capacity.

(a) If a member has such a conflict, the person shall recuse ~~((themselves))~~ him/herself from further involvement in the case. In the event such a conflict arises after the council

has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A member's or the conduct review officer's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time by submitting a motion to disqualify to the conduct review officer. When such a challenge is made, the session council, excluding the person alleged to have a conflict of interest, shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies (~~themself~~) him/herself from a case, the director of SRR will appoint a replacement.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-080 Administration and records. (1) Student conduct code.

(a) Interpretation: Any questions regarding the interpretation or application of this student conduct code are referred to the vice president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed every three years under the direction of the vice president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of SRR. As much as possible, records should include:

(i) A summary of the proceedings during a preliminary conference;

(ii) An audio recording of conduct review hearings;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings; (~~and~~)

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding;

(v) A statement of matters officially noticed or considered by the council;

(vi) Evidence submitted, whether or not accepted, any objections and rulings, any cross-examination questions submitted to the council and rulings on such questions;

(vii) Proposed findings, requested orders, and exceptions;

(viii) Recording of the hearing and subsequent transcript, if any;

(ix) Any staff memorandum to the extent required by RCW 34.05.476; and

(x) Matters placed on the record after any ex parte communication. "Ex parte" means when a member of the student discipline council or conduct review officer communicates with a party about a nonprocedural matter regarding the hearing when the other party is not present.

(b) The director of SRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of the university and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the (~~accused~~) respondent may review the records relative to their case. The (~~accused~~) respondent shall request to review the case records by contacting the conduct review officer. The conduct review officer shall make every reasonable effort to support the (~~accused's~~) respondent's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university shall not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) The university shall release information related to disciplinary records to complainants, victims, or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. Student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The conduct review officer may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the conduct review officer.

(c) Required holds: The conduct review officer shall place a hold on a student's academic record if the student is ~~((accused of violating))~~ the respondent to a violation of the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. This hold shall remain in place until the allegation or complaint is resolved.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any person may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities; or

(ii) The office of the dean of students.

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where the university is acting as the complainant, ~~((the director of SRR))~~ an EWU employee shall initiate the complaint.

(2) Complaint review. Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of ~~((harassment,))~~ sexual misconduct~~(s))~~ and/or criminal conduct that will require special processing under subsection (3) of this section and whether appropriate law enforcement or other authorities should be notified. The director of SRR shall also review the complaint to determine whether the allegations may lead to a possible sanction of suspension, expulsion, or if the charges rise to the level of a felony under Washington criminal law; all such cases are referred to a council hearing under WAC 172-121-122 or a sexual misconduct hearing under WAC 172-121-123.

(3) ~~((Special rules for complaints of harassment and/or sexual misconduct.))~~ Sexual misconduct hearings. Except where specifically stated, this section applies to all allegations the university receives of ~~((harassment and/or))~~ sexual misconduct. This section shall apply regardless of where the alleged acts occurred.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of ~~((harassment and/or))~~ sexual misconduct to the university

Title IX coordinator within ~~((two business days))~~ twenty-four hours.

(b) Prompt resolution. The university shall investigate any complaint alleging ~~((harassment and/or))~~ sexual misconduct when it is legally required to do so to determine if the university will pursue the incident under this student conduct code and/or refer the incident to other departments or agencies for further criminal, civil, or disciplinary action. All allegations of ~~((harassment and/or))~~ sexual misconduct shall be promptly investigated and resolved. For student conduct cases, the university uses the hearing processes set forth in this code as the means of investigating a complaint. In the absence of extenuating circumstances, the university will seek to have the allegations resolved within sixty days from the date it is notified of the allegation.

(c) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant or victim wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant or victim wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants or victims. Files subject to public disclosure will be released to the extent required by law.

(d) Right to file a criminal report. Once the university is notified of an allegation of ~~((sexual harassment, gender-based harassment, stalking, or any form of))~~ sexual misconduct, it will notify the potential victim of their right to file a criminal complaint with campus or local law enforcement. If the victim in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the victim that he or she is not required to file a report with local law enforcement. The university will report allegations of ~~((harassment or))~~ sexual misconduct to law enforcement or other authorities consistent with federal, state, and local law.

(4) Interim measures. During the complaint review, the director of SRR will evaluate the circumstances and recommend to the dean of students if any interim restriction action against the ~~((accused))~~ respondent is warranted or if any interim measures to assist or protect the complainant and/or victim during the conduct code process are needed. In cases of alleged ~~((harassment and/or))~~ sexual misconduct, the director of SRR shall, in conjunction with the dean of students and other appropriate university officials, take immediate steps to protect the complainant and/or victim from further harassment prior to completion of the investigation/resolution of the complaint. Appropriate steps may include separating the ~~((accused harasser))~~ respondent and the complainant/victim, providing counseling for the complainant/

victim and/or harasser, and/or taking disciplinary action against the ~~((accused))~~ respondent.

(5) Inform complainant. As part of the complaint review process, the director of SRR will follow up with the complainant as described below.

(a) For cases other than ~~((harassment and/or))~~ sexual misconduct, the director of SRR will contact the complainant and provide them with the following information:

(i) The complainant's rights under the student conduct code;

(ii) The allegations which the complainant has against the ~~((accused))~~ respondent;

(iii) The potential conduct code violations related to the allegations; and

(iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging ~~((harassment or))~~ sexual misconduct, the director of SRR will, in addition to the information specified under (a) of this subsection, provide the complainant with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the respondent; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures.

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

(6) Following the complaint review, the director of SRR will either dismiss the matter or arrange a preliminary conference.

(a) Dismiss the matter. If the director of SRR ~~((believes that there is insufficient justification or insufficient evidence to pursue conduct review proceedings against the accused))~~ determines the allegations, even if true, would not rise to the level of a conduct violation, he/she may dismiss the matter. In such cases, the director of SRR will prepare a written record

of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is ~~((appropriate and feasible))~~ permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of ~~((harassment and/or))~~ sexual misconduct, the complainant/victim may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within ten days.

(b) Preliminary conference. If the director of ~~((OSRR))~~ SRR does not dismiss the matter he/she will arrange a preliminary conference as described in WAC 172-121-110.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-105 Conduct review proceedings. (1)

General provisions:

(a) ~~((AH))~~ Conduct review proceedings in which the potential sanction is less than suspension, expulsion, or do not involve allegations of felony level sexual misconduct are summary hearings and considered brief adjudicative proceedings in accordance with WAC 172-108-010(3), and shall be conducted in an informal manner. Conduct review proceedings in which the potential sanction is suspension, expulsion, or that involve allegations of felony level sexual misconduct are council hearings or sexual misconduct hearings under this code and are considered full adjudicative proceedings under the Administrative Procedure Act.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings.

(2) Notification for student organizations: When a charge is directed towards a student organization, the conduct review officer will communicate all matters relative to conduct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant, victim, and the ~~((accused))~~ respondent may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant, victim, or the ~~((accused))~~ respondent that employed the advisor;

(b) The advisor may be an attorney or any other person of the student's choosing;

~~((The complainant and the accused are responsible for presenting their own case and, therefore, advisors may not speak or participate directly in any conduct review proceeding. The complainant and/or the accused may, however, speak quietly with their advisor during such proceedings; and~~

~~((d) If an attorney is used as an advisor, the person using the attorney shall inform the conduct review officer or the council of their intent to do so at least two business days prior to any conduct review proceeding.))~~ The advisor must provide the conduct review officer with a FERPA release signed by the student they are assisting;

(d) If a complainant, victim, or the respondent is represented by an attorney, the attorney shall provide the conduct review officer and other parties with the attorney's name,

address, telephone number, and email address. The attorney must file a notice of appearance when hired to represent a person and a notice of withdrawal upon withdrawal of representation. A notice of appearance must be filed at least two business days prior to any conduct review proceeding.

(4) Review of evidence:

((The accused)) (a) In summary hearings, the respondent, and, in cases of ((harassment and/or)) sexual misconduct, the complainant/victim may request to view material related to their case prior to a scheduled hearing by contacting the conduct review officer. To facilitate this process, the party should contact the conduct review officer as early as possible prior to the scheduled hearing. The conduct review officer shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(b) In council hearings, the parties may request to view material related to the case prior to the scheduled hearing by contacting the conduct review officer. To facilitate this process, the party should contact the conduct review officer as early as possible prior to the scheduled hearing. The conduct review officer shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(5) Continuances: Continuances, extensions of time, and adjournments may be ordered by the conduct review officer. A party may file a timely request for a continuance if the party shows good cause for the continuance. A request for a continuance may be oral or written. Before granting a motion for a continuance, the conduct review officer shall allow any other party to object to the request. The conduct review officer will make a decision on the request and will communicate his/her decision in writing to the parties along with the reasons for granting or denying the request.

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-110 Preliminary conference. (1) Scheduling. If, after reviewing a complaint, the director of SRR decides to initiate conduct review proceedings, the director shall, within ten business days of receiving the initial complaint, appoint a conduct review officer (CRO) to the case and notify the ((accused)) respondent. In cases alleging ((harassment and/or)) sexual misconduct, the CRO assigned must have completed training on issues relating to ((harassment and)) sexual misconduct, ((including)) the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the ((accused)) charges to the respondent must:

(a) Be made in writing;

(b) Include a written list of charges against the ((accused)) respondent; and

(c) Include the name of the conduct review officer assigned to the case and the deadline for the ((accused)) respondent to contact the CRO in order to schedule a preliminary conference. Whenever possible, the deadline for the ((accused)) respondent to contact the CRO will be within five business days of the date the director of SRR sent notification to the ((accused)) respondent.

(2) Failure to respond: If the ((accused)) respondent fails to ((comply with the notification requirements)) respond to

the notice of charges, the director of SRR shall schedule the preliminary conference and notify the ((accused)) respondent. The notification shall be in writing and shall include a date, time, and location of the preliminary conference.

(3) Follow up with complainant/victim. In all cases alleging ((harassment and/or)) sexual misconduct or if there will be a council hearing, the CRO shall notify the complainant(s) of the date, time, and location of the preliminary conference and of their right to attend the conference. The CRO shall also follow up with the ((complainant(s)/victim(s) to determine whether)) complainant(s)/respondent(s) to inform them of the process of reporting any retaliation or new incidents ((of harassment have occurred)). If the complainant/victim has experienced any type of retaliatory behavior, the university shall take immediate steps to protect the complainant/victim from further harassment or retaliation.

(4) Appearance. ((Except for cases alleging harassment and/or sexual misconduct,))

(a) For summary hearings only the ((accused)) respondent and the ((accused's)) respondent's advisor may appear at the preliminary conference, unless the case involves alleged sexual misconduct. In cases alleging ((harassment and/or)) sexual misconduct, the ((accused)) respondent and the complainant/victim, along with their advisors, if they choose to have an advisor, may appear at the preliminary conference.

(b) For council hearings and sexual misconduct hearings, both parties and their advisors may appear at the preliminary conference.

(5) Failure to appear. In cases where proper notice has been given but the ((accused)) respondent fails to attend the preliminary conference, the CRO may:

(a) Proceed with a hearing and decide the case based on the information available; or

(b) Place a hold on the ((accused's)) respondent's academic records as described in WAC 172-121-080.

(6) ((Proceedings:)) Preliminary conference. The purpose of the preliminary conference is to advise the parties regarding the student conduct process. If both of the parties are not present, the CRO will refrain from discussing any nonprocedural matters. During the preliminary conference, the conduct review officer will:

(a) Review the written list of charges with the ((accused)) respondent;

(b) Inform the ((accused)) respondent who is bringing the complaint against them;

(c) Provide the ((accused)) respondent with a copy of the student conduct code and any other relevant university policies;

(d) Explain the ((accused's)) respondent's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the ((accused's)) respondent's and complainant's rights and responsibilities in the conduct review process; and

(g) Explain possible penalties under the student conduct code.

(7) After the preliminary conference, the conduct review officer will take one of the following actions:

(a) Conduct or schedule a summary hearing with the ~~((accused))~~ respondent as described in WAC ~~((172-121-120;))~~ 172-121-121 for cases where the possible sanction is less than a suspension or the allegations do not involve felony level sexual misconduct; or

(b) ~~((Schedule a summary hearing with the accused as described in WAC 172-121-120; or~~

~~(e))~~ Refer the case to either the student disciplinary council for a council hearing under WAC ~~((172-121-120))~~ 172-121-122 or a sexual misconduct hearing under WAC 172-121-123 for any cases where the possible sanction is a suspension, expulsion, or involves an allegation of felony level sexual misconduct.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-120 Hearing~~(s)~~ procedures. The provisions ~~((of subsections (1) through (8)))~~ of this section apply to both summary hearings and to council hearings.

(1) General provisions.

(a) Hearing authority: The hearing authority, through the conduct review officers, exercises control over hearing proceedings. All procedural questions are subject to the final decision of the ~~((hearing authority))~~ conduct review officer.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the hearing authority.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(2) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the ~~((accused))~~ respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the ~~((accused's))~~ respondent's input.

(b) Complainant's appearance: The complainant will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the ~~((accused))~~ respondent student during the hearing. The complainant may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, ~~((so long as the complainant's identity can be reasonably established))~~ subject to the limits set forth below in (e) of this subsection.

(c) Advisors: The complainant and the ~~((accused))~~ respondent may be assisted by ~~((an))~~ one advisor during conduct review hearings as described in WAC ~~((172-121-090))~~ 172-121-105.

(d) Disruption of proceedings: Any person, including the ~~((accused))~~ respondent, who disrupts a hearing, may be excluded from the proceedings.

(e) Telephonic appearance. In the interest of fairness and expedience, the ~~((hearing authority))~~ conduct review officer may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate, if the rights

of the parties will not be substantially prejudiced by a telephonic appearance as determined by the conduct review officer.

~~((3))~~ (3) Evidence:

~~(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the hearing authority. However, hearing authorities are not bound by the rules of evidence observed by courts. The hearing authority may exclude incompetent, irrelevant, immaterial or unduly repetitious material.~~

~~(b) The accused, and, in cases of sexual harassment or sexual misconduct, the complainant and/or victim, have the right to view all material presented during the course of the hearing.~~

~~(4))~~ Standard of proof. The hearing authority shall determine whether the ~~((accused))~~ respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the ~~((accused))~~ respondent violated the student conduct code.

~~((5))~~ (4) Sanctions. In determining what sanctions shall be imposed, the hearing authority may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the hearing authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed.

~~((6))~~ Witnesses:

~~(a) The complainant, victim, accused and hearing authority may present witnesses at council review hearings.~~

~~(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing.~~

~~(c) The hearing authority may exclude witnesses from the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.~~

~~(d) All parties have the right to hear all testimony provided by witnesses during the hearing.~~

~~(7) Questioning:~~

~~(a) The complainant and the accused may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the hearing authority. The hearing authority may ask such questions, but is not required to do so. The hearing authority may reject any question which it considers inappropriate, irrelevant, immaterial or unduly repetitious. The hearing authority has complete discretion in determining what questions will be asked during the hearing.~~

~~(b) During a conduct review hearing, only the hearing authority may pose questions to persons appearing before them.~~

~~(c) The hearing authority may ask their own questions of any witness called before them.~~

~~(8) The hearing authority may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio~~

tape, written statement, or other means, as determined appropriate.

(9) Summary hearing procedures.

(a) The conduct review officer may hold a summary hearing with the accused only if all of the following conditions are met:

(i) The accused waives his/her right to prior notice about a conduct review hearing;

(ii) The accused requests that the case be heard in a summary hearing with the conduct review officer; and

(iii) The conduct review officer agrees to conduct the summary hearing. The conduct review officer is not obligated to conduct a summary hearing, but may instead refer the case to the student disciplinary council for a council hearing.

(b) Sexual misconduct cases. Allegations of sexual misconduct may not be resolved through a summary hearing but must be referred for a council hearing, unless the case has been otherwise resolved.

(c) Scheduling. A summary hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time, except that, in cases of harassment, a summary hearing cannot take place without first notifying the complainant/victim of the hearing. If the summary hearing will be held at a later date or time, the conduct review officer shall schedule the hearing and notify the accused and, in the case of harassment, the complainant/victim of the date, time, and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(d) If the accused fails to appear at the summary hearing, the conduct review officer may conduct the summary hearing without the accused present or refer the case to the student disciplinary council for a council hearing under WAC 172-121-110. The conduct review officer may also place a hold on the accused's academic records under WAC 172-121-080.

(e) Deliberation. After the hearing, the conduct review officer shall decide whether the accused violated the student conduct code based on a preponderance of the evidence.

(i) If the conduct review officer determines that there is not sufficient information to establish a violation by a preponderance of evidence, the conduct review officer shall dismiss the complaint.

(ii) If the conduct review officer determines that the accused violated the student conduct code, the conduct review officer shall impose any number of sanctions as described in WAC 172-121-210.

(f) Notification. The conduct review officer shall serve the accused with a brief written statement setting forth the outcome of the summary hearing and notice of the right to appeal. In the case of sexual harassment, gender-based harassment, or stalking, the victim shall be provided with written notice of: (i) The university's determination as to whether such harassment occurred; (ii) the victim's right to appeal; (iii) any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)). Information regarding the discipline of the accused will not be released unless:

(A) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(B) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

(10) Council hearing procedures.

(a) Scheduling and notification. If the conduct review officer has decided to refer the case to the student disciplinary council for a council hearing, the director of SRR shall schedule the hearing and notify the accused with the date, time and location of the hearing. The director of SRR shall also inform the council and notify the complainant/victim of the date, time, and location of the hearing in writing. The council must receive at least seventy-two hours' notice as to the time and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(b) Deliberations and sanctions. Following the hearing, the council shall meet in closed session and, within seven days, determine by majority vote whether, by a preponderance of the evidence, the accused violated the student conduct code. If the council determines the accused violated the student conduct code, the council shall then decide what sanctions shall be imposed. Sanctions shall be decided by majority vote and in closed session.

(c) Notification. The council chair shall forward the council decision to the director of SRR. The director of SRR shall serve the accused with a brief written statement setting forth the council's decision and notice of the right to appeal. In the case of sexual harassment, gender-based harassment, stalking, or any act of sexual misconduct, the victim shall be provided with written notice of: (i) The university's determination as to whether such harassment/sexual misconduct occurred; (ii) the victim's right to appeal; (iii) any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)). Information regarding the discipline of the accused will not be released unless:

(A) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(B) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a);)

NEW SECTION

WAC 172-121-121 Summary hearings. Summary hearing procedures.

(1) The conduct review officer may hold a summary hearing with the respondent if the proposed sanction is less than a suspension and the allegations do not involve felony level sexual misconduct.

(2) Scheduling. A summary hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time, except that, in cases of sexual misconduct, a summary hearing cannot take place without first notifying the complainant/respondent of the hearing. If the summary hearing will be held at a later date or time, the conduct review officer shall schedule the hearing and notify the respondent and, in the case of sexual miscon-

duct, the complainant of the date, time, and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(3) If the respondent fails to appear at the summary hearing, the conduct review officer may conduct the summary hearing without the respondent present or refer the case to the student disciplinary council for a council hearing under WAC 172-121-110. The conduct review officer may also place a hold on the respondent's academic records under WAC 172-121-080.

(4) Deliberation. After the hearing, the conduct review officer shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence.

(a) If the conduct review officer determines that there is not sufficient information to establish a violation by a preponderance of evidence, the conduct review officer shall dismiss the complaint.

(b) If the conduct review officer determines that the respondent violated the student conduct code, the conduct review officer shall impose any number of sanctions as described in WAC 172-121-210.

(5) Notification. The conduct review officer shall serve the respondent with a brief written statement setting forth the outcome of the summary hearing and notice of the right to appeal. In a sexual misconduct, the victim shall be provided with written notice of:

(a) The university's determination as to whether such sexual misconduct occurred;

(b) The victim's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

NEW SECTION

WAC 172-121-122 Council hearing procedures. (1) Scheduling and notification. Council hearings are used for allegations other than sexual misconduct which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion. If the conduct review officer has decided to refer the case to the student disciplinary council for a council hearing, the director of SRR shall schedule the hearing and notify the respondent with the date, time, and location of the hearing. The director of SRR shall also inform the council and notify the complainant/victim of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434. The notice will include information about how to request accommodations or interpreters for any parties or witnesses. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The conduct review

officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

(2) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the conduct review officer in accordance with RCW 34.05.452. Evidence, including hearsay evidence, is admissible if in the judgment of the conduct review officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The conduct review officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The conduct review officer may exclude incompetent, irrelevant, immaterial or unduly repetitious material. If not inconsistent with this section, the conduct review officer shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.

(b) The respondent has the right to view all material presented during the course of the hearing.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(3) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents as long as such request is submitted at least five days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(4) Subpoenas.

(a) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(b) Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(i) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.

(c) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(d) The conduct review officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

(6) Witnesses.

(a) The complainant, victim, respondent and hearing authority may present witnesses at council review hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. For purposes of a council hearing, an attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable and oppressive.

(c) The hearing authority may exclude witnesses from the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five days prior to the hearing. The CRO will comply with WAC 10-08-150.

(7) Questioning:

(a) The complainant, the respondent, and their advisors may ask questions of each other or of any witnesses, except the CRO may preclude any questions which he/she considers inappropriate, irrelevant, immaterial or unduly repetitious. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) The CRO and any members of the council may ask their own questions of any witness called before them.

(8) The hearing authority may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means, as determined appropriate, subject to subsection (2) of this section.

(9) Deliberations and sanctions. Following the hearing, the council shall meet in closed session and, within seven days, determine by majority vote whether, by a preponderance of the evidence, the respondent violated the student conduct code. If the council determines the respondent violated the student conduct code, the council shall then decide what sanctions shall be imposed. Sanctions shall be decided by majority vote and in closed session. The council shall issue a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. The findings shall be based exclusively on the evidence provided at the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(d) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(e) Contain an initial or final order disposing of all contested issues;

(f) Contain a statement describing the available post-hearing remedies.

(10) Notification. The council chair shall forward the council decision to the director of SRR. The director of SRR shall serve the respondent with a brief written statement setting forth the council's decision and notice of the right to appeal.

Information regarding the discipline of the respondent will not be released unless:

(a) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(b) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-130 Appeals. (1) Basis: Appeals may be filed by the (~~accused~~) respondent or the complainant. In cases of (~~harassment and/or~~) sexual misconduct, the victim may also file an appeal. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures. A hearing may have deviated from established procedures if:

(i) The hearing was not conducted fairly in light of the charges and information presented;

(ii) The complainant was not given a reasonable opportunity to prepare and to present information as provided by the student conduct code;

(iii) The ~~((accused))~~ respondent was not given a reasonable opportunity to prepare and to present a response as provided by the student conduct code.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority was based on the information presented and that ~~((that))~~ information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information which was not known to the appellant and could not reasonably have been discovered and presented by the appellant at the original hearing. It is the party's obligation to present all evidence at the time of the original hearing. The university is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.

(2) Filing: Appeals may be filed following a summary hearing, conduct review hearing or sexual misconduct hearing, subject to the following provisions:

(a) The appeal must be submitted to the director of student rights and responsibilities within ten calendar days from service of the council's decision following a council hearing or the CRO's decision following a sexual misconduct hearing, and within twenty-one calendar days from service of a decision from a summary hearing, from service of the ~~((council's))~~ decision;

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(c) In cases of sexual misconduct, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days.

(3) Appeal authorities:

(a) For summary hearings heard by the conduct review officer, appeals are determined by the student disciplinary council.

(b) For student disciplinary council hearings, appeals are determined by the ~~((dean of students))~~ vice president for student affairs.

(c) For sexual misconduct hearings, appeals are determined by the vice president for student affairs.

(4) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

(5) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

(6) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, or remand the decision(s) of the hearing authority.

(7) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(8) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the ~~((accused))~~ respondent. When determining sanctions, the appeal authority may consider the complete record of the ~~((accused's))~~ respondent's prior conduct and academic performance in addition to all other information associated with the case.

(9) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR shall serve the ~~((accused))~~ respondent, and, in cases of ~~((harassment or))~~ sexual misconduct, notify the complainant and victim, with a brief written statement setting forth the outcome of the appeal.

(10) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code. Judicial review of the university's decision may be available under chapter 34.05 RCW.

(11) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-140 Interim restriction. In situations where there is cause to believe that a student or a student

organization (~~(endangers)~~) poses an immediate danger to the health, safety, or welfare of themselves, the university community, or property of the university community, the dean of students may take immediate action(s) against the student or student organization without prior notice or hearing.

Simultaneous with such action(s), the dean of students will refer the charges to the conduct review officer, who will process such charges in accordance with the provisions of this student conduct code.

Interim restriction is subject to the following:

(1) Interim restriction actions may only be imposed in the following situations:

(a) When a student or student organization poses an immediate threat to:

- (i) The health, safety or welfare of any part of the university community or public at large;
- (ii) The student's own physical safety and well-being; or
- (iii) Any property of the university community; or

(b) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community (~~(or~~

~~(c) When a student is undergoing criminal proceedings for any felony charge).~~

(2) During the interim restriction period, a student may be restricted by any or all of the following means:

(a) Denial of access (~~(s)~~) including, but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

(b) Interim suspension, including temporary total removal from the university or restriction of access to campus;

(c) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The dean of students will determine what restriction(s) will be placed on a student.

~~(4) ((All interim restrictions that involve any type of restriction from any university premises will be accomplished by giving a notice against trespass. The notice against trespass may be given by any manner specified in WAC 172-122-200.~~

~~(5))~~ The dean of students will prepare a brief memorandum for record containing the reasons for the interim restriction. The dean of students will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) constitute a violation of the student conduct code; ~~(and)~~

(c) How the circumstances of the case necessitated the interim restriction action(s); and

(d) The date, time, and location for an emergency appeal hearing with the vice president for student affairs.

~~((6)) (5)~~ In cases alleging sexual (~~harassment, sexual misconduct, domestic violence, relationship violence, and/or stalking~~) misconduct, the complainant will be provided with

notice of any interim restrictions that relate directly to the complainant.

~~((7)) (6)~~ Emergency appeal(s) hearing.

~~(a) ((In all cases, the student or student organization may appeal the interim restriction to the vice president for student affairs.))~~ If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal hearing with the vice president for student affairs, or designee, within ten business days after the interim suspension is served. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs within ten business days after service of the interim restriction.

(b) The vice president for student affairs, or designee, will conduct an emergency appeals hearing with the student or student organization subject to the interim restriction. The student may appear at the hearing telephonically and may be represented by counsel.

(c) In cases alleging ((sexual harassment,)) sexual misconduct ((, domestic violence, relationship violence, and stalking)), if an interim restriction is imposed, the student, the student organization, and the complainant may appeal the interim restriction using the process outlined in this subsection. Also, in such cases, if an appeal is filed, all parties shall be given notice of the appeal and shall be provided the opportunity to participate in the appeal proceeding.

~~((e) Appeals must be submitted, in writing, within ten business days after the interim restriction action is taken, unless the student requests an extension. Requests for extension will only be granted to review the following issues:~~

~~(i) The reliability of the information concerning the student's behavior; and~~

~~(ii) Whether the student's continued presence or prior or present behavior warrants interim restriction for the causes listed in subsection (1) of this section.~~

~~(d) As a result of the appeal, the vice president for student affairs will schedule a meeting with the accused.)~~ (d) The vice president for student affairs may have the dean of students or any other person deemed relevant attend the meeting. The ((accused)) respondent and the complainant, if he/she has the right to be present under (b) of this subsection, may have an advisor present at the meeting ((so long as the name of that person is provided to the director of SRR at least two business days prior to the scheduled meeting)).

(e) During the ((appeal meeting)) emergency appeal hearing, the vice president for student affairs will review available materials and statements. After the meeting, the vice president for student affairs may uphold, modify, or terminate the interim restriction action.

~~((8)) (f)~~ The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

~~((9)) (g)~~ Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council, CRO, or the vice president for student affairs.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-200 Violations. The following are defined as offenses which are subject to disciplinary action by the university.

(1) Acts of academic dishonesty. University policy regarding academic dishonesty is governed by the university academic integrity policy.

(2) Acts of social misconduct.

(a) Abuse. Physical abuse, verbal abuse, and/or other conduct which threatens or endangers the health or safety of any person.

(b) Bullying. Bullying is behavior that is:

(i) Intentional;

(ii) Targeted at an individual or group;

(iii) Repeated;

(iv) Objectively hostile or offensive; and

(v) Creates an intimidating and/or threatening environment which produces a risk of psychological and/or physical harm.

(c) Domestic violence and relationship violence.

(i) Domestic violence means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

(B) Sexual assault of one family or household member by another; or

(C) Stalking of one family or household member by another family or household member.

(ii) Relationship violence is a type of domestic violence, except the acts specified above are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. In determining whether such a relationship exists, the following factors are considered:

(A) The length of time the relationship has existed;

(B) The nature of the relationship; and

(C) The frequency of interaction between the parties involved in the relationship.

(d) Harassment, gender-based harassment, and sexual harassment.

(i) Harassment is conduct by any means that is sufficiently severe, pervasive, or persistent, and objectively offensive so as to threaten an individual or limit the individual's ability to work, study, participate in, or benefit from the university's programs or activities.

(ii) Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes. Gender-based harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

(iii) Sexual harassment is unwelcome conduct of a sexual nature and may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's

ability to work, study, participate in, or benefit from the university's programs or activities.

In determining whether any of the above-listed types of harassment are severe, pervasive, or persistent, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the victim; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

(e) Retaliation. Any actual or threatened retaliation or any act of intimidation intended to prevent or otherwise obstruct the reporting of a violation of this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation or act of intimidation directed towards a person who participates in an investigation or disciplinary process under this code is prohibited and is a separate violation of this code.

(f) Sexual misconduct. (~~Sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion, are types of sexual misconduct.~~) Sexual misconduct includes, but is not limited to, sexual violence; indecent liberties; indecent exposure; sexual exhibitionism; sex-based cyber harassment; prostitution or the solicitation of a prostitute; peeping or other voyeurism; or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity. Sexual violence is sexual intercourse or sexual contact with a person without his or her consent or when the person is incapable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when the victim is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, or physical condition. (~~Sexual misconduct also includes, but is not limited to, indecent liberties, indecent exposure, sexual exhibitionism, sex-based cyber harassment, prostitution or the solicitation of a prostitute, peeping or other voyeurism, or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity.~~)

(g) Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their health and/or safety or the health/safety of others; or

(ii) Suffer substantial emotional distress.

(h) Unauthorized use of electronic or other devices: Making an audio or video recording of any person while on university premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. This includes, but is not limited to, surreptitiously

taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

(3) Property violations. Theft of, damage to, or misuse of another person's or entity's property.

(4) Weapons. Possession, carrying, discharge or other use of any weapon is prohibited on property owned or controlled by Eastern Washington University, except as permitted in (a) through (d) of this subsection. Examples of weapons under this section include, but are not limited to: Explosives, chemical weapons, shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that can be used as an object of intimidation and/or threat, such as replica or look-a-like weapons.

(a) Commissioned law enforcement officers may carry weapons, which have been issued by their respective law enforcement agencies, while on campus or other university controlled property, including residence halls. Law enforcement officers must inform the university police of their presence on campus upon arrival.

(b) A person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Eastern Washington University.

(c) A person may bring a weapon onto campus for display or demonstration purposes directly related to a class or other educational activity, provided that they obtain prior authorization from the university police department. The university police department shall review any such request and may establish conditions to the authorization.

(d) Weapons that are owned by the institution for use in organized recreational activities or by special groups, such as EWU ROTC or university-sponsored clubs or teams, must be stored in a location approved by the university police department. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

(5) Failure to comply.

(a) Failure to comply with lawful and/or reasonable directions of university officials or law enforcement officers acting in performance of their duties on campus or affecting conduct on campus;

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so;

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students or other authorized university official.

(6) Trespassing/unauthorized use of keys.

(a) Trespass. Entering or remaining on university property without authorization.

(b) Unauthorized use of keys. Unauthorized possession, duplication, or use of university keys or access cards.

(7) Deception, forgery, fraud, unauthorized representation.

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of university documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose.

(c) Forgery or issuing a bad check with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

(8) Safety.

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.

(e) Failure to evacuate during a fire, fire drill, or false alarm.

(9) Alcohol, drugs, and controlled substances.

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is prohibited.

(b) Drugs and paraphernalia.

(i) Use, possession, distribution, manufacture, or sale of ~~((marijuana, drug paraphernalia and/or))~~ paraphernalia, narcotics or controlled substances, is prohibited.

(ii) Use, possession, distribution, manufacture, or sale of marijuana is prohibited except for reasons permitted under EWU Policy 602-01 (drug and alcohol abuse prevention).

(iii) Being under the influence of marijuana or an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university.

(10) Hazing. Any act which, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization:

(a) Endangers the mental or physical health or safety of any student or other person;

(b) Destroys or removes public or private property; or

(c) Compels an individual to participate in any activity which is illegal or contrary to university rules, regulations or policies.

The express or implied consent of any participant is not a defense. A person who is apathetic or acquiesces in the presence of hazing violates this rule.

(11) Disruptive conduct/obstruction.

(a) Disruptive conduct. Conduct which unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

~~((d) Demonstration. Participation in a campus demonstration which violates university regulations.))~~

(12) Violations of other laws, regulations and policies.

(a) Violation of a local, county, state, or federal law.

(b) Violation of other university policies, regulations, or handbook provisions.

(13) Assisting/attempts. Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code.

(14) Acts against the administration of this code.

(a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(b) Interference with or attempt to interfere with the enforcement of this code, including but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

(15) Other responsibilities:

(a) Guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

(b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

(i) The laws of the host country;

(ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(iii) Any other agreements related to the student's study program in the foreign country; and

(iv) The student conduct code.

(16) Student organization and/or group offenses. Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

AMENDATORY SECTION (Amending WSR 15-24-050, filed 11/23/15, effective 12/24/15)

WAC 172-121-210 Sanctions. If any student or student organization is found to have committed any of the offenses described in WAC 172-121-200, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the CRO or council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions.

(1) Individual student sanctions:

(a) Admonition: An oral statement to a student that he/she has violated university rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same

standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extra-curricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: The university conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of four hundred dollars against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.30.125, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and

will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspension is subject to the processes outlined in this chapter except any suspension must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(k) **Expulsion:** Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. Expulsion actions will be accomplished by issuing both an order of expulsion and a notice against trespass. The notice against trespass may be given by any manner specified in chapter 9A.52 RCW. Expulsion is subject to the processes outlined in this chapter except any expulsion must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed.

(l) **Loss of institutional, financial aid funds:** Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) **Revocation of degree:** A degree awarded by the university may be revoked for fraud, misrepresentation, or other violation of law or university standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the university president.

(2) **Student organizations and/or group sanctions:** Any of the above sanctions may be imposed in addition to those listed below:

(a) **Probation:** Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) **Social probation:** Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) **Restriction:** The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) **Revocation:** The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization. Revocation is subject to the processes outlined in this chapter except any revocation must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(e) **Additional sanctions:** In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

(i) Exclusion from intramural competition as a group;

(ii) Denial of use of university facilities for meetings, events, etc.;

(iii) Restitution; and/or

(iv) Fines.

NEW SECTION

WAC 172-121-123 Sexual misconduct hearing procedures. (1) **Scheduling and notification.** Sexual misconduct hearings are used for sexual misconduct allegations which, if substantiated by a preponderance of the evidence, could result in a sanction of suspension or expulsion or would be considered felony-level sexual misconduct. Sexual misconduct hearings are conducted by a conduct review officer (CRO). The CRO shall schedule the hearing and notify the complainant/victim and respondent of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434. The notice will include information about how to request accommodations or interpreters for any parties or witnesses. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so.

(2) **Evidence.**

(a) **Evidence:** Pertinent records exhibits and written statements may be accepted as information for consideration by the CRO in accordance with RCW 34.05.452. Evidence, including hearsay evidence, is admissible if in the judgment of the conduct review officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude incompetent, irrelevant, immaterial or unduly repetitious material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings.

(b) The respondent and the complainant/victim have the right to view all material presented during the course of the hearing.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(3) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents as long as such request is submitted at least five days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(4) Subpoenas.

(a) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(b) Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(i) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.

(c) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(d) The CRO, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable and oppressive, or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

(6) Witnesses.

(a) The complainant, victim, respondent, and CRO may present witnesses at council review hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable and oppressive.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required

to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five days prior to the hearing. The CRO will comply with WAC 10-08-150.

(7) Questioning:

(a) The complainant, the respondent, and their advisors may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the CRO. The CRO may ask such questions, but is not required to do so. The CRO may reject any question deemed inappropriate, irrelevant, immaterial or unduly repetitious. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) During a conduct review hearing, only the CRO may pose questions to persons appearing at the hearing. The CRO may question any parties and witnesses.

(8) The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means, as determined appropriate, subject to subsection (2) of this section.

(9) Deliberations and sanctions. Following the hearing, the CRO will determine whether the respondent violated the student conduct code. If the CRO determines the respondent violated the student conduct code, the CRO shall then decide what sanctions shall be imposed. The CRO shall issue a decision including his/her findings, conclusions, and rationale. Such decision should be issued within seven business days from the sexual misconduct hearing. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the CRO's decision. The findings shall be based exclusively on the evidence provided at the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(d) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(e) Contain an initial or final order disposing of all contested issues;

(f) Contain a statement describing the available post-hearing remedies.

(10) Notification. The CRO shall forward his/her decision to the director of SRR. The director of SRR shall serve the respondent with a brief written statement setting forth the CRO's decision and notice of the right to appeal. The victim shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct occurred;

(b) The victim's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, relationship violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

- WAC 132H-155-020 Purpose.
- WAC 132H-155-030 Informal complaint process.
- WAC 132H-155-040 How to file a discrimination complaint.
- WAC 132H-155-050 Formal discrimination complaint procedure.
- WAC 132H-155-060 Appeal.
- WAC 132H-155-070 External complaint.

**WSR 17-17-032
PERMANENT RULES
BELLEVUE COLLEGE**

[Filed August 9, 2017, 12:32 p.m., effective September 9, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Community College District VIII is repealing the existing WAC. The current language is confusing and no longer complies with requirements of federal agencies. There is also no need for the process to be a part of the Washington Administrative Code. The process that was previously in code will be clarified, updated and placed in policy and procedure at the college.

Citation of Rules Affected by this Order: Repealing chapter 132H-155 WAC.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140.

Adopted under notice filed as WSR 17-04-033 on January 24, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 7.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 9, 2017.

Aaron B. Hilliard
Vice President
of Human Resources

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132H-155-010 Title.

**WSR 17-17-039
PERMANENT RULES
HEALTH CARE AUTHORITY**

[Filed August 9, 2017, 3:12 p.m., effective September 9, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is revising the rules governing the certification process for patient decision aids to add more guidance and specificity.

Citation of Rules Affected by this Order: New WAC 182-60-027, 182-60-035, 182-60-040, 182-60-045 and 182-60-050; and amending WAC 182-60-010, 182-60-020, 182-60-025, and 182-60-030.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 17-14-057 on June 29, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 4, Repealed 0.

Date Adopted: August 9, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-24-052, filed 11/30/12, effective 1/1/13)

WAC 182-60-010 Definitions. When used in this chapter:

(1) "**Agency**" means the Washington state health care authority (HCA), created pursuant to chapter 41.05 RCW.

(2) "**Certification fee**" means a fee assessed by the agency to an individual or organization applicant requesting ~~(an independent review)~~ certification or recertification of a

patient decision aid not already certified by an organization located in the United States or Canada and recognized by the agency's medical director.

(3) **"Certified patient decision aid"** means a patient decision aid, as defined in this section, for any medical condition or procedure, including abortion as defined in RCW 9.02.170, that:

(a) Is certified by one or more national certifying organizations recognized by the agency's medical director; or

(b) Has been evaluated based on the International Patient Decision Aid Standards (IPDAS) by an organization located in the United States or Canada and has current scores satisfactory to the agency's medical director in each of the following categories: Content criteria, development process criteria, and effectiveness criteria; or

(c) Is independently assessed and certified by the agency's medical director based on the International Patient Decision Aid Standards developed by the IPDAS Collaboration if a current evaluation is not available from an organization located in the United States or Canada.

(4) **"National certifying organization"** means a group, entity, or organization in the United States or Canada that is recognized by the agency's medical director to certify patient decision aids under this chapter.

(5) **"Patient decision aid"** means a written, audio-visual, or online tool that provides a balanced presentation of the condition and test or treatment options, benefits, and harms including, if appropriate, a discussion of the limits of scientific knowledge about outcomes ~~((and a means to acknowledge that the tool has been fully reviewed and understood)),~~ for any medical condition or procedure.

AMENDATORY SECTION (Amending WSR 12-24-052, filed 11/30/12, effective 1/1/13)

WAC 182-60-020 National certifying organizations. The agency's medical director ~~((will))~~:

(1) Maintains a list of recognized national certifying organizations so that individuals or organizations seeking certification may identify organizations recognized by the agency's medical director.

(2) Considers organizations recommended by applicants for inclusion in the list.

(3) Updates the list as needed.

AMENDATORY SECTION (Amending WSR 12-24-052, filed 11/30/12, effective 1/1/13)

WAC 182-60-025 Agency review process and certification. (1) When independently reviewing decision aids under RCW 7.70.060 (4)(a)(ii), the agency's medical director ~~((considers the most current))~~ uses agency certification criteria, which are based on criteria developed by the International Patient Decision Aid Standards (IPDAS) ((developed by the IPDAS)) Collaboration, for evaluation of a patient decision aid.

(2) The agency's medical director may certify a patient decision aid ~~((may be certified))~~ if it is reviewed by a national certifying organization and has current scores satisfactory to the agency's medical director in each of the following categories:

Content criteria, development process criteria, and effectiveness criteria.

(3) ~~((The))~~ An applicant requesting review and certification must provide written documentation of the basis for certification as provided in subsection (1) of this section, using the application materials developed by the agency.

(4) The agency's medical director may contract for an assessment of the patient decision aid.

(a) The contract will:

(i) Be with an evidence-based organization or other appropriate entity; and

(ii) ~~((Provide))~~ Require an assessment to evaluate the patient decision aid based on the ~~((most current International Patient Decision Aid Standards developed by the IPDAS Collaboration))~~ agency's IPDAS-based certification criteria using information provided by the applicant and the agency's medical director.

(b) The agency's medical director may use the results of the assessment in whole or part as the basis for a certification determination.

(5) The agency's medical director may establish minimum scores in each of the following ~~((criteria))~~ areas: Content criteria, development process criteria, and effectiveness criteria ~~((based on IPDAS Collaboration criteria, necessary to qualify as a certified patient decision aid)).~~

NEW SECTION

WAC 182-60-027 Patient decision aid review advisory panel. (1) The agency's medical director has the authority to establish one or more expert advisory panels to review patient decision aids using established criteria under WAC 182-60-025.

(2) The panel may include the following as necessary:

(a) Practicing physicians or other relevant licensed health professionals;

(b) Health literacy and numeracy experts;

(c) Experts in shared decision making; and

(d) Legal experts.

(3) The agency's medical director may contract with an evidence-based practice center or other appropriate expert to review and advise on the validity or presentation of evidence, other elements of the decision aid, or on developing and updating policies or practices.

(4) Advisory review panel members must meet conflict of interest and disclosure requirements. Each advisory panel member must:

(a) Complete an advisory panel member agreement, including a conflict of interest disclosure form, and keep disclosure statements current;

(b) Abide by confidentiality requirements and keep all proprietary information confidential; and

(c) Not use information gained as a result of advisory panel membership outside of advisory panel responsibilities, unless the information is publicly available.

(5) The agency's medical director makes the final determination on certification.

AMENDATORY SECTION (Amending WSR 12-24-052, filed 11/30/12, effective 1/1/13)

WAC 182-60-030 Certification fees. ~~((+))~~ The agency ~~((will charge a certification fee))~~ charges one or more fees to ((the)) an applicant to defray the costs of ((the assessment and certification under)) assessments, certifications, recertifications, and any opportunities to remedy deficiencies in the application, according to this chapter.

~~((a))~~ (1) Fees ((will be)) are based on the reasonable projected or actual cost of ((obtaining an assessment)) the certification program.

~~((b) One))~~ (2) Except as otherwise provided in this chapter, a certification fee ((will apply)) applies to each review of a patient decision aid. An opportunity to remedy deficiencies as described in WAC 182-60-045 may require an additional fee.

~~((2) Applicants requesting review and certification of a patient decision aid must pay a fee established by the agency to defray the cost of review by a contracted review organization or group.))~~ (3) The agency may, at its discretion, waive or otherwise reduce applicable fees for patient decision aids publicly available at no cost.

NEW SECTION

WAC 182-60-035 Patient decision aid topic selection.

(1) The agency may, at the medical director's discretion, give preference to certification of patient decision aids identified as priority topics for shared decision making by the Healthier Washington Initiative, the Robert Bree collaborative, or other topics that are important to state health care purchasing or policy objectives.

(2) Periodically throughout the year, the agency may issue a request for submission of specific patient decision aid topics that address state priorities.

(3) The agency may review additional decision aids that do not reflect the topics requested in its solicitation but may decline or defer review based on resource limitations or priorities for review.

NEW SECTION

WAC 182-60-040 Agency medical director certification. (1) Decisions.

(a) The agency's medical director, with input as determined necessary by an advisory review team, or contracted experts, or both, makes a written determination to:

(i) Certify the decision aid;

(ii) Notify the developer of areas of deficiency and provide an opportunity to remedy deficiencies as described in WAC 182-60-045; or

(iii) Decline to certify the decision aid.

(b) Upon certification, the agency adds the decision aid to a list of certified products posted on the agency web site.

(c) Certification determinations are final and not subject to appeal.

(2) Certification period. A certification under this chapter is valid for two years from the date of the written certification determination, except in the case of withdrawal or suspension under subsection (4) of this section.

(3) Recertification.

(a) The developer may request recertification by taking the following steps six months before the current certification expires:

(i) Request recertification;

(ii) Submit any needed updates or modifications using HCA 82-328 form; and

(iii) Pay the required certification fee.

(b) The agency's medical director may limit review to the updated elements of the application and the decision aid, together with associated evidence and may make the determinations described in subsection (1) of this section.

(c) Recertification is effective for two years from the date of the written recertification determination.

(4) Withdrawal or suspension of certification.

(a) Developers must notify the agency's medical director when they become aware of information that may materially change the content of an approved decision aid or supporting application materials on file.

(b) The agency's medical director may withdraw or suspend a certification:

(i) On the medical director's own initiative, if information becomes available that may materially change the decision aid's content or supporting application materials; or

(ii) In response to developer notification under (a) of this subsection.

(c) Within ten business days of the agency's withdrawal or suspension of a certification, the agency sends notification to the developer's address on file.

(d) The developer must submit its updated application materials to the agency's medical director within the time frame specified in the agency's notice. The agency charges the developer reasonable costs associated with the recertification.

(e) The agency's medical director may limit review to the updated elements of the decision aid and may make the determinations described in subsection (1) of this section.

(f) If a developer fails to submit updated application materials within the time frame in (d) of this subsection, the agency withdraws the certification.

(g) The agency posts withdrawal, suspension, and recertification decisions on the agency's web site.

(5) Effect of certification determination.

(a) Certification under this chapter provides the basis for heightened legal protections under RCW 7.70.065; and

(b) A certified patient decision aid used as part of a shared decision-making process may also be a requirement or preference in contract or arrangements for state-purchased health care.

NEW SECTION

WAC 182-60-045 Opportunity to remedy deficiencies. (1) The agency's medical director may suspend the certification or recertification process if the medical director determines there are deficiencies in an application, including the decision aid and supporting materials.

(2) The agency provides the developer with a written notice of deficiencies and gives an opportunity to provide additional information or materials. The developer must pay

any additional fees related to the review of additional information.

(3) The developer must submit any additional materials within sixty calendar days of the date on the written notice.

(4) The medical director makes a final decision to certify or to decline to certify the decision aid within sixty calendar days of receipt of the developer's materials.

NEW SECTION

WAC 182-60-050 Public notices. The agency posts the following information on its web site:

(1) Priority certification topics and the timeline for application and consideration of submitted decision aids;

(2) Certification forms and criteria;

(3) A complete listing of certified decision aids and certification effective dates; and

(4) All notifications of certification expirations, withdrawals, and suspensions.

WSR 17-17-040

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 16-04—Filed August 9, 2017, 4:42 p.m., effective September 9, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The amendments to the rules were adopted to:

- Address "housekeeping" issues.
- Provide more clarity.
- Provide more flexibility.
- Take advantage of new funding opportunities consistent with state and federal updates.

Citation of Rules Affected by this Order: Amending chapter 173-98 WAC, Uses and limitations of the water pollution control revolving fund and chapter 173-95A WAC, Uses and limitations of the centennial clean water program.

Statutory Authority for Adoption: Chapter 90.50A RCW, Water pollution control facilities—Federal capitalization grants and chapter 70.146 RCW, Water pollution control facilities financing.

Adopted under notice filed as WSR 17-09-078 on April 19, 2017.

Changes Other than Editing from Proposed to Adopted Version: In WAC 173-98-100 (20)(c) and (d) added the bold, underlined text:

(c) For wetland habitat preservation **and protection**; or

(d) For riparian area **and watershed** preservation **and protection**;

In WAC 173-95A-100 (14)(a) and (b) added the bold, underlined text:

(a) For wetland habitat preservation **and protection**;

(b) For riparian area **and watershed** preservation **and protection**;

In WAC 173-98-400 (2)(b) added the bold, underlined text:

(b) Taken from the period one hundred eighty **to thirty** days before the funding application cycle begins.

In WAC 173-98-400(4) added the bold, underlined text:

(4) The standard interest rates for water pollution control activities projects are the rates calculated for "moderate" hardship in accordance with Table 1 in WAC 173-98-300. **The department may work with stakeholders to develop a program that may further adjust interest rates for the purposes of further encouraging the funding of water pollution control activities projects.**

A final cost-benefit analysis is available by contacting: The department of ecology issued a preliminary cost-benefit analysis (included in our regulatory analysis document) at the time we filed the rule proposal (CR-102). At this time we have determined that under RCW 34.05.328 (5)(b)(ii) this rule making does not require this analysis because it is a rule that relates "only to internal governmental operations that are not subject to violation by a nongovernment party." For that reason we have not prepared a final analysis.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 3, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 57, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 38, Repealed 4.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 9, 2017.

Maia D. Bellon
Director

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-015 Integrated funding approach. (1) Where possible, the Washington state department of ecology combines the management of the centennial program with other funding programs, such as the water pollution control revolving fund, the stormwater financial assistance program, and the Clean Water Act section 319 nonpoint source program.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-020 Definitions. For the purposes of this chapter:

(1) **Activities** see water pollution control activities.

(2) **Applicant** means a public body that has applied for funding.

(3) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(4) **Cash match** means ~~((moneys))~~ funds used to match the state share of a grant.

(5) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

(6) **Centennial** means the centennial clean water program.

(7) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from large commercial establishments, industrial facilities, or institutional sources such as state schools, hospitals, and prisons.

(8) **Competitive funding** means ~~((moneys))~~ funds available for projects through a statewide evaluation process.

(9) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

(10) **Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event; or

(b) An animal livestock feeding operation that is under a department administrative order, notice of violation, or a National Pollution Discharge Elimination System permit; or

(c) An animal livestock feeding operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An animal livestock feeding operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

(11) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

(12) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

(13) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(14) **Cost-effective alternative** means the option selected in an approved ~~((facilities plan))~~ planning document that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., ~~((lowest present worth or equivalent annual value))~~ life cycle cost).

(15) **Department** means the Washington state department of ecology.

(16) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(17) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(18) **Draft offer and applicant list** means a catalog of all applications for financial assistance considered and those proposed for funding, based on estimates of state and federal budgets.

(19) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-or-grant-funded activities or facilities; sewer use ordinances and other legal documents may be sufficient.

(20) **Effective date** means the date the loan or grant agreement is signed by the department's water quality program manager.

(21) **Eligible cost** means the portion of a facilities or activities project that can be funded based on program eligibility as defined in WAC 173-98-100 and in the most recently updated edition of the *Water Quality Financial Assistance Guidelines* (publication #10-10-049).

(22) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

~~((23))~~ ~~**Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.~~

~~((24))~~ **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

~~((25))~~ **(24) Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

~~((26))~~ **(25) Equivalent residential unit (ERU)** means a unit of measurement used to express the average sewage loading discharged from a typical full-time single-family dwelling unit.

~~((27))~~ **(26) Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

~~((28))~~ **(27) Existing need** means water pollution control facility's capacity reserved for all users, at the time of application.

~~((29))~~ **(28) Existing residential need** means that portion of a water pollution control facility's capacity reserved for residential structures that:

(a) Exists within the project service area at the time of application;

(b) Is connected to the facility or is scheduled to be connected to the facility in an approved ~~((engineering report))~~ planning document; and

(c) Will bear the financial burden of paying for the new facility.

~~((30))~~ **(29) Extended grant payments** means cash disbursements for eligible project costs made with equal annual payments as established in RCW 70.146.075.

~~((31))~~ (30) Facilities see water pollution control facility.

~~((32))~~ Facilities plan means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC.

~~((33))~~ (31) Final offer and applicant list means a catalog of all applications for financial assistance considered and those offered funding, based on adopted state and federal budgets.

~~((34))~~ (32) Force account means loan or grant project work performed using labor, materials, or equipment of a public body.

~~((35))~~ (33) Funding cycle means the events related to the competitive process used to allocate ~~((moneys))~~ funds from the water pollution control revolving fund, centennial clean water program, the stormwater financial assistance program, and the Clean Water Act section 319 nonpoint source program for a state fiscal year.

~~((36))~~ (34) Grant agreement means a contractual arrangement between a public body and the department.

~~((37))~~ (35) Growth means the portion of the flows to a facility reserved for future residential, commercial, industrial, or institutional flows.

~~((38))~~ (36) Indirect cost means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

~~((39))~~ (37) In-kind contributions means the value of noncash contributions provided for a project.

~~((40))~~ (38) Interlocal agreement means a written arrangement between a grant recipient and another public body to provide eligible grant match contributions to a project. Interlocal agreements are subject to chapter 39.34 RCW, Interlocal Cooperation Act.

~~((41))~~ (39) Interlocal costs means the value of goods or services provided to a project by a public body under the terms of an interlocal agreement. Interlocal contributions satisfy cash matching requirements.

~~((42))~~ (40) Infiltration and inflow means water, other than wastewater, that enters a sewer system.

~~((43))~~ (41) Infiltration and inflow correction means the cost-effective alternative or alternatives identified in an approved ~~((facilities plan or engineering report))~~ planning document for eliminating or reducing the infiltration and inflow to an existing sewer system.

~~((44))~~ (42) Landowner agreement means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

~~((45))~~ (43) Loan agreement means a contractual arrangement between a public body and the department that involves a disbursement of ~~((moneys))~~ funds that must be repaid.

~~((46))~~ (44) Loan default means failure to make a loan repayment to the department within sixty days after the payment was due.

~~((47))~~ (45) Match means the recipient share of eligible project costs.

~~((48))~~ (46) Nonpoint source water pollution means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from boats or other marine vessels.

~~((49))~~ (47) Plans and specifications means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

~~((50))~~ (48) Preliminary project priority list means a catalog of all applications for financial assistance considered for funding and submitted to the Washington state legislature for its consideration during budget development.

~~((51))~~ (49) Project means a water quality improvement effort funded with a grant or loan.

~~((52))~~ (50) Project completion or expiration means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

~~((53))~~ (51) Public body means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

~~((54))~~ (52) Public health emergency means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

~~((55))~~ (53) Recipient means a public body that has an effective loan or grant agreement with the department.

~~((56))~~ (54) Residential means the portion of the total flows to a facility that originates from single family houses, apartments, mobile home parks, small commercial facilities, and community facilities such as local K-12 public schools, libraries, and fire stations.

~~((57))~~ (55) Revolving fund means Washington state's water pollution control revolving fund.

~~((58))~~ (56) Riparian buffer or zone means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

~~((59))~~ (57) Scope of work means a detailed description of project tasks, milestones, and measurable objectives.

~~((60))~~ (58) Service area population means the number of people served in the area of the project.

~~((61))~~ (59) Severe public health hazard means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

~~((62))~~ (60) Sewer means the pipe and related pump stations located on public property or on public rights of way and easements that convey wastewater from buildings.

~~((63))~~ (61) Side sewer means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

~~((64))~~ (62) **State environmental review process** (SERP) means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 C.F.R. § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

~~((65))~~ (63) **Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

~~((66))~~ (64) **Total project cost** means the sum of all expenses associated with a water quality project.

~~((67))~~ (65) **Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders the waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

~~((68))~~ (66) **Water pollution control activities** or **activities** means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of water pollution control facilities or other means.

~~((69))~~ (67) **Water pollution control facility** or **facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater(~~(;))~~) including, but not limited to, sanitary sewage, stormwater, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((70))~~ (68) **Water resource inventory area** (WRIA) means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-100 Grant and loan eligible. Certain projects or project elements, including but not limited to the following may be eligible for centennial loan or grant assistance:

(1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution can be addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property:

(a) Best management practices that consist of new, innovative or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner;

(3) **BMP implementation** on public property;

(4) **Computer equipment and software** specific to the funded project and preapproved by the department;

(5) **Diagnostic studies** to assess current water quality;

(6) **Education and outreach** efforts for the public;

(7) **Environmental checklists**, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(8) **Equipment and tools** as identified in a grant or loan agreement;

(9) **Groundwater protection activities** such as well-head protection and critical aquifer recharge area protection;

(10) **Hardship assistance** for wastewater (~~(treatment)~~) facilities construction, on-site sewage system repair and replacement, and construction elements of (~~(a design-build-operate)~~) an alternative public works contracting project;

(11) **Implementation** of eligible projects identified in water quality plans;

(12) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

(13) **Lake implementation and planning activities** on lakes with public access;

(14) **Land acquisition:**

(a) For wetland habitat preservation and protection;

(b) For riparian area and watershed preservation and protection; or

(c) For drinking water source protection;

(15) **Landscaping for erosion control** directly related to a project, or site-specific landscaping to mitigate site conditions and comply with requirements in the State Environmental Policy Act or the National Environmental Policy Act;

~~((15))~~ (16) **Light refreshments** for meetings when specified in the loan or grant agreement;

~~((16))~~ (17) **Monitoring BMP effectiveness;**

~~((17))~~ (18) **Monitoring equipment** used for water quality assessment;

~~((18))~~ (19) **Monitoring water quality;**

~~((19))~~ (20) **On-site sewage systems:**

(a) **Development and administration of a local loan fund for on-site sewage system repair and replacement** for residential and small commercial systems; and

(b) **On-site sewage** system surveys;

~~((20))~~ (21) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;

~~((21))~~ (22) **Planning**, including comprehensive basin plans, watershed plans, and area-wide water quality plans;

~~((22))~~ (23) **Planning and design for hardship wastewater facilities;**

(24) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;

~~((23))~~ (25) Sales tax;

~~((24))~~ (26) Stream restoration that meets recognized water quality standards;

~~((25))~~ (27) Stormwater activities that are certain non-permit-related planning activities, such as education and outreach, establishing a stormwater utility, identifying and mapping of pollution sources, and department-approved erosion control;

~~((26))~~ (28) Total maximum daily load study development and implementation;

~~((27))~~ (29) Training to develop specific skills that are necessary to directly satisfy the scope of work. Training, conference registration, or annual meeting fees must be preapproved by the department;

~~((28))~~ (30) Wastewater or stormwater utility development;

~~((29))~~ (31) Wastewater or stormwater utility rate or development impact fee studies;

~~((30))~~ (32) Water quality education and stewardship programs; and

~~((31))~~ (33) Wellhead protection.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-110 Loan only eligible. Certain projects or project elements~~(s)~~ including, but not limited to, the following may be eligible for centennial loan assistance:

(1) **CAFOs**, for BMP implementation;

(2) **Environmental emergencies** as defined in WAC 173-95A-020 and applied for in accordance with the provisions described in the published funding guidelines for the funding cycle in which the emergency occurs;

(3) **Facilities** for nonhardship wastewater and stormwater:

(a) **Planning:**

(i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the Growth Management Act;

(ii) ~~((Facilities))~~ **Planning** for water pollution control facilities; and

(iii) **Stormwater** planning for permitted facilities;

(b) **Design** preparation of plans and specifications for water pollution control facilities;

(c) **Construction of:**

(i) Combined sewer overflow abatement;

(ii) ~~((Side sewers or individual pump stations or other appurtenances on private residential property;~~

~~((iii) Sewers and side sewers on public property for infiltration and inflow correction projects, and to replace existing water pollution control facilities;~~

~~((iv))~~ Facilities for the control, storage, treatment, conveyance, disposal, or recycling of stormwater; and

~~((v))~~ (iii) Water pollution control facility construction to meet existing residential needs;

(d) **Value engineering** for water pollution control facilities;

~~((e) Design or construction costs associated with design-build or design-build-operate contracts;~~

~~((3))~~ (4) **Land acquisition:**

(a) As an integral part of the treatment process (e.g., land application); or

(b) ~~((For prevention of water pollution;~~

~~((c))~~ For siting of water pollution control facilities, sewer rights of way, easements, and associated costs; ~~((c~~

~~((d) for wetland habitat preservation;~~

~~((4))~~ (5) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

~~((5))~~ (6) **On-site sewage systems:**

(a) **Local loan fund** program development and administration;

(b) **New sewer systems** to eliminate failing or failed on-site sewage systems;

~~((6))~~ (7) **Spare parts**, an initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements; and

~~((7))~~ (8) **Transferring ownership** of a small wastewater system to a public body.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-120 Projects ineligible for centennial program funding. While it is impossible to list every project or project element that is not eligible, some examples of ineligible projects include:

(1) **Abandonment** or demolition of existing structures;

(2) ~~((Acts of nature that alter the natural environment, thereby causing water quality problems;~~

~~((3))~~ **Commercial, institutional or industrial** wastewater pretreatment;

~~((4))~~ (3) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;

~~((5))~~ (4) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects a negotiated fee in general contractor/construction manager contracts is not a cost-plus-a-percentage-of-cost contract;

~~((6))~~ (5) **Facilities** intended solely to control, transport, treat, dispose, or otherwise manage commercial, institutional, or industrial wastewater;

~~((7))~~ (6) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;

~~((8))~~ (7) **Flood control**, projects or project elements intended solely for flood control;

~~((9))~~ (8) **Funding application preparation** for loans or grants;

~~((10))~~ (9) **Interest** on bonds, interim financing, and associated costs to finance projects;

~~((11))~~ (10) **Landscaping** for aesthetic reasons;

~~((12))~~ (11) **Legal expenses** associated with claims and litigation;

~~((13))~~ (12) **Lobbying** or expenses associated with lobbying;

~~((14))~~ **(13) Monitoring equipment** for sampling and analysis of commercial, institutional, or industrial discharges;

~~((15))~~ **(14) Office furniture** not included in the recipient's indirect rate;

~~((16))~~ **(15) Operating expenses** of local government, such as the salaries and expenses of a mayor, city councilmember, and city attorney;

~~((17))~~ **(16) Operation and maintenance** costs for work not performed by contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary;

~~((18))~~ **(17) Overtime** differential paid to employees of a public body to complete administrative or force account work;

~~((19))~~ **(18) Permit fees** not directly required for the completion of the project;

~~((20))~~ **(19) Professional dues;**

~~((21))~~ **(20) Reclamation** of abandoned mines;

~~((22))~~ **(21) Refinance** of existing debt;

~~((23))~~ **(22) Rework costs** or previously funded objectives;

~~((24))~~ **(23) Solid or hazardous waste;**

~~((25))~~ **(24) Utility local improvement district** formation;

~~((26))~~ **(25) Vehicle purchase**, except for vehicles intended for the transportation of liquid or dewatered sludge or septage; and

~~((27))~~ **(26) Water quantity** or other water resource projects that solely address water quantity issues such as reservoirs and dams.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-95A-200 Centennial clean water program loan interest rates. ~~((The department bases loan recipient interest rates on the average market interest rate. The average market interest rate is based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds for the period from sixty to thirty days before the annual funding application cycle begins. See WAC 173-95A-400 for hardship interest rates.))~~

Loan terms and interest rates are as follows:

Repayment Period	Interest Rate
Up to five years:	Thirty percent of the average market rate.
More than five but no more than twenty years:	Sixty percent of the average market rate.))

Loan interest rates are determined by the provisions in WAC 173-98-400.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-300 Application for funding. (1) To apply for funding the applicant must submit a completed application to the department. The department will provide the application on the department web site.

(2) ~~((The applicant may be asked to provide the following project information:~~

~~(a) Basic information such as names of contacts, addresses, and other tracking information;~~

~~(b) Project summary;~~

~~(c) Project goals, objectives, and milestones;~~

~~(d) Overall water quality benefits;~~

~~(e) Public health benefits;~~

~~(f) Sources of pollution addressed;~~

~~(g) How the project will address state and federal mandates, elements in *Washington's Water Quality Plan to Control Nonpoint Sources of Pollution*, or other such plans;~~

~~(h) Performance measures and postproject assessment monitoring;~~

~~(i) Readiness to proceed, likelihood of success, and measures of success specific to the project;~~

~~(j) Local initiatives, commitments, or priorities related to the project; or~~

~~(k) Other information requested by the department.~~

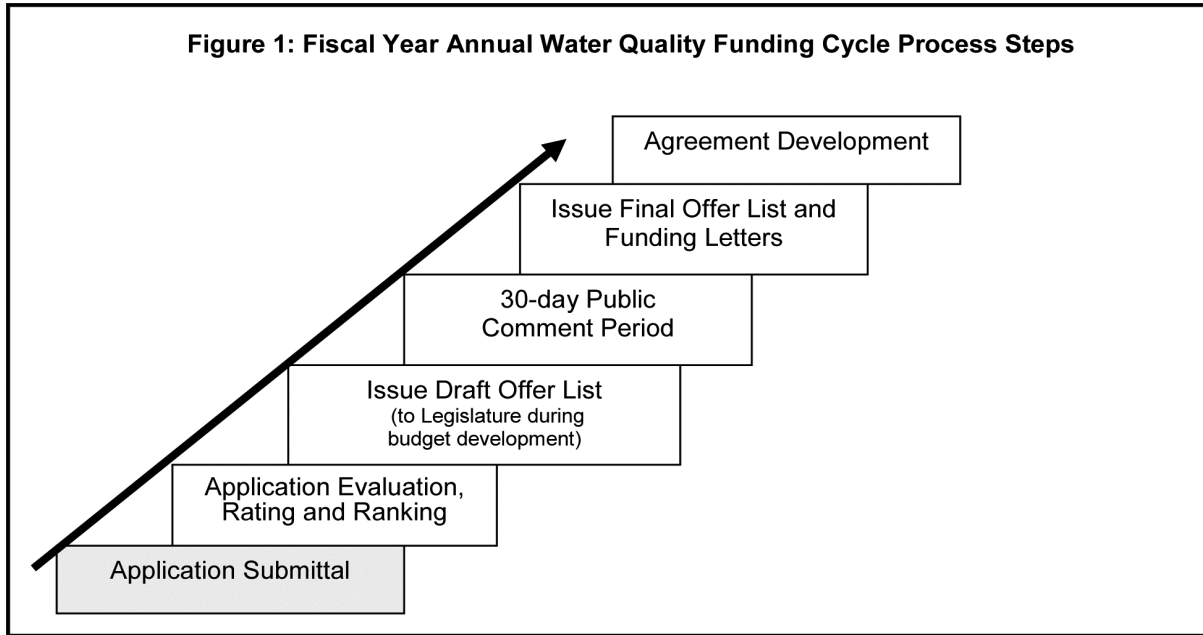
~~(3))~~ Minimum score on application.

(a) An applicant must receive a minimum score equal to fifty percent of the available points on ~~((section three,))~~ the water quality and public health improvements form, of the water quality financial assistance application to be rated for the *Draft Offer and Applicant List* and *Final Offer and Applicant List*. ~~((An applicant with fewer than fifty percent of the points available on section three of the application is not eligible for funding consideration.))~~ The department may offer funding to applicants with fewer than fifty percent of the points available on ~~((section three))~~ the form if demand for funding is low.

(b) An applicant must receive a minimum score equal to sixty percent of the available points on the water quality financial assistance application to be eligible for funding consideration. The department may offer funding to applicants with fewer than sixty percent of the points available on the financial assistance application if demand for funding is low.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-310 ((Ecology's)) The department's responsibilities. (1) A general funding cycle schedule is provided in Figure 1.



(2) In general, ((ecology)) the department will provide the following services, although annual modifications may be made to accommodate legislative schedules and requirements:

- (a) Make available the application and applicable guidelines before the associated funding cycle begins;
- (b) Conduct at least one application workshop in each of ecology's four regions;
- (c) Conduct preapplication workshops to discuss regional level priorities if applicable;
- (d) After the application deadline, complete an initial review of project proposals for funding eligibility;
- (e) Request other agencies to provide evaluation assistance as needed;
- (f) Rate and rank the applications using a consistent scoring system;
- (g) ((Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;
- (h) Submit preliminary project priority list to the state legislature during budget development;
- ((h)) Develop a combined *Draft Offer and Applicant List*;
- ((h)) ((h)) Facilitate a public review and comment period for the combined *Draft Offer and Applicant List*;
- ((h)) ((i)) Sponsor at least one public meeting to explain the combined *Draft Offer and Applicant List*;
- ((h)) ((i)) Develop a combined *Final Offer and Applicant List*. Public comments collected during ((draft)) the public review period will be incorporated ((and result in a responsiveness summary));
- ((m)) ((k)) Issue funding decision letters to all applicants; and
- ((n)) ((l)) Negotiate, develop, and finalize loan or grant agreements.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-320 Final offer and applicant list.

Loan and grant offers identified on the *Final Offer and Applicant List* will be effective for up to one year from the publication date of the *Final Offer and Applicant List*. Loan and grant offers that do not result in a signed agreement ((are automatically)) may be ended.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-400 Wastewater ((treatment)) facilities construction. (((1) There are three primary factors considered in determining hardship funding for the construction portion of a wastewater treatment facilities projects:

- (a) Service area population;
 - (b) Existing residential need at the time of application; and
 - (c) Level of financial burden placed on the ratepayers.
- (2) ~~Service area population.~~ Applicants serving an area of twenty-five thousand or less can request hardship funding consideration by submitting a financial hardship analysis form, provided by the department, along with the grant and loan funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.
- (3) ~~Existing residential need.~~ Water pollution control facilities construction costs that are associated with existing residential need at the time of application may be eligible for funding. Additional reserve capacity for growth is not eligible for grant funding.

(4) Level of financial burden.

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI) for the project area. The annual residential sewer user fee is calculated using:

- (i) Estimated construction costs;
 - (ii) Existing annual operation and maintenance costs;
 - (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
 - (iv) Projected future operation and maintenance costs for the total facility;
 - (v) The applicant's current and future annual debt service on the project;
 - (vi) The annual debt service for the project if funded with a water pollution control revolving fund loan;
 - (vii) Other grants and loans funding the project;
 - (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
 - (ix) The total number of households or equivalent residential units (ERUs) existing at the time of application that will be served by the project;
 - (x) The nonresidential share of the total annual costs; and
 - (xi) The MHI for the project area;
- (b) The sewer user fee as a percentage of the MHI is the basis for the department's grant and loan hardship funding continuum (shown below in figure 2 and figure 3);
- (c) The most recent available American community survey data determines the MHI; and
- (d) If MHI data are not available for a community, the county MHI in which the community resides will be used;
- (e) If the applicant disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI for the project area.

(5) Hardship grant ceiling amounts. The department uses the grant hardship funding continuum, shown in figure 2 below, to determine the percent of grant awarded. There is a funding ceiling of five million dollars per project.

For example:

When a grant applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may receive a grant of seventy-five percent of eligible project costs, not to exceed five million dollars (see figure 2 below).

(6) If a project in the hardship category receives partial funding due to department funding constraints, the department may offer the remaining funding, up to five million dollars, in the next funding cycle, and on a case-by-case basis. The department may require further hardship analysis before offering the remaining moneys.

(7) Loan terms and interest rates. The department uses the loan hardship funding continuum, shown in figure 2 below, to determine the hardship loan interest rates. There is a funding ceiling of five million dollars. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When a loan applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 3 below).

(8) Design-build-operate (construction portion).

(a) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures; chapter 70.150 RCW, Water Quality Joint Development Act; and/or chapter 35.58 RCW, Metropolitan municipal corporations;

(b) The construction portion of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for a grant if the public body can demonstrate financial hardship in accordance with WAC 173-95A-400. Hardship grant ceiling amounts found in WAC 173-95A-520 apply;

(c) Design-build-operate projects must comply with chapter 35.58 RCW, Metropolitan municipal corporations;

(d) The project scope of work must implement a department-approved facilities plan;

(e) In addition to the project application information found in WAC 173-95A-300, the project will be evaluated on the applicant's level of administrative and technical expertise;

(f) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to use the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost and time-to-complete as compared to the traditional design-bid-construct process;

(g) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;

(h) Costs associated with change orders are not eligible for reimbursement;

(i) Projects must be completed according to the timeline in WAC 173-95A-700 and 173-95A-710; and

(j) Before the loan agreement is signed, the following must be approved by the department:

(i) Primary design elements;

(ii) Final service agreements.

(9) Extended grant payments. In some cases, the legislature may appropriate extended grant payments per RCW 70.146.075.

(10) ~~Figure 2: Grant Hardship Funding Continuum~~

Sewer User Fee divided by MHH	Below two percent	Two percent and above, but below three percent	Three percent and above, but below five percent	Five percent and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHH) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHH))
Grant Hardship Funding Continuum	Zero percent Grant	Fifty percent Grant (up to five million dollars)	Seventy five percent Grant (up to five million dollars)	One hundred percent Grant (up to five million dollars)

(11) ~~Figure 3: Loan Hardship Funding Continuum~~

Sewer User Fee divided by MHH	Below two percent	Two percent and above, but below three percent	Three percent and above, but below five percent	Five percent and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHH) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHH))
Loan Hardship Funding Continuum	Loan at sixty percent of market rate	Loan at forty percent of market rate	Loan at twenty percent of market rate	Loan at zero percent interest))

Financial hardship for wastewater facilities construction is determined by the provisions in WAC 173-98-300.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-500 Funding allocation. There are two project categories in which the competitive funding is allocated: Activities and facilities.

(1) The scores derived from the application rating and ranking process will determine the allocation of the competitive funding;

(2) No more than two-thirds of the fund can go to either category;

(3) If the demand for funding is low in either category, then ~~((moneys))~~ funds may be shifted amongst categories; and

(4) The department will adjust the funding allocation based on the following:

(a) To provide match for other funding sources, such as the Clean Water Act section 319 nonpoint source program or other funding programs; or

(b) To comply with funding restrictions in legislative appropriations.

For example:

If fifty percent of the competitive centennial program funding is comprised of state building construction account ~~((moneys))~~ funds, then fifty percent of the centennial program funding must be allocated to projects approved for that funding source.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-95A-510 Funding recognition. (1) The recipient must acknowledge department funding in reports, technical documents, publications, brochures, and other materials.

(2) Site-specific projects must ~~((display a sign acknowledging department funding. The sign must be large enough to be seen from nearby roadways, and include a department logo))~~ acknowledge department funding by one of the following means:

(a) Standard signage (appropriately sized and weather resistant);

(b) Posters and wall signage in a public building or location;

(c) Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility;

(d) Online signage placed on community web site or social media outlet; or

(e) Press release.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-520 Ceiling amounts. (1) **Activities projects.** Grants for activities projects made under the centennial program are subject to ceiling amounts of:

(a) Five hundred thousand dollars if the match for the grant is in the form of cash and/or interlocal costs; or

(b) Two hundred fifty thousand dollars if any part of the match is in the form of in-kind goods and services; and

(c) Five hundred thousand dollars for activities project loans.

(2) **Facilities projects.** Loans are subject to ceiling amounts of five million dollars.

(3) **Hardship projects.**

(a) Grants for facilities construction projects are subject to ceiling amounts of five million dollars. If a centennial program grant is provided for a hardship project in conjunction with a water pollution control revolving fund (revolving fund) forgivable principal loan award for hardship, then the ceiling amount for the combined revolving fund forgivable principal loan and centennial program grant is five million dollars; and

(b) Grants for facilities planning and design may not exceed fifty percent of the total eligible costs.

(4) **Water pollution control facilities construction bid overruns.**

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's ~~((original))~~ cost estimate as supplied with the bid documents;

(b) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

(c) First priority for availability of ~~((moneys))~~ funds will be given to hardship communities based on the severity of financial need. For more information, see WAC 173-95A-400.

(5) **Water pollution control facilities construction change orders:**

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The department may approve funding for change orders for greater than five percent of the eligible portion of the low responsive responsible construction bid(s) only if the recipient can demonstrate that the additional funding is needed to remedy unforeseeable, extraordinary site-specific conditions;

(c) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

~~((e))~~ (d) First priority for availability of ~~((moneys))~~ funds will be given to hardship communities based on the severity of financial need. For more information on hardship, see WAC 173-95A-400.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-95A-530 Match. (1) Depending on the grant amount, match can consist of cash or interlocal and in-kind contributions that total twenty-five percent of the total eligible project cost.

(2) No match is required for loans under the centennial program.

(3) No match is required for grants for wastewater facility hardship projects.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-540 Step process for facilities. ~~((+))~~ The step process is required for facilities construction projects. The process begins with site-specific planning, and continues through design to construction or implementation. At the time of application, all previous steps must be approved by the department. Draft documents must be sent to the department's engineers at least sixty days before end of application cycle for approval by end of application cycle. Funding for one step does not guarantee the future funding of subsequent steps.

(2) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. Facilities plans must be approved by the department before an application for design can be considered for funding. Facilities plans approved by the department more than two years before the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding. The applicant must also have a current rate study that includes the proposed project before an application for construction can be considered for funding. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short-lived assets, and any other associated project costs. The applicant must have an adopted fee ordinance based on the current rate study that includes the proposed project before the department will sign a loan agreement.

(3) **Combined steps for smaller design-bid-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one year of the effective date of the funding agreement. The applicant must also complete a rate study that includes the proposed project and adopt a fee ordinance based on the rate study before the department will approve plans and specifications as required in WAC 173-98-560, approval of plans and specifications. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short-lived assets;

and any other associated project costs. The total project costs for step four projects must be five million dollars or less.

(4) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) ~~The Washington state department of health has declared a public health emergency; and~~

(b) ~~The proposed project would remedy this situation.~~

~~No loan agreement will be signed until all previous steps have been completed and approved by the department.)~~ Wastewater facility projects must follow the step process provisions in WAC 173-98-530.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-95A-550 Commercial, industrial, and institutional flows. (1) The portion of a project designed to serve the needs of commercial, industrial, and institutional customers may be funded using loans only.

(2) Capacity to serve local public primary and secondary schools may be grant eligible if the applicant can demonstrate financial hardship according to WAC (~~(173-95A-400)~~) 173-98-300.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-95A-560 ((Step)) Process for water pollution control activities. The ((step)) following process is required for lake projects and recommended for all water pollution control activities projects.

(1) **Planning** involves the identification of problems (~~and~~), evaluation of cost-effective alternatives in accordance with WAC 173-98-730, and preparation of a planning document.

(2) **Implementation** is the actual implementation of the project based on the planning document. (~~Where the project includes construction, a design element may be included before the implementation step.~~)

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-600 General requirements. (1) Recipients must fully comply with all applicable federal, state, and local laws and rules relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Recipients of Ecology Grants and Loans* (publication #91-18) or *Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL* (publication #14-01-002).

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-610 The Growth Management Act. (1) ~~((A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.))~~ A county, city, or town that has been offered a loan or grant for a water pollution control facilities project may not receive loan or grant funding while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department; and

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

(2) For the purposes of this section, "compliance with the Growth Management Act" means that ~~((+))~~ a county, city, or town that must or chooses to plan under RCW 36.70A.040 and has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan or grant must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan or grant application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in the quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan or grant must be documented by a letter signed by the director and addressed to the public official who signed the loan or grant application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

~~((5) A county, city, or town that has been offered a loan or grant for a water pollution control facilities project may not receive loan or grant funding while the county, city, or town is not in compliance with the Growth Management Act unless:~~

~~(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department; and~~

~~(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and~~

~~(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.))~~

PART 7

TIMELY USE OF CENTENNIAL PROGRAM ~~((MON- EYS))~~ FUNDS

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-700 Starting a project. ~~((Costs incurred before a grant or loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department.~~

(1) Prior authorization to incur costs.

~~(a) An applicant may request prior authorization to incur eligible project costs if the following applies:~~

~~(i) The project is identified on the *Final Offer and Applicant List*;~~

~~(ii) Costs are incurred between the publication date of the *Final Offer and Applicant List* and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and~~

~~(iii) The written request is made to the water quality program manager;~~

~~(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and~~

~~(c) Any project costs incurred before the publication date of the *Final Offer and Applicant List* are not eligible for reim-~~

~~bursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.~~

~~(2))~~ **(1) Project initiation.** Grant or loan ~~((moneys))~~ funds must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the grant or loan agreement. These performance measures include, but are not limited to, the following:

~~(a) Work on a project must be started within ((sixteen))~~ ten months of the publication date of the *Final Offer and Applicant List* on which the project was proposed.

~~(b) Starting a project means making any measurable steps toward achieving the milestones, objectives, and overall goals of the project.~~

~~((c) Loan and grant offers identified on the *Final Offer and Applicant List* will be effective for up to one year from the publication date of the *Final Offer and Applicant List*. Loan and grant offers that do not result in a signed agreement are automatically ended, see WAC 173-95A-320.~~

~~(3))~~ **(2) Project initiation extension.** Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

~~(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or~~

~~(b) There is a need to do work during an environmental window in a specific season of the year.~~

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-95A-800 Accounting requirements for grant and loan recipients. (1) Recipients must maintain ~~((accounting records in accordance with RCW 43.09.200, Local government accounting—Uniform system of accounting. For example, charges must be properly supported, related to eligible costs, and documented by appropriate records. These records must be maintained separately))~~ accurate records and accounts for the project in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards related to the reporting of infrastructure assets, or in accordance with the state standards in RCW 43.09.200 Local government accounting—Uniform system of accounting.

(2) Accounting irregularities may result in an immediate payment hold. The director may require immediate repayment of misused loan or grant ~~((moneys))~~ funds.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-95A-810 Appealing a department decision. If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision by a written appeal to the water quality program

manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient may request review of the decision within thirty days to the deputy director;

(4) The deputy director will consider the appeal information, and may ~~((choose))~~ choose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received, and that decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to the appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the program.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-95A-820 Audit requirements for grant and loan recipients. The department, or at the department's discretion another authorized auditor, ~~((with))~~ may audit the grant or loan agreement and records.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-95A-580 Approval of plans and specifications.

AMENDATORY SECTION (Amending WSR 13-24-005, filed 11/20/13, effective 12/21/13)

WAC 173-98-010 Purpose. The purpose of this chapter is to set forth requirements for the Washington state department of ecology's (department) administration of Washington state's water pollution control revolving fund (revolving fund), and the water pollution control revolving administration account (administration account) as authorized by chapter 90.50A RCW, water pollution control facilities ~~((financing))~~ federal capitalization grants.

The revolving fund is primarily comprised of federal capitalization grants, state matching ~~((moneys))~~ funds, and principal and interest repayments. It is used to provide loan assistance to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. ~~((1251-1387))~~ 1251-1388.

The administration account is comprised of an administration charge applied to the outstanding loan balance on

revolving fund loans. The administration account may be used for the following:

(1) Administration costs associated with conducting application processes, managing contracts, collecting loan repayments, managing the revolving fund, providing technical assistance, and meeting state and federal reporting requirements; and

(2) Information and data system costs associated with loan tracking and fund management.

At the point where the administration account adequately covers the program administration costs, the department may no longer use the federal administration allowance. If a federal capitalization grant is awarded after that point, all federal capitalization grant dollars must be used for making loans.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-020 Integrated funding approach. (1) Where possible, the department combines the management of the revolving fund with other funding programs, such as the centennial clean water program, the stormwater financial assistance program, and the federal Clean Water Act section 319 nonpoint source program.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending WSR 13-24-005, filed 11/20/13, effective 12/21/13)

WAC 173-98-030 Definitions. For the purposes of this chapter:

(1) **Act** means the federal Clean Water Act (33 U.S.C. ~~((1251-1387))~~ 1251-1388).

(2) **Activities**, see water pollution control activities.

(3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.

(4) **Applicant** means a public body that has applied for funding.

(5) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(6) **Capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the revolving fund.

(7) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

(8) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from large commercial establishments, industrial facilities, or institutional sources such as state schools, hospitals, and prisons.

(9) **Competitive funding** means ~~((moneys))~~ funds available for projects through a statewide evaluation process.

(10) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

(11) **Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event;

(b) An animal livestock feeding operation that is under a department administrative order, notice of violation, or a National Pollution Discharge Elimination System permit;

(c) An animal livestock feeding operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An animal livestock feeding operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

(12) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

(13) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

(14) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(15) **Cost-effective alternative** means the option selected in an approved ~~((facilities plan))~~ planning document that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., ~~((lowest present worth or equivalent annual value))~~ life cycle cost).

(16) **Debt service** means the total of all principal, interest, and administration charges associated with a water pollution control revolving fund loan that must be repaid to the department by the public body.

(17) **Department** means the Washington state department of ecology.

(18) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(19) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(20) **Draft offer and applicant list** means a catalog of all applications for financial assistance considered and those proposed for funding, based on estimates of state and federal budgets.

(21) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities; sewer use ordinances and other legal documents may be sufficient.

(22) **Effective date** means the date the loan agreement is signed by the department's water quality program manager.

(23) **Eligible cost** means the portion of a facilities or activities project that can be funded based on program eligibility as defined in WAC 173-98-100 and in the most recently updated edition of the *Water Quality Financial Assistance Guidelines* (publication # 10-10-049).

(24) **Energy efficiency** means the use of improved technologies and practices to reduce the energy consumption of water quality projects, use energy in a more efficient way, and produce/use renewable energy.

(25) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

~~((26))~~ ~~**Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC.~~

~~((27))~~ **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

~~((28))~~ **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

~~((29))~~ **Environmentally innovative** means projects that demonstrate new or innovative approaches to managing water quality issues in a more sustainable way.

~~((30))~~ **Equivalent residential unit (ERU)** means a unit of measurement used to express the average sewage loading discharged from a typical full-time single-family dwelling unit.

~~((31))~~ **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

~~((32))~~ **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application.

~~((33))~~ **Existing residential need** means that portion of a water pollution control facility's capacity reserved for residential structures that:

(a) Exist within the project service area at the time of application;

(b) Are connected to the facility or scheduled to be connected to the facility in an approved ~~((engineering report))~~ planning document; and

(c) Will bear the financial burden of paying for the new facility.

~~((34))~~ **Facilities**, see water pollution control facility.

~~((35))~~ ~~**Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC.~~

~~((36))~~ **Federal capitalization grant**, see capitalization grant.

~~((37))~~ **Final offer and applicant list** means a catalog of all applications for financial assistance considered and those offered funding, based on adopted state and federal budgets.

~~((38))~~ **Force account** means loan project work performed using labor, materials, or equipment of a public body.

~~((39))~~ **(37) Forgivable principal** means the portion of a loan made by the department that is not required to be paid back by the borrower if allowable by the act or Congress through federal appropriation.

~~((40))~~ **(38) Funding category** see "water pollution control activities funding category," "water pollution control facilities funding category," and "preconstruction funding category(~~(, "and "green project reserves funding category").~~)"

~~((41))~~ **(39) Funding cycle** means the events related to the competitive process used to allocate ~~((moneys))~~ funds from the revolving fund, centennial clean water program, stormwater financial assistance program, and the Clean Water Act section 319 nonpoint source program for a state fiscal year.

~~((42))~~ **(40) General obligation debt** means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

~~((43))~~ **(41) Green infrastructure** means a wide array of practices at multiple scales that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring and harvesting and using stormwater.

~~((44))~~ **(42) Green project reserve(s)** means water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects.

~~((45) Green project reserves funding category~~ means that portion of the revolving fund dedicated to green project reserves projects.

~~((46))~~ **(43) Growth** means the portion of the total flows to a facility that is reserved for future residential, commercial, industrial, and institutional flows.

~~((47))~~ **(44) Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

~~((48))~~ **(45) Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

~~((49))~~ **(46) Infiltration and inflow correction** means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved ~~((facilities plan or engineering report))~~ planning document for eliminating or reducing the infiltration and inflow to existing sewer system.

~~((50))~~ **(47) Initiation of operation** means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur before final inspection or project completion.

~~((51))~~ **(48) Intended use plan** means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the revolving fund for a fiscal year as described in section 606(c) of the act.

~~((52))~~ **(49) Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

~~((53))~~ **(50) Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of ~~((moneys))~~ funds that must be repaid.

~~((54))~~ **(51) Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

~~((55))~~ **(52) Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

~~((56))~~ **(53) Perpetuity** means ~~((the point at which the revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.~~

~~((57))~~ the department will seek to manage the revolving fund account so that available future funds at least match the rate of growth of *Engineering News-Record* "Construction Cost Index" for the city of Seattle.

(54) Plans and specifications means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

~~((58))~~ **(55) Preconstruction** means facility planning, facility design, rate studies, value engineering, sewer use ordinances, and utility formation.

~~((59))~~ **(56) Preconstruction funding category** means that portion of the revolving fund dedicated to preconstruction projects.

~~((60))~~ **(57) Preliminary project priority list** means a catalog of all applications for financial assistance considered for funding and submitted to the Washington state legislature for its consideration during budget development.

~~((61))~~ **(58) Project** means a water quality improvement effort funded with a grant or loan.

~~((62))~~ **(59) Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

~~((63))~~ **(60) Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

~~((64))~~ **(61) Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

~~((65))~~ **(62) Recipient** means a public body that has an effective loan agreement with the department.

~~((66))~~ **(63) Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the revolving fund loan.

~~((67))~~ **(64) Residential** means the portion of the total flows to a facility that originates from single-family houses, apartments, mobile home parks, small commercial facilities, and community facilities such as local K-12 public schools, libraries, and fire stations.

~~((68))~~ **(65) Revenue-secured debt** means an obligation of the recipient secured by a pledge of the revenue of a utility.

~~((69))~~ **(66) Revolving fund** means Washington state's water pollution control revolving fund.

~~((70))~~ **(67) Riparian buffer or zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

~~((71))~~ **(68) Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

~~((72))~~ **(69) Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

~~((73))~~ **(70) Service area population** means the number of people served in the area of the project.

~~((74))~~ **(71) Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

~~((75))~~ **(72) Sewer** means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

~~((76))~~ **(73) Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

~~((77))~~ **(74) State environmental review process (SERP)** means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 C.F.R. § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

~~((78))~~ **(75) Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

~~((79))~~ **(76) Total project cost** means the sum of all expenses associated with a water quality project.

~~((80))~~ **(77) Water efficiency projects** means the use of improved technologies and practices to deliver equal or better water quality services with less water. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future.

~~((81))~~ **(78) Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders the waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

~~((82))~~ **(79) Water pollution control activities or activities** means actions taken by a public body for the following purposes:

(a) To prevent or mitigate pollution of underground water;

(b) To control nonpoint sources of water pollution;

(c) To restore the water quality of freshwater lakes; and

(d) To maintain or improve water quality through the use of water pollution control facilities or other means.

~~((83))~~ **(80) Water pollution control activities funding category** means that portion of the revolving fund dedicated to nonpoint source pollution projects.

~~((84))~~ **(81) Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, stormwater, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((85))~~ **(82) Water pollution control facilities funding category** means that portion of the revolving fund dedicated to facilities projects.

~~((86))~~ **(83) Water pollution control revolving fund (revolving fund)** means the water pollution control revolving fund established by RCW 90.50A.020.

~~((87))~~ **(84) Water resource inventory area (WRIA)** means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-040 Revolving fund uses. The revolving fund may be used for the following purposes:

(1) To provide loans to finance the planning, design, and/or construction of water pollution control facilities;

(2) To provide loans for nonpoint source pollution control management projects that implement the *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution*, and for developing and implementing a conservation and management plan under section 320 of the act;

(3) ~~To provide loans for up to twenty years reserve capacity for water pollution control facilities;~~

~~(4))~~ To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;

~~((5))~~ (4) To guarantee or buy insurance for local obligations to improve credit market access or reduce interest rates;

~~((6))~~ (5) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund;

~~((7))~~ (6) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW; and

~~((8))~~ (7) To provide loan subsidies in the form of reduced interest rates and forgivable principal to public bodies for statewide, high-priority water quality projects that are

consistent with the Clean Water Act, 33 U.S.C. ((1251-1387)) 1251-1388.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-100 Eligible. Certain projects or project elements may be eligible for loan assistance including, but not limited to, the following:

(1) Alternative public works contracting for water pollution control facilities allowed under state statute including, but not limited to, design-build, design-build-operate, and general contractor/construction manager;

(2) Aquatic plant control when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution is addressed sufficiently to ensure that the pollution is eliminated;

~~((2))~~ (3) BMP implementation on private property:

(a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.

~~((3))~~ (4) BMP implementation on public property;

~~((4))~~ (5) Capacity for growth. Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;

~~((5))~~ (6) Computer equipment and software specific to the funded project and preapproved by the department;

~~((6))~~ (7) Confined animal feeding operations (CAFO) water pollution control projects located in federally designated national estuaries;

~~((7))~~ (8) Conservation planning;

~~((8))~~ Design-build or design-build-operate (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;)

(9) Diagnostic studies to assess current water quality;

(10) Education and outreach efforts for the public;

(11) Environmental checklists, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(12) Environmental emergencies as defined in WAC 173-98-030 and applied for in accordance with the provisions described in the published funding guidelines for the funding cycle in which the emergency occurs;

(13) Equipment and tools as identified in a loan agreement;

~~((13))~~ (14) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and stormwater for residential, and/or a combination of residential, commercial, institutional and industrial:

(a) **Planning:**

(i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the Growth Management Act;

(ii) **Stormwater planning;**

(iii) **Facilities planning** for water pollution control facilities;)

(b) **Design** preparation of plans and specifications for water pollution control facilities;

(c) **Construction of:**

(i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and stormwater;

(ii) Combined sewer overflow abatement;

~~((Facilities to meet existing needs plus twenty years for growth;~~

~~((iv))~~ Side sewers ~~((or individual))~~, pump stations, or other appurtenances on public property or private ~~((residential))~~ property if solving a nonpoint source pollution problem, such as failing on-site sewage systems; and

~~((+))~~ (iv) Side sewers ~~((existing))~~, pump stations, or other appurtenances on public property or private property ~~((with an easement))~~ to correct infiltration and inflow ~~((and replace existing water pollution control facilities; and~~

~~((vi) New sewer systems to eliminate failing or failed on-site sewage systems;))~~

(d) **Value engineering** for water pollution control facilities;

~~((e) Design or construction costs associated with design-build or design-build-operate contracts))~~

~~((14))~~ (15) **Green project reserve**(s) projects such as water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects or project elements as ~~((outlined in WAC 173-98-125, and as))~~ defined by EPA guidance;)

~~((15))~~ (16) **Groundwater protection activities** such as wellhead protection and critical aquifer recharge area protection;

~~((16))~~ (17) **Hardship assistance** for preconstruction projects, wastewater treatment facilities construction, and on-site sewage system repair and replacement;

~~((17))~~ (18) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Recipients of Ecology Grants and Loans* (publication #91-18) or *Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL* (publication #14-01-002);

~~((18))~~ (19) **Lake implementation and associated planning activities** on lakes with public access;

~~((19))~~ (20) **Land acquisition:**

(a) As an integral part of the treatment process (e.g., land application); (del))

(b) For siting of water pollution control facilities;

(c) For wetland habitat preservation and protection;

~~((20))~~ (d) For riparian area and watershed preservation and protection; or

(e) For drinking water source protection.

(21) **Landscaping for erosion control** directly related to a project, or site-specific landscaping to mitigate site conditions and comply with requirements in the SERP;

~~((21))~~ (22) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

~~((22))~~ (23) **Light refreshments** for meetings when preapproved by the department;

~~((23))~~ (24) **Mitigation**, determined on a case-by-case basis, that addresses water quality impacts directly related to the project;

~~((24))~~ (25) **Monitoring BMP effectiveness;**

~~((25))~~ (26) **Monitoring equipment** used for water quality assessment;

~~((26))~~ (27) **Monitoring water quality;**

~~((27))~~ (28) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;

~~((28))~~ (29) **On-site sewage systems:**

(a) **On-site sewage system repair and replacement** for residential and small commercial systems;

(b) **On-site sewage system** surveys;

(c) **Local loan fund** program development and implementation~~((:))~~;

~~((29))~~ (30) **Planning**, including comprehensive basin plans, watershed plans, and area-wide water quality plans;

~~((30))~~ (31) **Refinancing** of water pollution control facility debt;

~~((31))~~ (32) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;

~~((32))~~ (33) **Sales tax;**

~~((33))~~ (34) **Spare parts**, an initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;

~~((34))~~ (35) **Stream restoration projects;**

~~((35))~~ (36) **Total maximum daily load study** development and implementation;

~~((36))~~ (37) **Training** to develop specific skills that are necessary to directly satisfy the funding agreement scope of work. Training, conference registration or annual meeting fees must be preapproved by the department;

~~((37))~~ (38) **Transferring ownership** of a small wastewater system to a public body;

~~((38))~~ (39) **Wastewater or stormwater utility development;**

~~((39))~~ (40) **Wastewater or stormwater utility rate** or development impact fee studies;

~~((40))~~ (41) **Water quality education** and stewardship programs.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-110 Ineligible. Certain projects or project elements are not eligible for loan assistance including, but not limited to, the following:

(1) **Abandonment** or demolition of existing structures not interfering with proposed construction of a wastewater or stormwater treatment facility;

(2) ~~((Acts of nature that alter the natural environment, thereby causing water quality problems;~~

~~((3))~~ (3)) **Aquatic plant control** for aesthetic reasons, navigational improvements, or other purposes unrelated to water quality;

~~((4))~~ (3) **Bond costs** for debt issuance;

~~((5))~~ (4) **Bonus or acceleration payments** to contractors to meet contractual completion dates for construction;

~~((6))~~ (5) **Commercial, institutional or industrial** wastewater pollution control ~~((activities or))~~ facilities or portions of those facilities that are solely intended to control, transport, treat, dispose, or otherwise manage commercial, institutional, or industrial wastewater;

~~((7))~~ (6) **Commercial, institutional or industrial** monitoring equipment for sampling and analysis of discharges from municipal water pollution control facilities;

~~((8))~~ (7) **Commercial, institutional or industrial** wastewater pretreatment;

~~((9))~~ (8) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;

~~((10))~~ (9) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects (a negotiated fee in general contractor/construction manager contracts is not a cost-plus-a-percentage-of-cost contract);

~~((11))~~ Engineering reports;

~~((12))~~ (10) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;

~~((13))~~ (11) **Flood control**~~((s))~~ projects or project elements intended solely for flood control;

~~((14))~~ (12) **Funding application preparation** for loans or grants;

~~((15))~~ (13) **Interest** on bonds, interim financing, and associated costs to finance projects;

~~((16))~~ (14) **Landscaping** for aesthetic reasons;

~~((17))~~ (15) **Legal expenses** associated with claims and litigation;

~~((18))~~ (16) **Lobbying** or expenses associated with lobbying;

~~((19))~~ (17) **Mitigation** is not eligible unless it addresses water quality impacts directly related to the project, and will be determined on a case-by-case basis;

~~((20))~~ (18) **Office furniture** not included in the recipient's indirect rate;

~~((21))~~ (19) **Operating expenses** of local government, such as the salaries and expenses of a mayor, city councilmember, and city attorney;

~~((22))~~ (20) **Operation and maintenance** costs for work not performed by contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary;

~~((23))~~ (21) **Overtime** differential paid to employees of public body to complete administrative or force account work;

~~((24))~~ (22) Permit fees not directly required for the completion of a project;

~~((25))~~ (23) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or other means;

~~((26))~~ (24) Professional dues;

~~((27))~~ (25) Reclamation of abandoned mines;

~~((28))~~ (26) Refinancing of existing debt not related to a water pollution control facility;

~~((29))~~ (27) Solid or hazardous waste cleanup;

~~((30))~~ (28) Utility local improvement district (ULID) formation;

~~((31))~~ (29) Vehicle purchase, except for vehicles intended for the transportation of liquid, dewatered sludge, septage, or special purpose vehicles as approved by the department; and

~~((32))~~ (30) Water quantity or other water resource projects that solely address water quantity issues such as reservoirs and dams.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-200 Application for funding. (1) To apply for funding, the applicant must submit a completed application to the department. The department will provide the application on the department web site.

(2) ~~((The applicant may be asked to provide the following project information:~~

~~(a) Basic information such as names of contacts, addresses, and other tracking information;~~

~~(b) Project summary;~~

~~(c) Project goals, objectives, and milestones;~~

~~(d) Overall water quality benefits;~~

~~(e) Public health benefits;~~

~~(f) Sources of pollution addressed;~~

~~(g) How the project will address state and federal mandates, elements in *Washington's Water Quality Plan to Control Nonpoint Sources of Pollution*, or other such plans;~~

~~(h) Performance measures and postproject assessment monitoring;~~

~~(i) Readiness to proceed, likelihood of success, and measures of success specific to the project;~~

~~(j) Local initiatives, commitments, or priorities related to the project; or~~

~~(k) Other information requested by the department.~~

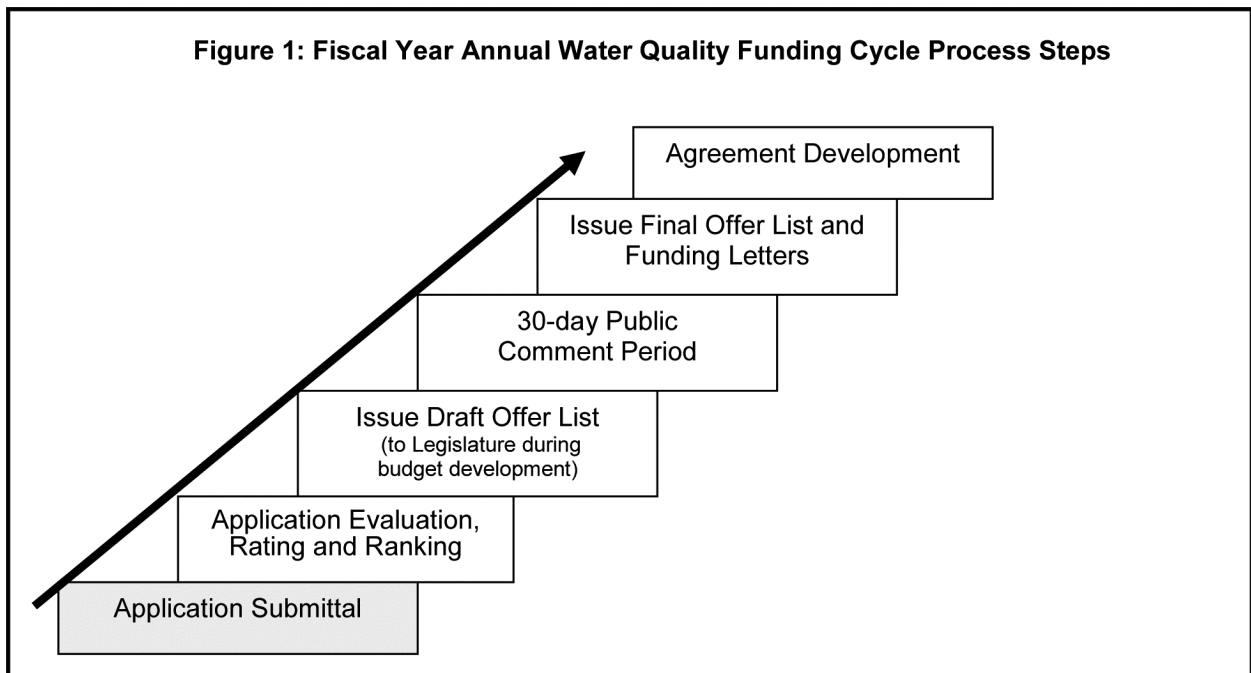
~~(3))~~ **Minimum score on application.**

(a) An applicant must receive a minimum score equal to fifty percent of the available points on ~~((section three,))~~ the water quality and public health improvements form, of the water quality financial assistance application to be eligible for funding consideration. The department may offer funding to applicants with fewer than fifty percent of the points available on ~~((section three))~~ the form if demand for funding is low; and

(b) An applicant must also receive a minimum score equal to sixty percent of the available points on the entire water quality financial assistance application to be eligible for funding consideration. The department may offer funding to applicants with fewer than sixty percent of the points available on the financial assistance application if demand for funding is low.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-210 ((Ecology's)) The department's responsibilities. (1) A general funding cycle schedule is provided in Figure 1.



(2) In general, ~~((ecology))~~ the department will provide the following services, although ~~((annual))~~ modifications may be made to accommodate legislative schedules and requirements:

(a) Make available the application and applicable guidelines before the associated funding cycle begins;

(b) Conduct ~~((at least one))~~ application workshops ~~((in each of ecology's four regions))~~ that are accessible statewide;

(c) Conduct preapplication workshops to discuss regional level priorities if applicable;

(d) Complete an initial review of project proposals for funding eligibility after the application deadline;

(e) Request other agencies to provide evaluation assistance as needed;

(f) Rate and rank the applications using a consistent scoring system;

~~((g))~~ ~~((Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;~~

~~((h))~~ ~~((Submit a preliminary project priority list to the state legislature during budget development;~~

~~((i))~~ ~~((Develop a combined Draft Offer and Applicant List and a Draft Intended Use Plan (IUP);~~

~~((j))~~ ~~((Facilitate a public review and comment period for the combined Draft Offer and Applicant List and Draft IUP;~~

~~((k))~~ ~~((Sponsor at least one public meeting to explain the combined Draft Offer List and Applicant List and Draft IUP;~~

~~((l))~~ ~~((Develop a combined Final Offer and Applicant List and a Final IUP. Public comments collected during ((draft)) the public review period will be incorporated ((and result in a responsiveness summary));~~

~~((m))~~ ~~((Issue funding decision letters to all applicants; and~~

~~((n))~~ ~~((Negotiate, develop, and finalize loan agreements.~~

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-220 Final offer and applicant list. Loan offers identified on the *Final Offer and Applicant List* will be effective for up to one year from the publication date of the *Final Offer and Applicant List*. Loan offers that do not result in a signed agreement ~~((are automatically))~~ or a letter of binding commitment may be ended.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-230 Revolving fund intended use plan (IUP). (1) As required by the EPA, the department issues a *Draft IUP and a Final IUP* for each funding cycle.

(2) The ~~((Final IUP is issued in conjunction with the Final Offer and Applicant List.~~

~~((3))~~ ~~((IUP contains a detailed report of how the department expects to allocate ((moneys)) funds available in the current funding cycle.~~

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-300 Wastewater treatment facilities construction. (1) There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:

(a) Service area population;

(b) Existing residential need at the time of application; and

(c) Level of financial burden placed on the ratepayers.

(2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request ~~((hardship funding))~~ hardship funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percentage of the median household income (MHI) for the project area. The annual residential sewer user fee is calculated using:

(i) Estimated construction costs;

(ii) Existing annual operation and maintenance costs;

(iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;

(iv) Projected future annual operation and maintenance costs for the total facility;

(v) The applicant's current and future annual debt service on the project;

(vi) The annual debt service for the project if funded with a revolving fund loan;

(vii) Other grants and loans funding the project;

(viii) The applicant's level of debt for other wastewater facilities not associated with the project;

(ix) The total number of households or equivalent residential units (ERUs) existing at the time of application that will be served by the project;

(x) The nonresidential share of the total annual costs is deducted; and

(xi) MHI for the project area;

(b) The sewer user fee as a percentage of MHI is the basis for the department's hardship loan ~~((hardship funding continuum))~~ interest rates shown in ~~((figure 2))~~ Table 1;

(c) The most recent available American Community Survey data determines the MHI;

(d) If MHI data are not available for a community, the county MHI in which the community resides will be used; and

(e) If the applicant disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI for the project area.

(5) **Loan terms and interest rates.** The department uses ~~((the loan hardship funding continuum))~~ Table 1 to deter-

mine the (~~hardship loan~~) hardship loan interest rates. (~~Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years, and forgivable principal loans as specified in WAC 173-98-330.~~)

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply:

When an applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the MHI, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 2).

~~(6) Figure 2. Loan Hardship Funding Continuum~~

Sewer User Fee divided by MHI	Below two percent	Two percent and above, but Below three percent	Three percent and above, but Below five percent	Five percent and above
Hardship Designation	Nonhardship (Low sewer user rates in relation to MHI) (Not funded with grant or forgivable principal dollars)	Moderate Hardship	Elevated Hardship	Severe Hardship (Very high sewer user rates in relation to MHI)
Loan Hardship Funding Continuum	Loan at sixty percent of market rate	Loan at forty percent of market rate	Loan at twenty percent of market rate	Loan at zero percent interest

~~(7))~~

Table 1
Hardship Loan Interest Rates

<u>Sewer fee divided by MHI is:</u>	<u>Below two percent (nonhardship)</u>	<u>Above two but below three percent (moderate hardship)</u>	<u>Above three but below five percent (elevated hardship)</u>	<u>Above five percent (severe hardship)</u>
<u>One to five years term:</u>	<u>Thirty percent of market rate</u>	<u>Twenty percent of market rate</u>	<u>Ten percent of market rate</u>	<u>Zero percent</u>
<u>Six to twenty years term:</u>	<u>Sixty percent of market rate</u>	<u>Forty percent of market rate</u>	<u>Twenty percent of market rate</u>	<u>Zero percent</u>
<u>Twenty-one to thirty years term:</u>	<u>Eighty percent of market rate</u>	<u>Sixty percent of market rate</u>	<u>Forty percent of market rate</u>	<u>Twenty percent of market rate</u>

(6) Partially funded projects: If a project in the hardship category receives partial funding due to department funding constraints, the department may offer the remaining funding, subject to funding ceilings, in the next funding cycle (~~and on a case-by-case basis~~). The department may require further hardship analysis before offering the remaining (~~moneys~~) funds.

to homeowners (~~and small commercial enterprises. To receive the adjusted interest rate, the recipient must issue loans shown in figure 3.~~)

~~(3) Figure 3 shows the interest rate schedule for loans targeted to homeowners at three levels of county MHI. For information on how the market rate is determined, see WAC 173-98-400.~~

~~Figure 3:~~

Homeowner Income is:	Twenty-Year Term	Five-Year Term	Hardship Level
Above eighty-percent county MHI	Sixty percent of MR	Thirty percent of MR	Nonhardship
Fifty-eighty-percent county MHI	Thirty percent of MR	Up to fifteen percent of MR	Moderate

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-310 On-site sewage system repair and replacement programs. (1) Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-site sewage repair and replacement for homeowners and small commercial enterprises.

(2) **Final loan blended interest rate.** The department may adjust the recipient's interest rates based on the (~~interest rates~~) proportion of loans that the recipient charged provided

Homeowner Income is:	Twenty-Year Term	Five-Year Term	Hardship Level
Below fifty percent county MHI	Up to fifteen percent of MR	Zero percent	Severe

(4) Figure 4 shows the interest rate schedules for loans targeted to small commercial enterprises at three levels of annual gross revenue. For example, in order for a small commercial enterprise to be considered for moderate to severe hardship, the business must provide documentation to substantiate that annual gross revenue is less than one hundred thousand dollars.

Figure 4.

Small Commercial Enterprise Annual Gross Revenue is:	Twenty-Year Term	Five-Year Term	Hardship Level
Above one hundred thousand dollars	Sixty percent of MR	Thirty percent of MR	Nonhardship
Fifty thousand dollars to one hundred thousand dollars	Thirty percent of MR	Up to fifteen percent of MR	Moderate
Below fifty thousand dollars	Up to fifteen percent of MR	Zero percent	Severe

(5)) in accordance with Table 2. Loans provided to small commercial enterprises do not affect the final loan blended interest rate.

Table 2

Interest Rate Schedule for Loans Targeted to Homeowners

Homeowner income is:	Above eighty percent of county MHI (nonhardship)	Above fifty but below eighty percent of county MHI (moderate hardship)	Below fifty percent of county MHI (severe hardship)
One to five years term:	Thirty percent of market rate	Fifteen percent of market rate	Zero percent

Sewer User Fee divided by MHI	Below two percent	Two percent and above, but Below three percent	Three percent and above, but Below five percent	Five percent and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to MHI)

Homeowner income is:	Above eighty percent of county MHI (nonhardship)	Above fifty but below eighty percent of county MHI (moderate hardship)	Below fifty percent of county MHI (severe hardship)
Six to twenty years term:	Sixty percent of market rate	Thirty percent of market rate	Fifteen percent of market rate
Twenty-one to thirty years term:	Eighty percent of market rate	Forty percent of market rate	Twenty percent of market rate

(3) For the purposes of this section, small commercial enterprises are those with an average daily flow of less than three thousand five hundred gallons.

(4) The recipient ((agrees to)) must submit a final compilation of the local loans provided to homeowners ((and small commercial enterprises)) throughout the duration of the project. The list will include information provided by the recipient regarding the number and final dollar amounts of loans funded in the following respective homeowner income ((and small commercial enterprise revenue)) levels:

- (a) ((Homeowner income:
 - (i)) Above eighty percent of county MHI;
 - ((ii)) (b) Fifty to eighty percent of county MHI;
 - ((iii)) (c) Below fifty percent of county MHI.
- ((b) Small commercial enterprise annual gross revenue:
 - (i) Above one hundred thousand dollars;
 - (ii) Fifty thousand dollars to one hundred thousand dollars;
 - (iii) Below fifty thousand dollars.))

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-320 Forgivable principal. (((+))) Forgivable principal. The department will ((apply the funding hardship continuum provided in figure 5 below)) use Table 3 to determine the amount of forgivable principal loan funding provided to an eligible hardship project. Financial hardship will be determined based on the provisions in WAC 173-98-300((-

(2) Figure 5. Forgivable principal hardship continuum (to determine amounts of forgivable principal loan allowed for eligible costs using revolving funds):

Figure 5.

Sewer User Fee divided by MHI	Below two percent	Two percent and above, but Below three percent	Three percent and above, but Below five percent	Five percent and above
Loan Hardship Funding Continuum	Not eligible for forgivable principal loan	Fifty percent forgivable principal loan up to ceiling amount defined in WAC 173-98-520	Seventy-five percent forgivable principal loan up to ceiling amount defined in WAC 173-98-520	One hundred percent forgivable principal loan up to ceiling amount defined in WAC 173-98-520))

and the ceiling amounts in WAC 173-98-520. In addition, in accordance with the act, the department must consider unemployment for the purposes of awarding forgivable principal loan for hardship.

Table 3
Forgivable Principal for Hardship

<u>Sewer user fee divided by MHI is:</u>	<u>Below two percent (nonhardship)</u>	<u>Above two but below three percent (moderate hardship)</u>	<u>Above three but below five percent (elevated hardship)</u>	<u>Above five percent (severe hardship)</u>
<u>Forgivable principal eligibility:</u>	Not eligible	Fifty percent up to ceiling amount	Seventy-five percent up to ceiling amount	One hundred percent up to ceiling amount

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-330 Preconstruction category. (1) An applicant ~~(can request hardship funding consideration)~~ will be considered for hardship funding when submitting a funding application if the service area population is twenty-five thousand or less and the MHI is less than eighty percent of the state MHI.

(2) If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) The most recent available American community survey data determines the MHI.

(4) If MHI data are not available for a community then the county MHI in which the community resides will be used.

(5) If the applicant disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI for the project area.

AMENDATORY SECTION (Amending WSR 13-24-005, filed 11/20/13, effective 12/21/13)

WAC 173-98-400 Loan interest rates. (1) Interest will accrue on each disbursement as it is paid to the recipient. This is "deferred interest." Deferred interest is added to the principal at project completion.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

(a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and

(b) Taken from the period ~~((sixty to thirty))~~ one hundred eighty to thirty days before the ~~((annual))~~ funding application cycle begins.

(3) See WAC 173-98-300 and 173-98-310 for hardship interest rates.

~~((Figure 6*))~~ **Table 4**

Standard Loan ~~((Terms and))~~ Interest Rates

((Repayment Period)) <u>Loan term</u>	<u>Interest rate</u>
((Up)) <u>One</u> to five years:	Thirty percent of ((the average)) market rate ((;-))
((More than five but no more than)) <u>Six</u> to twenty years:	Sixty percent of ((the average)) market rate ((;-))
<u>Twenty-one</u> to thirty years:	<u>Eighty percent of market rate</u>

(4) The standard interest rates for water pollution control activities projects are the rates calculated for "moderate" hardship in accordance with Table 1 in WAC 173-98-300. The department may work with stakeholders to develop a program that may further adjust interest rates for the purposes of further encouraging the funding of water pollution control activities projects.

(5) The director may ~~((approve lower))~~ adjust interest rates for the ~~((annual))~~ funding application cycle if a financial analysis of the revolving fund demonstrates that ~~((lower))~~ the interest rates ~~((for that year))~~ are not detrimental to the perpetuity of the revolving fund.

~~((5))~~ (6) Prior to issuing its Final Offer and Applicant List the department will examine and may lower interest rates if the rates for tax-exempt municipal bonds are significantly lower than when the funding cycle interest rate was determined in accordance with subsection (2) of this section.

(7) An administration charge will be applied to all loans that enter repayment after the effective date of this section. The following conditions apply to the administration charge.

(a) The administration charge will be applied to the outstanding loan balance at the time of each payment.

(b) The administration charge will be subtracted from the interest rate established in the loan agreement so there is no additional cost to the borrower.

(c) The administration charge will not be applied to loans with interest rates less than the administration charge.

(d) The maximum allowable administration charge is one percent. Initially the administration charge will be set at this level.

(e) Beginning with its 2017-2019 biennial operating budget submittal and each biennium thereafter, the department will compare the projected administration account balance and the projected administration charge income with projected program costs, including an adequate working capital reserve as defined by the office of financial management. In its submittal to the office of financial management, the department may:

(i) Find that the projected administration charge income is inadequate to fund the cost of administering the program, and that the rate of the charge must be increased; however, the administration charge may never exceed one percent;

(ii) Find that the projected administration charge income exceeds what is needed to fund the cost of administering the program, and that the rate of the charge must be decreased;

(iii) Find that there is an excess balance in the administration account, and that the excess must be transferred to the water pollution control revolving fund to be used for loans; or

(iv) Find that there is no need for any rate adjustments or balance transfers.

(f) If the department determines the administration charge should be adjusted, it will increase (up to the maximum of one percent) or decrease the administration charge and apply the new administration charge to loans that enter repayment after the administration charge has been adjusted. Loans already in repayment will not be affected by the adjusted administration charge.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-410 Refinancing. (1) There are two kinds of refinance with different rules: Standard refinance and interim refinance.

(2) **Standard refinance** refers to a completed project funded with ~~((moneys))~~ funds from a source other than the department. It is limited to water pollution control facilities where project construction began after March 7, 1985.

(a) Applicants requesting standard refinancing must meet all the requirements contained in the act;

(b) Standard refinance projects will only be funded if there is limited demand for ~~((moneys))~~ funds for new projects;

(c) All department prerequisites and revolving fund conditions must have been met at the time the project was undertaken;

(d) If multiple standard refinance applications are received, priority will be given based on impacts to the ratepayers in the service area of the project;

(e) Standard refinance projects are not eligible for hardship financial assistance; and

(f) Repayment begins six months after a funding agreement becomes effective.

(3) **Interim refinance** applies to a project that is in progress using ~~((moneys))~~ funds from a source other than the department. Interim refinance retires existing debt and also covers the remaining eligible project costs. Interim refinance projects must meet all applicable requirements of this chapter.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-450 Loan reserve requirements. ~~((For a revenue obligation secured loan with terms more than five years, the recipient must accumulate a reserve account equivalent to the annual debt service on the loan. This reserve must be established before or during the first five years of the loan repayment period. The reserve account may be used to make the last two payments.))~~ The department may require a recipient to create a reserve account to secure the payment of the principal and interest on the revolving fund loan.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-460 Loan default. In the event of loan default, the state of Washington may withhold any amounts due to the recipient from the state for other purposes. The ~~((moneys))~~ funds will be applied to the debt.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-98-470 Late payments. A late fee of one percent per month on the past due amount ~~((with))~~ may be assessed starting on the date the debt becomes past due and until it is paid in full.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-500 Funding categories. (1) The revolving fund is divided into ~~((four))~~ three funding categories:

(a) ~~((Green project reserves category: An amount equal to twenty-five percent of the capitalization grant is allocated to the green project reserves category.~~

(b) ~~Moneys for the green project reserves category are allocated before the remaining revolving fund is divided between the other categories; and~~

~~((e))~~ Water pollution control facilities category: ~~((After allocating revolving fund moneys to the green project reserves category,))~~ Seventy-five percent of the ((remaining)) revolving fund will be available for facilities projects ((as established under section 212 of the act; and));

~~((d))~~ (b) Preconstruction category: ~~((After allocating revolving fund moneys to the green project reserves category,))~~ Five percent of the ((remaining)) revolving fund will be available for preconstruction category; and

~~((e))~~ (c) Water pollution control activities category: ~~((After allocating revolving fund moneys to the green project reserves category,))~~ Twenty percent of the ((remaining))

revolving fund will be available for the implementation of programs or projects established under the *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution*.

(2) Forgivable principal.

(a) Additional subsidization in the form of forgivable principal loans may be provided at an amount equal to ~~((nine percent of the capitalization grant;~~

~~(b) The amount of forgivable principal provided may be adjusted up to an amount equal to thirty percent of the capitalization grant to meet minimum requirements for green project reserves and demand for hardship funding; and~~

~~(c) The percentages listed in (a) and (b) of this subsection for forgivable principal offered may be adjusted as required to meet federal laws)) the maximum allowed by the act and/or a capitalization grant;~~

~~((~~(b)~~)) (b) Additional subsidization in the form of forgivable principal loans may be provided for eligible hardship projects, eligible green project reserve((s)) projects or project elements, and eligible preconstruction projects.~~

(3) If the demand is limited in any of the funding categories or to meet funding levels required in federal laws, the department can shift ~~((moneys)) funds~~ between the funding categories.

~~((a) The amount of revolving funds dedicated to the green project reserves category may be adjusted as required to meet minimum requirements for forgivable principal or to meet funding levels required in federal laws;~~

~~(b) The amount of forgivable principal provided to the green project reserves category may be adjusted as required to meet green project reserves minimum requirements or to meet funding levels required in federal laws:))~~

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-98-510 Funding recognition. (1) Where applicable, the recipient must acknowledge department and EPA funding in reports, technical documents, publications, brochures, and other materials.

(2) Where applicable, the recipient must ~~((display signs for site-specific projects acknowledging department and EPA funding. The sign must be large enough to be seen from nearby roadways and include a department or EPA logo)) acknowledge department and EPA funding for site-specific projects by one of the following means:~~

(a) Standard signage (appropriately sized and weather resistant);

(b) Posters and wall signage in a public building or location;

(c) Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility;

(d) Online signage placed on community web site or social media outlet; or

(e) Press release.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-520 Ceiling amounts. (1) Green project reserve((s-category)):

~~((a) No more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; and~~

~~(b)) The ceiling amount for forgivable principal provided for eligible green project reserve((s)) projects is up to ~~((fifty)) twenty-five~~ percent of the total green project reserve-eligible portion of the project costs. ~~((If demand is limited for green project reserves projects, the ceiling amount may be raised to fully use available funding.))~~~~

(2) Preconstruction category:

(a) No more than twenty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(b) The ceiling amount for a forgivable principal loan provided for financial hardship for WAC 173-98-330 is up to fifty percent of the eligible project costs. ~~((If demand is limited for projects eligible for preconstruction category, the ceiling amount may be raised to fully use available funding.))~~

(c) The ceiling amount for this category applies to the combined total of all preconstruction elements for loans and forgivable principal loans.

(3) Water pollution control facilities category:

(a) No more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle;

(b) The ceiling amount for a forgivable principal loan provided for financial hardship for WAC 173-98-330 is five million dollars. If a forgivable principal loan is provided for a hardship project in conjunction with a centennial program grant award for hardship, then the ceiling amount for the combined forgivable principal loan and centennial program grant is five million dollars; and

(c) No more than ~~((five)) seven~~ million dollars is available for each smaller combined design-construct project (step four). See WAC 173-98-530 for information on smaller combined design-construct projects (step four).

(4) Water pollution control activities category: ~~((Not))~~ No more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(5) Water pollution control facilities construction bid overruns:

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's ~~((original estimate)) cost estimate as supplied with the bid documents;~~

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding bid overruns will be given to hardship communities based on the severity of financial need.

(6) Water pollution control facilities construction change orders:

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The department may approve funding for change orders for greater than five percent of the eligible portion of the low responsive responsible construction bid(s) only if the recipient can demonstrate that the additional funding is needed to remedy unforeseeable, extraordinary site-specific conditions;

(c) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

~~((e))~~ (d) First priority for funding change orders will be given to hardship communities based on the severity of financial need.

(7) If a project qualifies for both hardship funding and green project reserve~~((s))~~ funding, then the ceiling amount for total forgivable principal and centennial grant funding for the project is the combined ceiling amount of both hardship and green project reserve~~((s))~~ categories.

(8) If demand is limited for projects eligible for any category, the ceiling amounts may be raised in other categories to fully use available funding.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-530 Step process for water pollution control facilities. (1) The step process is required for waste-water facilities projects. The process begins with site-specific planning, and continues through design to construction.

(2) For steps one through three, an applicant may only apply for funding for one step of the process at a time. ~~((At the time of application, completion of the previous steps must be approved by the department.))~~ Funding of one step does not guarantee the funding of subsequent steps.

(3) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific ~~((facilities plan))~~ planning document that identifies the cost-effective alternatives for addressing a water pollution control problem in accordance with WAC 173-98-730. There is no prerequisite for planning ~~((If there is an existing engineering report, it must be upgraded to a facilities plan))~~;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the ~~((facilities plan. A facilities plan))~~ planning document. In order to be eligible for design a planning document must be approved by the department ((before an application for design can be considered for funding)) without conditions at least thirty days before issuance of the *Draft Offer and Applicant List*.

~~((Facilities plans))~~ Planning documents approved by the department more than two years before the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes ~~((the actual building))~~ construction of facilities based on the approved design. ~~((Design))~~ In order to be eligible for construction, design plans and specifications must be approved by the department ~~((before an application for construction can be considered for funding. The applicant must also have~~

a current rate study that includes the proposed project before an application for construction can be considered for funding. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The applicant must have an adopted fee ordinance based on the current rate study that includes the proposed project before the department will sign a loan agreement)) without conditions, in accordance with WAC 173-240-030, at least thirty days before issuance of the *Draft Offer and Applicant List*.

(4) **Combined steps for smaller design-construct projects (step four):** In some cases, design and construction may be combined into one ~~((loan))~~ project. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one year of the ~~((effective))~~ signature date of the funding agreement. ((The applicant must also complete a rate study that includes the proposed project and adopt a fee ordinance based on the rate study before the department will approve plans and specifications as required in WAC 173-98-560, approval of plans and specifications. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs.)) In order to be eligible for step four, a planning document must be approved by the department without conditions at least thirty days before issuance of the *Draft Offer and Applicant List*. The total project costs for step four projects must be ((five)) seven million dollars or less.

(5) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency~~((;))~~, and

~~((b))~~ the proposed project would remedy this situation((-

No loan agreement will be signed until all previous steps have been completed and approved by the department)); or

(b) The department has declared an environmental emergency, and the proposed project would remedy this situation.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-98-540 ((Step)) Process for water pollution control activities. The ~~((step))~~ following process is required for lake projects and recommended for all water pollution control activities projects.

(1) **Planning** involves the identification of problems ~~((and))~~, evaluation of cost-effective alternatives in accordance with WAC 173-98-730, and preparation of a planning document.

(2) **Implementation** is the actual implementation of the project based on the planning document. ~~((Where the project includes construction, a design element may be included before the implementation step.))~~

PART 6

((DESIGN-BUILD AND DESIGN-BUILD-OPERATE-PROJECTS)) ALTERNATIVE PUBLIC WORKS CONTRACTING

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-600 (~~Design-build and design-build-operate project~~) **Alternative public works contracting requirements.** ~~((1) Design-build or design-build-operate)~~ Alternative public works contracting projects must be consistent with the applicable ~~((statutes, such as))~~ sections of chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations.

~~((2) The construction portions of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for reduced interest rate and a forgivable principal loan if the public body can demonstrate financial hardship in accordance with WAC 173-98-300.~~

(3) The following conditions apply to design-build and design-build-operate projects:

(a) The ceiling amounts in WAC 173-98-520;

(b) If eligible project costs exceed the ceiling amounts in WAC 173-98-520, then public bodies can compete for additional funding in the subsequent funding cycle;

(c) Interest rates for nonhardship projects are set according to WAC 173-98-400;

(d) In the case of hardship, a reduced interest rate and a forgivable principal loan may be available for the construction portion of a design-build-operate project;

(e) The project scope of work must implement a department-approved facilities plan;

(f) In addition to the project application information listed in WAC 173-98-200, the project will be evaluated on the applicant's level of administrative and technical expertise;

(g) Applicants may apply for up to one hundred ten percent of the facilities planning estimate for design and construction. The loan agreement will be written for the final negotiated contract price;

(h) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to use the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost and time to complete as compared to the traditional design-bid-construct process;

(i) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;

(j) Costs associated with change orders are not eligible for reimbursement;

(k) Before delegation authority is granted to the applicant and the loan agreement is signed, the following must be approved by the department:

(i) Primary design elements;

(ii) Final service agreements and/or contracts;

(l) Projects funded before the effective date of this rule will continue to be managed in accordance with the program guidelines for the year the project was funded; and

(m) Projects must be completed according to the timeline in ~~WAC 173-98-800 and 173-98-810.~~)

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-700 General requirements. (1) Recipients must fully comply with all applicable federal, state, and local laws and rules relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Recipients of Ecology Grants and Loans* (publication #91-18) or *Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL* (publication #14-01-002).

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-710 The Growth Management Act. (1) ~~((A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.))~~ A county, city, or town that has been offered a loan for a water pollution control facilities project may not receive loan funds while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department;

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

(2) For the purposes of this section, "compliance with the Growth Management Act" means: A county, city, or town

that must or chooses to plan under RCW 36.70A.040 and has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in the quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan must be documented by a letter signed by the director and addressed to the public official who signed the loan application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state;

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

~~((5) A county, city, or town that has been offered a loan for a water pollution control facilities project may not receive loan funds while the county, city, or town is not in compliance with the Growth Management Act unless:~~

~~(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department;~~

~~(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and~~

~~(c) The department has determined that the project is designed to address only the public health need or substantial~~

~~environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.))~~

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-98-720 State environmental review process (SERP). (1) All recipients of funding for water pollution control facility projects must comply with the SERP.

(2) SERP includes all the provisions of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC, and applicable federal requirements.

(3) All mitigation measures committed to in documents developed in the SERP process, such as the environmental checklist, environmental report, SEPA environmental impact statement (EIS), the finding of no significant impact/environmental assessment, or record of decision/federal EIS will become revolving fund loan agreement conditions. Failure to abide by these conditions will result in withholding of payments and may result in immediate repayment of the loan.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-98-730 Cost-effectiveness analysis (~~for water pollution control facilities~~). (1) Funding will only be considered if ~~((the))~~ a project is shown to be the cost-effective alternative/solution to ~~((the))~~ a water ~~((pollution control))~~ quality problem and that the project maximizes the potential for energy conservation and efficient water use, reuse, recapture, and conservation. The cost-effective alternative is determined using a cost-effectiveness analysis.

(2) A cost-effectiveness analysis ~~((must be included in the facilities plan and))~~ must include ~~((the following:~~

~~(a))~~ a comparison of the ~~((total cost, total present worth or annual equivalent))~~ life cycle costs of alternatives considered for the planning period(~~;~~

~~(b) The no action alternative; and~~

~~(c) A consideration of the monetary or nonmonetary costs/benefits of each alternative, such as the environmental impact, energy impacts, growth impacts, and community priorities))~~ taking into account:

(a) The cost of constructing the project or activity;

(b) The cost of operating and maintaining the project or activity over the life of the project or activity; and

(c) The cost of replacing the project or activity.

(3) ~~((Facilities plans))~~ Applicants proposing ~~((design-build or design-build-operate))~~ alternative public works contracting for projects must demonstrate that this approach is the cost-effective alternative for procurement.

PART 8

TIMELY USE OF REVOLVING FUND LOAN (~~MON-~~
~~EYS)) FUNDS~~

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-800 Starting a project. (~~Costs incurred before a loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department or interim refinancing is approved. For more information on interim refinancing, see WAC 173-98-410.~~

(1) Prior authorization to incur eligible costs:

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

(i) The project is identified on the *Final IUP*;

(ii) Costs are incurred between the publication date of the *Final Offer and Applicant List* and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and

(iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and

(c) Any project costs incurred before the publication date of the *Final Offer and Applicant List* are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.

~~(2))~~ **(1) Project initiation.** Loan (~~moneys~~) funds must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within (~~sixteen~~) ten months of the publication date of the *Final Offer and Applicant List* on which the project was proposed.

(b) Starting a project means making any measurable step toward achieving the milestones, objectives, and overall goals of the project.

~~((c) Loan offers identified on the *Final Offer and Applicant List* will be effective for up to one year from the publication date of the *Final Offer and Applicant List*. Loan offers that do not result in a signed agreement are automatically ended, see WAC 173-98-220.~~

~~(3))~~ **(2) Project initiation extension.** Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(b) There is a need to do work during an environmental window in a specific season of the year; or

(c) Other reasons as identified by the department on a case-by-case basis.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-900 Revolving fund perpetuity. (1) The act requires that the revolving fund be managed in perpetuity.

(2) The department will strive to achieve perpetuity, as defined by WAC 173-98-030(~~, by 2016~~).

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-98-910 Accounting requirements (~~for loan recipients~~). (1) Recipients must maintain (~~accounting records in accordance with RCW 43.09.200 Local government accounting—Uniform system of accounting~~) accurate records and accounts for the project in accordance with generally accepted accounting principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards related to the reporting of infrastructure assets, or in accordance with the state standards in RCW 43.09.200 "Local government accounting—Uniform system of accounting."

(2) Accounting irregularities may result in a payment hold until irregularities are resolved. The director may require immediate repayment of misused loan (~~moneys~~) funds.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

WAC 173-98-940 Insurance for water pollution control facilities projects. Recipients shall maintain comprehensive insurance coverage on the project for an amount equal to the (~~moneys~~) funds disbursed.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-970 Self-certification. (1) The department may authorize a recipient to certify compliance with selected program requirements. The recipient must:

(a) Request certification authority;

(b) Document that it has the capability and resources;

(c) Document that it is in the best interest of the state; and

(d) Demonstrate that the request is consistent with state and federal laws and rules.

(2) (~~Concurrences~~) Determinations required in the environmental review process cannot be delegated to recipients.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-98-130 Green project reserves projects.

WAC 173-98-560 Approval of plans and specifications.

WAC 173-98-820 Declaration of construction after project completion.

WSR 17-17-045
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed August 10, 2017, 11:08 a.m., effective September 10, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of these rule changes is to adopt WAC for coastal recreational bottomfish and halibut fisheries that are consistent with regulations approved by the Pacific Fishery Management Council (PFMC) and adopted into federal regulations by the National Marine Fisheries Service. The regulatory changes were developed through the PFMC's biennial groundfish management process to regulate groundfish fisheries to achieve, but not exceed, specific federal harvest limits for Washington state. Specific management measures were developed through a public process that included input from Washington recreational anglers and representatives.

Citation of Rules Affected by this Order: Amending WAC 220-314-020, 220-314-030, 220-314-040, 220-305-010, and 220-310-120.

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

Other Authority: C.F.R. Title 50, Part 660.

Adopted under notice filed as WSR 17-12-102 on June 6, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 10, 2017.

J. W. Unsworth
 Director

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

WAC 220-305-010 General rules—Fish. (1) It is unlawful to take, fish for, possess or transport fish, shellfish, or fish or shellfish parts, in or from any waters or land within the jurisdiction of the state of Washington, or from the waters of the Pacific Ocean, except as provided by department rule. Specifically, persons delivering fish or shellfish caught in Pacific Ocean waters into Washington are subject to all Washington personal use fishing, possession, and licensing regulations.

(2) It is unlawful for any person who takes or possesses fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington, or the Pacific Ocean, for any purpose, to fail to submit the fish or shellfish for inspection by authorized department personnel. Violation of this subsection is punishable under RCW 77.15.360 Unlawful interfering in department operations—Penalty.

(3) It is unlawful for the owner or operator of any fishing gear to refuse to submit to inspection of the gear in any manner specified by a fish and wildlife officer. Violation of this subsection is punishable under RCW 77.15.470.

(4) It is unlawful for any person to fish for fish or shellfish while in possession in the field of fish or shellfish that are in violation of the rules for the area fished. This subsection does not apply to vessels in transit between Washington marine areas. Violation of this subsection is punishable under RCW 77.15.380 or RCW 77.15.550, depending on the circumstances of the violation.

(5) It is unlawful to take, fish for, possess, injure, kill, or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere with the proper operation of a fish protective device in any way. Violation of this subsection is punishable under RCW 77.15.370 or 77.15.380, depending on the circumstances of the violation.

(6) It is unlawful to take or possess any fish or shellfish smaller or larger than the minimum or maximum size limits or in excess of catch or possession limits prescribed by department rule. A person must immediately return to the water any fish or shellfish snagged, hooked, netted or gilled that do not conform to department size requirements or are in excess of catch or possession limits with the least possible injury to the fish or shellfish. Violation of this subsection is a misdemeanor punishable under RCW 77.15.380 or 77.15.550, depending on the circumstances of the violation.

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

(8) For the purposes of this section "delivery" means transportation by a private or commercial recreational fishing vessel. Delivery in Washington is complete when, within the state, the vessel anchors, moors, ties to a float or pier, or is placed or attempted to be placed on a boat trailer. Delivery is also complete if the fish or shellfish are offloaded from the vessel within state waters.

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

WAC 220-310-120 Gaffing and use of other body-penetrating devices—Personal use. (1) It is unlawful to club, gaff, snag, snare, dip net, harass, spear, stone, or otherwise molest, mutilate, injure, kill, destroy, or shoot with a firearm, crossbow, bow and arrow, or compressed air gun,

any fish or shellfish or fish or shellfish parts for personal-use purposes, except:

(a) A person may use a dip net or club in the landing of fish taken by personal-use angling, unless otherwise provided; and a person may use a gaff in the landing of tuna, halibut, lingcod in Marine Areas 1 through 3 and 4, west of the Bonilla-Tatoosh line and dogfish, and a harpoon in the landing of halibut, in all catch record card areas;

(b) A person may use a spear in underwater spear fishing, as provided in WAC 220-310-130;

(c) A person may use a bow and arrow or spear to take carp or as provided by department rule;

(d) A person may snag herring, smelt, anchovies, pilchard, sand lance, and squid when using forage fish jigger gear or squid jigs; and

(e) A person may shoot halibut when landing them with a dip net, harpoon or gaff for personal use only.

(2) It is unlawful to possess fish or shellfish or parts of fish or shellfish taken using the unlawful methods described in subsection (1) of this section.

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

(4) Violation of this section is a gross misdemeanor punishable under RCW 77.15.370, Unlawful recreational fishing in the first degree—Penalty.

(5) It is unlawful to attempt acts that violate this section. Violation of this subsection is punishable under RCW 77.15.-380, Unlawful recreational fishing in the second degree—Penalty.

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

WAC 220-314-020 Possession limits—Bottomfish.

~~((It is unlawful to fish for, retain, or possess sixgill, sevensgill, or thresher sharks.)) It is unlawful for any person to ((take in any day more than the following quantities of)) fish for or take bottomfish for personal use((The possession limit at any time may not exceed the equivalent of two daily limits in fresh, frozen or processed form. Unless otherwise provided, bottomfish fishing is open the entire year.~~

~~(1) Coastal (Catch Record Card Areas 1 through 4:)) except within the seasons, daily quantities and possession limits prescribed as follows:~~

~~(1) Coastal areas (Catch Record Card Areas 1 through 3 and 4 west of the Bonilla-Tatoosh line):~~

~~(a) Bottomfish fishing is open the second Saturday in March through the third Saturday in October, except fishing for surfperch from the shore is allowed year-round.~~

~~(b) Limit 12 surfperch. For all other bottomfish, limit is 2 fish total, ((except limit 10 fish total east of the Bonilla-Tatoosh line, of all species and species groups of bottomfish,)) which may include no more than:~~

~~((a)) (i) Lingcod: 2 fish, no minimum length. ((Minimum length is 22 inches in Catch Record Card Areas 1 through 4.~~

~~(b))~~

~~(ii) Rockfish: ((10)) 7 fish in aggregate ((except)) which can include up to one canary rockfish in Catch Record Card~~

~~Areas 1 and 2. The possession limit for ((canary rockfish and)) yelloweye rockfish is 0. ((In Marine Area 4 east of the Bonilla-Tatoosh line: 6 fish. Only black or blue rockfish may be retained.~~

~~((c))~~

~~(ii) Wolf-eel: 0 fish from Catch Record Card Area 4.~~

~~((d)) (iv) Cabezon: ((1) Marine Areas 1 through 3: 2 fish.~~

~~(ii) Marine Area 4: 1 fish; the minimum size limit is 18 inches.)) Marine Areas 1 through 3: 2 fish. Marine Area 4: 1 fish; the minimum size limit is 18 inches.~~

~~(2) Inner Puget Sound (Catch Record Card Areas 4 east of the Bonilla-Tatoosh line, and 5 through 13):~~

~~(a) Catch Record Card Area 4 east of the Bonilla-Tatoosh line: Limit 10 fish total, which may include no more than:~~

~~(i) Lingcod: 2 fish, minimum length of 22 inches.~~

~~(ii) Rockfish: 6 fish. Only black or blue rockfish may be retained.~~

~~(iii) Wolf-eel: 0 fish.~~

~~(iv) Cabezon: 1 fish; the minimum size limit is 18 inches.~~

~~(b) Catch Record Card Areas 5 and 6: 15 fish total for all species and species groups of bottomfish, which may include no more than:~~

Rockfish in Marine Area 5 except	1 fish May 1 through September 30. Only black or blue rockfish may be retained.
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in Marine Area 5 west of Slip Point	3 fish. Only black or blue rockfish may be retained.
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in Marine Area 6.	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Pollock	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pacific hake	2 fish

~~((b)) (c) Catch Record Card Area 7: 15 fish total for all species of bottomfish, which may include no more than:~~

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pollock	2 fish

Pacific hake	2 fish
(((e))) (d) Catch Record Card Areas 8-1 through 11 and 13: 15 fish total for all species and species groups of bottomfish, which may include no more than:	
Rockfish	0 fish
Surfperch	10 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pacific hake	0 fish

(((d))) (e) Catch Record Card Area 12: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	0 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	0 fish
Wolf-eel	0 fish
Cabezon	0 fish
Pacific hake	0 fish

(((e))) ~~It is unlawful to possess lingcod taken by angling that are under 26 inches in length or over~~ (f) The possession limit for lingcod taken by angling gear is 26 to 36 inches in length. ((It is unlawful to possess lingcod taken by)) For spear fishing ((that are over)), lingcod may not be possessed that exceed 36 inches in length.

(((f))) (g) In Marine Areas 5 through 11 and 13, the minimum size limit for cabezon is 18 inches. All cabezon must be released in Catch Record Card Areas 5 through 11 and 13 from December 1 through April 30.

(((g))) (h) In Catch Record Card Area 5, the daily limit for rockfish is the first legal rockfish caught, except that west of Slip Point, the daily limit for rockfish is the first three legal rockfish caught. Only black or blue rockfish may be retained. After the daily limit of rockfish is caught, all subsequent rockfish must be released.

(((h))) (i) In Catch Record Card Area 5, it is unlawful to take rockfish by spear fishing except when this area is open to spear fishing for lingcod.

(3) The possession limit at any time may not exceed the equivalent of two daily limits in fresh, frozen or processed form.

(4) Unless otherwise provided, bottomfish fishing is open the entire year.

(5) Daily limits include bottomfish caught in adjacent areas bordering other states, such as Oregon.

(6) It is unlawful to fish for, retain, or possess sixgill, sevengill, or thresher sharks.

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

WAC 220-314-030 Halibut—Seasons—Daily and possession limits. (1) It is unlawful to fish for or possess halibut taken for personal use except from the areas or in excess of the amounts provided for in this section:

(a) ~~Catch Record Card Area 1: ((Open on the first Thursday in May or May 1, if May 1 is a Friday or Saturday, through the third Saturday in July, from 12:01 a.m. each Thursday through 11:59 p.m. each Saturday. The fishery will reopen on the first Friday in August through September 30, from 12:01 a.m. each Friday through 11:59 p.m. each Sunday.))~~ Closed except as provided by emergency rule. By-catch restriction: It is unlawful during any vessel trip to bring into port or land bottomfish, except flatfish, sablefish ~~((e))~~ and Pacific cod, if the vessel has brought halibut into port or landed halibut.

(b) Catch Record Card Area 2:

(i) The northern near shore fishery takes place in those waters from 47°31.70'N. lat. south to 46°58.00'N. lat. and east of a boundary line approximating the 30 fathom depth contour as defined by the following coordinates:

47°31.70'N. lat., 124°37.03'W. long.

47°25.67'N. lat., 124°34.79'W. long.

47°12.82'N. lat., 124°29.12'W. long.

46°58.00'N. lat., 124°24.24'W. long.

~~((Open on the first Sunday in May through September 30 on days that all other waters in Area 2 are open, as specified in (b)(ii) of this subsection, and from 12:01 a.m. each Thursday through 11:59 p.m. each Sunday.))~~ Closed except as provided by emergency rule.

(ii) All other waters in Area 2 - ~~((Open on the first Sunday in May through the third Sunday in May from 12:01 a.m. through 11:59 p.m. each Sunday, and from 12:01 a.m. through 11:59 p.m. each Tuesday. Beginning on the third Sunday in May through September 30, the halibut fishery will be open from 12:01 a.m. through 11:59 p.m. each Sunday.))~~ Closed except as provided by emergency rule.

(iii) From March 15 through June 15, it is unlawful to fish for or possess bottomfish, except rockfish, seaward of line approximating the 30-fathom depth contour as defined by the coordinates below. However, a person may fish for and retain sablefish and Pacific cod from May 1 through June 15 and retain lingcod on days open during the primary halibut season as described in (b)(ii) of this subsection, seaward of a line approximating the 30-fathom depth contour as defined by the coordinates below:

47°31.70'N. lat., 124°37.03'W. long.

47°25.67'N. lat., 124°34.79'W. long.

47°12.82'N. lat., 124°29.12'W. long.

46°52.94'N. lat., 124°22.58'W. long.

46°44.18'N. lat., 124°18.00'W. long.

46°38.17'N. lat., 124°15.88'W. long.

(c) Catch Record Card Areas 3 and 4 - ~~((Open the first Thursday between May 9 and May 15 of each year through September 30, from 12:01 a.m. through 11:59 p.m. each Thursday, and from 12:01 a.m. through 11:59 p.m. each Saturday.))~~ Closed except as provided by emergency rule. The following area southwest of Cape Flattery is closed to halibut fishing at all times:

Those waters within an eastward-facing C-shaped closed area defined as: Beginning at 48°18'N. lat., 125°18'W. long.; thence to 48°18'N. lat., 124°59'W. long.; thence to 48°11'N. lat., 124°59'W. long.; thence to 48°11'N. lat., 125°11'W. long.; thence to 48°04'N. lat., 125°11'W. long.; thence to 48°04'N. lat., 124°59'W. long.; thence to 48°00'N. lat., 124°59'W. long.; thence to 48°00'N. lat., 125°18'W. long.; thence to the point of origin.

It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates, from ~~((June))~~ May 1 through ~~((September 30))~~ Labor Day except, on days and times ~~((closed))~~ open to halibut fishing when only lingcod, sablefish and Pacific cod can be retained:

48°23.9'N. lat., 124°44.2'W. long.
 48°23.6'N. lat., 124°44.9'W. long.
 48°18.6'N. lat., 124°43.6'W. long.
 48°18.6'N. lat., 124°48.2'W. long.
 48°10.0'N. lat., 124°48.8'W. long.
 48°02.4'N. lat., 124°49.3'W. long.
 47°37.6'N. lat., 124°34.3'W. long.
 47°31.7'N. lat., 124°32.4'W. long.

(d) Catch Record Card Areas 5 through 13 - ~~((Open the Thursday before Memorial Day through September 30, except closed to fishing for halibut beginning at 12:01 a.m. each Tuesday through 11:59 p.m. each Wednesday.~~

~~((e) Catch Record Card Areas 6 through 13 — Open May 1 through September 30, except closed to fishing for halibut beginning at 12:01 a.m. each Tuesday through 11:59 p.m. each Wednesday.))~~ On days that the halibut fishery is open, it is lawful to fish for, retain, and possess lingcod and Pacific cod seaward of 120 feet in Catch Record Card Areas 5 and 6. Closed except as provided by emergency rule.

(2) Daily limit is one halibut taken from state or offshore waters. This does not include Canadian waters; see WAC 220-310-210 for limits on Canadian-origin halibut.

(3) The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit. See WAC 220-310-210 for rules on Canadian-origin halibut possession.

(4) It is unlawful to fish for, retain, possess, or land halibut into a port located within an area that is closed to halibut fishing. This does not include halibut caught in Canadian waters. See WAC 220-310-210 for rules on Canadian-origin halibut possession.

(5) A violation of this section is punishable under RCW 77.15.370 or 77.15.380, depending on the violation.

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

WAC 220-314-040 Lingcod—Areas and seasons. It is unlawful to take, fish for, or possess lingcod for personal use except during the following seasons and areas:

(1) Coastal area:

(a) Catch Record Card Areas 1 through 3: ~~((The Saturday closest to March 15, through the Saturday closest to October 15;~~

~~((b) Catch Record Card Area 4 west of the Bonilla-Tatoosh line: April 16 through October 15, or the Saturday closest to October 15 if that Saturday comes before October 15, whichever is earlier; and~~

~~((c))~~ From the second Saturday in March, through the third Saturday in October; and

(b) Catch Record Card Area 4 east and west of the Bonilla-Tatoosh line: April 16 through October 15.

~~((d))~~ (c) It is unlawful to fish for, retain, or possess lingcod in Catch Record Card Area 1 seaward of a line extending from 46°38.17'N. lat., 124°21.00'W. long. to ~~((46°25.00'N.))~~ 46°33.00'N. lat., 124°21.00'W. long. year-round.

~~((e))~~ (d) It is unlawful to fish for, retain, or possess lingcod in Catch Record Card Area 2 seaward of a line extending from 47°31.70'N. lat., 124°45.00'W. long. south to 46°38.17'N. lat., 124°30.00'W. long. year-round, except that lingcod may be taken, retained and possessed seaward of the line on days open during the primary halibut season.

(2) Catch Record Card Areas 5 through 13: May 1 through June 15 by angling, and May 21 through June 15 by spear fishing.

WSR 17-17-079
PERMANENT RULES
OFFICE OF
ADMINISTRATIVE HEARINGS

[Filed August 16, 2017, 11:25 a.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: This rule making is initiated in response to the petition filed by CB (a resident of Washington), the Fred T. Korematsu Center for Law & Equality at Seattle University School of Law, and Disability Rights Washington. The petition requested that a new rule be adopted to provide an assessment for representational accommodation for parties in adjudicative proceedings before office of administrative hearings (OAH). The access to justice board submitted a letter of support urging rule making on this topic.

Main objectives:

Establish within OAH a process for the referral of a pro se party with disabilities to the OAH Americans with Disabilities Act (ADA) coordinator.

Establish a network of individuals to assist those pro se parties with accessing OAH's adjudicative proceedings (comparable to nondisabled pro se parties) and to ensure that they are not denied meaningful access to adjudicative proceedings.

Establish a training program for (1) OAH administrative law judges (ALJ) and support staff and (2) individuals who are trained to assist pro se parties determined to need assistance to access an OAH adjudicative proceeding.

Rule proposal elements:

Assessment:

Establish a process for OAH ALJs or any party to refer a party to the OAH ADA coordinator when an issue is raised on whether a party's disability precludes meaningful access to the OAH adjudicative process.

Establish a "reasonable belief" standard for when an ALJ's referral to the ADA coordinator is appropriate.

Establish a separate process and file for responding to the party's need due to disabilities.

Protect the party's privacy interest by maintaining a separate file that is kept confidential (from the other party) and from the ALJ presiding over the hearing on the merits.

Establish the OAH ADA coordinator as the first decision maker on whether accommodation is necessary with an appeal opportunity to the chief ALJ.

Accommodation Response:

If no other accommodation provides for meaningful participation in an adjudicative proceeding and an accommodation under this rule is determined to be necessary, OAH will provide a suitable representative to assist the party at no cost to the party.

OAH will establish a network of individuals who can be appointed by OAH to assist these parties with a disability.

Training:

All OAH staff will receive initial and annual refresher training commensurate within the scope of their duties.

OAH's ADA coordinator will also receive specialized training initially and thereafter as necessary to ensure an adequate knowledge and understanding of the requirements of federal and state law with respect to assessing the need for reasonable accommodations.

Suitable representatives will receive uniform qualification training, or demonstrate equivalent experience or training, as established by the chief ALJ.

Data Collection:

Within two years after the effective date of the rule, the program will be assessed for effectiveness and the results of the review will be made available to the public. OAH will track the timeliness of the process; hearing outcomes; number of suitable representation requests granted and denied; sources of referrals to the OAH ADA coordinator; and, number and outcome of appeals of denials to the chief ALJ. OAH will review feedback from parties, OAH's ADA coordinator, persons appointed as suitable representatives, ALJs, and referring agency representatives on how this rule may be improved.

Citation of Rules Affected by this Order: New WAC 10-24-010.

Statutory Authority for Adoption: RCW 34.12.080 and 34.05.250.

Other Authority: RCW 34.12.030, 34.12.080.

Adopted under notice filed as WSR 17-09-084 on April 19, 2017.

Changes Other than Editing from Proposed to Adopted Version: This rule was initially proposed for inclusion in the

model rules of procedure as WAC 10-08-055; OAH now proposes to create a new chapter in Title 10 WAC for clarity and change the section number to WAC 10-24-010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 1, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 7, 2017.

Lorraine Lee
Chief Administrative Law Judge

Chapter 10-24 WAC

ACCESS TO OAH FACILITIES AND SERVICES

NEW SECTION

WAC 10-24-010 Accommodation. (1) Accommodation requests under the federal Americans with Disabilities Act (ADA) by a party to an office of administrative hearings adjudicative proceeding are handled pursuant to the office of administrative hearings' policy. This section specifically applies to requests for representation as an accommodation in adjudicative proceedings before the office of administrative hearings. The appointment of a suitable representative may be an appropriate response in those cases where the party is unable to meaningfully participate in an adjudicative proceeding. This section is intended to ensure that all requests for accommodation are addressed in accordance with the requirements of the ADA and that any accommodation response is the minimum necessary to effectively address the needs of the party.

(2) Definitions.

(a) "Disability" as used in this section is defined under 42 U.S.C. Sec. 12102. Disability does not include factors such as lack of education, lack of English proficiency, or other non-disability factors.

(b) "Suitable representative" means an individual who is qualified under subsection (1) of this section to provide the assistance needed to enable an otherwise unrepresented party with a disability to meaningfully participate in the adjudicative proceeding.

(c) "Agency ADA coordinator" is an administrative law judge designated by the chief administrative law judge to make the assessment and accommodation determinations described in subsection (3) of this section.

(3) If, during any stage of an adjudicative proceeding, the administrative law judge or any party has a reasonable

belief that an otherwise unrepresented party may be unable to meaningfully participate in the adjudicative proceeding because of a disability, with that party's consent the administrative law judge shall refer the party to the agency ADA coordinator and delay commencing or resuming the adjudicative proceeding until the accommodation request is addressed by the ADA coordinator.

(4) The agency ADA coordinator will expedite the assessment and accommodation process to the greatest extent practicable and consistent with the party's limitations.

(5) All records considered in the decision whether to appoint a suitable representative shall be kept confidential and held separately from the adjudicative proceeding record.

(6) Upon a party's request for a suitable representative or referral from the administrative law judge, the agency ADA coordinator must determine whether the party is a person with a disability. The agency ADA coordinator may require documentation from the party at the coordinator's discretion.

(7) If the party is a person with a disability, the agency ADA coordinator must determine whether the party is unable to meaningfully participate in the adjudicative proceeding as a result of the disability. The existing assistance of a legal guardian, near relative, or friend shall not affect the agency ADA coordinator's determination of whether the party is able to meaningfully participate in the adjudicative proceeding. The agency ADA coordinator shall consider the following:

(a) Whether the party has a rational and factual understanding of:

(i) The nature and object of the adjudicative proceeding;
 (ii) The right of representation;
 (iii) The right to present, examine, and object to evidence;

(iv) The right to cross-examine witnesses; and
 (v) The right to appeal.

(b) Whether the party has sufficient present ability to:

(i) Exercise the rights in (a) of this subsection;
 (ii) Make informed decisions about whether to waive the rights in (a) of this subsection;

(iii) Physically participate in the adjudicative proceeding;

(iv) Respond to any allegations, issues, arguments, and evidence presented by other parties;

(v) Evaluate and coherently discuss arguments and defenses;

(vi) Present evidence relevant to eligibility for relief;

(vii) Present coherent testimony based upon adequate recall; and

(viii) Act upon instructions and information presented by other parties and the administrative law judge.

(8) If the party is unable to meaningfully participate in the adjudicative proceeding as a result of a disability, the agency ADA coordinator will commence an interactive process with the party to determine the type of accommodation required to allow the party to meaningfully participate in the adjudicative proceeding, specifically:

(a) Whether an alternative accommodation can adequately address the party's specific disability-related limitations; or

(b) Whether a suitable representative is the most appropriate accommodation.

(9) If the agency ADA coordinator determines that appointment of a suitable representative is not the accommodation needed, the agency ADA coordinator will inform the party in writing, or any other communication appropriate to the situation, of the denial of a suitable representative, including how to seek review of the decision under subsection (16) of this section.

(10) If the agency ADA coordinator determines that appointment of a suitable representative is the accommodation necessary for a party's meaningful participation in an adjudicative proceeding, the agency ADA coordinator will identify an individual to assist the party at no cost to the party.

(11) To identify an individual, the agency ADA coordinator will consider the needs identified in the assessment under subsection (7) of this section and any other factors, including:

(a) The party's preferences;

(b) The knowledge, skills and abilities of the individual being considered, including:

(i) Knowledge of or the ability to attain knowledge of the procedural rules;

(ii) Knowledge of or ability to attain knowledge of the substance at issue;

(iii) Experience and training in advocating for people with disabilities; and

(iv) The individual's availability to meet the timelines and duration of the particular adjudicative proceeding.

(c) An individual is not eligible to be appointed as a suitable representative if the individual is employed by the office of administrative hearings, or is prohibited by law from representing the party.

(d) The agency ADA coordinator will inform the party with a disability that an individual has been identified to assist as the party's suitable representative. The party will show acceptance of the appointment in writing or in any other form consistent with the party's disability. If the party disagrees with the appointment, the party will contact the agency ADA coordinator. The agency ADA coordinator will evaluate the party's reconsideration request, and may consider identifying another individual to be appointed as the party's suitable representative, if the request for reconsideration contains new disability or suitability related information.

(12) The appointment of a suitable representative is made by the chief administrative law judge. The appointment is effective upon acceptance of the accommodation by the party with a disability. The party has the right to reject the appointment of a suitable representative.

(13) Upon appointment the suitable representative will file a notice of appearance under WAC 10-08-083 or other applicable rule or law to inform all parties and representatives of record of the suitable representative's name, address, and telephone number.

(14) The appointment under this section ends when the time expires to file a petition for review of the administrative law judge's initial or final order, unless earlier terminated by the party or the suitable representative. The suitable representative will file a notice of withdrawal under WAC 10-08-083

or other applicable rule or law if the appointment is terminated prior to the deadline for the petition for review.

(15) In the event a higher authority remands the case to the office of administrative hearings, the agency ADA coordinator will determine whether the party is able to meaningfully participate in the remanded adjudicative proceeding under subsection (7) of this section and the appropriate accommodation under subsection (8) of this section. If a suitable representative is still the most appropriate accommodation, the agency ADA coordinator will determine if the individual previously appointed is available or will identify another individual to be the suitable representative. The party with a disability may state a preference for or disagree with an individual's appointment, or reject an appointment.

(16) If the party is not satisfied with a decision by the agency ADA coordinator, the party may request review of the accommodation request by the chief administrative law judge, whose decision shall be final.

(17) The office of administrative hearings will establish a network of individuals who are able and available to be appointed by the chief administrative law judge as suitable representatives.

(18) The chief administrative law judge will ensure that all office of administrative hearings staff receive both initial and annual training commensurate with the scope of their duties. The training selected will include specific reference to the requirements of the ADA, as amended, as well as the Washington state law against discrimination, as they relate to the issues of reasonable accommodation throughout an adjudicative proceeding, with particular regard to the process for assessing and determining accommodations necessary to ensure meaningful participation in an adjudicative proceeding.

(19) The agency ADA coordinator will also receive specialized training initially and thereafter as necessary to assure an adequate knowledge and understanding of the requirements of federal and state law with respect to assessing the need for reasonable accommodations. The agency ADA coordinator will make recommendations to the chief administrative law judge regarding the necessary training for agency staff and for suitable representatives.

(20) Suitable representatives shall receive uniform qualification training, or demonstrate equivalent experience or training, as established by the chief administrative law judge.

(21) The chief administrative law judge or his/her designee will develop routine reports that reflect the number of requests for accommodation pursuant to this section, the result of those requests, and the costs, if any, associated with any such accommodation. Personal health information and other confidential data will be redacted from reports in order to comply with relevant privacy laws.

(22) Two years following the effective date of this section the program will be reviewed and assessed for its effectiveness. The results of this assessment will be made available on the OAH public web site for inspection and will also be provided to the office of financial management and all persons or organizations who express an interest in receiving the report. The assessment will include a review of:

(a) The timeliness of the process, including the suitable representative process and the impact on the scheduling of the adjudicative proceeding;

(b) The adjudicative proceeding outcome for parties with suitable representation, including how many cases resulted in: Settlement, orders affirming or reversing agency action, or defaults;

(c) The number of suitable representation requests granted and denied;

(d) The sources of referrals to the agency ADA coordinator;

(e) The number and outcome of appeals of denials to the chief administrative law judge; and

(f) Feedback from parties, the agency ADA coordinator, persons appointed as suitable representatives, administrative law judges, and referring agency representatives on how the provisions of this section may be improved.

WSR 17-17-088
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed August 17, 2017, 10:51 a.m., effective September 17, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 220-412-070 Big game and wild turkey auction, raffle, and special incentive permits, this rule codifies the locations, restrictions, and legal bag limit for auction, raffle and special incentive permits. The proposal clarifies language on those auction and raffle tags that include elk hunting. The proposed language clarifies where the auction, raffle, and incentive permits can be used and which animals are legal for harvest.

WAC 220-413-200 Reducing the spread of hoof disease—Unlawful transport of elk hooves, this rule is an attempt to reduce the potential risk of inadvertently spreading the causative agents of treponeme associated hoof disease (TAHD) in elk. New game management units (GMU) are being proposed in which transport of elk hooves from harvested elk would be restricted. These new GMUs include 407, 418, 437, 633, and 636. The rule does allow, under certain circumstances, the legal transport of elk hooves coming from GMUs with TAHD to facilitate research by the department.

Citation of Rules Affected by this Order: Amending WAC 220-412-070 and 220-413-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.240, 77.04.055, 77.12.047, 77.12.150, 77.32.090, and 77.32.530.

Adopted under notice filed as WSR 17-13-132 on June 21, 2017.

Changes Other than Editing from Proposed to Adopted Version: **WAC 220-412-070 Big game and wild turkey auction, raffle, and special incentive permits.**

Differences between the proposed rule and the rule as adopted: None.

WAC 220-413-200 Reducing the spread of hoof disease—Unlawful transport of elk hooves.

Differences between the proposed rule and the rule as adopted: In subsection (1) of WAC 220-413-200, in the new GMUs being added to the list of GMUs where the restriction applies, after GMU 437 add GMU 454.

Treponeme associated hoof disease was confirmed in a wild elk in GMU 454 after the filing of the CR-102 that describes the proposed WAC amendment.

WAC 220-415-080 2017 and 2018 Spring black bear seasons and regulations. This WAC is still under review and will be filed separately from this CR-103P.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 4, 2017.

Brad Smith, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 17-10-076, filed 5/3/17, effective 6/3/17)

WAC 220-412-070 Big game and wild turkey auction, raffle, and special incentive permits.

AUCTION PERMITS

(1) BLACK-TAILED DEER AUCTION PERMIT

(a) Season dates: September 1 - December 31

(b) Hunt Area: Those GMUs open to black-tailed deer hunting EXCEPT GMU 485 and those GMUs closed to black-tailed deer hunting by the fish and wildlife commission.

(c) Weapon type: Any legal weapon.

(d) Bag limit: One additional any buck black-tailed deer.

(e) Number of permit hunters selected: 1

(2) MULE DEER AUCTION PERMIT

(a) Season dates: September 1 - December 31

(b) Hunt Area: Those GMUs open to mule deer hunting EXCEPT those GMUs closed to mule deer hunting by the fish and wildlife commission.

(c) Weapon type: Any legal weapon.

(d) Bag limit: One additional any buck mule deer.

(e) Number of permit hunters selected: 1

(3) WHITE-TAILED DEER AUCTION PERMIT

(a) Season dates: September 1 - December 31

(b) Hunt Area: Those GMUs open to white-tailed deer hunting EXCEPT those GMUs closed to white-tailed deer hunting by the fish and wildlife commission.

(c) Weapon type: Any legal weapon.

(d) Bag limit: One additional any buck white-tailed deer.

(e) Number of permit hunters selected: 1

(4) THREE-DEER AUCTION PERMIT

(a) Bag limit: One additional any buck black-tailed deer, one additional any buck mule deer, and one additional any buck white-tailed deer; total harvest not to exceed three animals.

(b) Hunt Area: For black-tailed deer, those GMUs open to black-tailed deer hunting EXCEPT GMU 485 and those GMUs closed to deer hunting by the fish and wildlife commission. For mule deer, those GMUs open to mule deer hunting EXCEPT those GMUs closed to mule deer hunting by the fish and wildlife commission. For white-tailed deer, those GMUs open to white-tailed deer hunting EXCEPT those GMUs closed to white-tailed deer hunting by the fish and wildlife commission.

(c) Season dates: September 1 - December 31

(d) Weapon: Any legal weapon.

(e) Number of permit hunters selected: 1

(5) WESTSIDE ELK AUCTION PERMIT

(a) Season dates: September 1 - December 31

(b) Hunt Area: Western Washington EXCEPT GMU 485, those GMUs closed to elk hunting, and those GMUs not opened to ((~~branch antlered~~)) bull elk hunting by the fish and wildlife commission.

(c) Weapon type: Any legal weapon.

(d) Bag limit: One additional any bull elk.

(e) Number of permit hunters selected: 1

(6) EASTSIDE ELK AUCTION PERMIT

(a) Season dates: September 1 - December 31

(b) Hunt Area: Eastern Washington EXCEPT GMUs 157, 334, and those GMUs closed to elk hunting, and those GMUs not opened to ((~~branch antlered~~)) bull elk hunting by the fish and wildlife commission.

(c) Weapon type: Any legal weapon.

(d) Bag limit: One additional any bull elk.

(e) Number of permit hunters selected: 1

(7) CALIFORNIA BIGHORN SHEEP AUCTION PERMIT

(a) Season dates: September 1 - December 31

(b) Hunt Area: The director is authorized to select areas open for this hunt based on population objectives, harvest objectives, and recent harvest parameters as identified by the department. The selection of hunt areas will be made no later than December 1 for the following year, and will be posted on the department's web site no later than January 1.

(c) Weapon: Any legal weapon.

(d) Bag limit: One California bighorn ram.

(e) Number of permit hunters selected: 1

(8) MOOSE AUCTION PERMIT

(a) Season dates: September 1 - December 31

(b) Hunt Area: Any open moose unit, and hunt areas identified by the department before December 1 for the following year, and posted on the department's web site no later than January 1.

(c) Weapon: Any legal weapon.

(d) Bag limit: One moose of either sex.

(e) Number of permit hunters selected: 1

(9) MOUNTAIN GOAT AUCTION PERMIT

(a) Season dates: September 1 - December 31

(b) Hunt Area: The director is authorized to select areas open for this hunt based on population objectives, harvest

objectives, and recent harvest parameters as identified by the department. The selection of hunt areas will be made no later than December 1 for the following year, and will be posted on the department's web site no later than January 1.

- (c) Weapon: Any legal weapon.
- (d) Bag limit: One mountain goat of either sex.
- (e) Number of permit hunters selected: 1

RAFFLE PERMITS

(10) BLACK-TAILED DEER RAFFLE PERMIT

(a) Season dates: September 1 - December 31
 (b) Hunt Area: Those GMUs open to black-tailed deer hunting EXCEPT GMU 485 and those GMUs closed to deer hunting by the fish and wildlife commission.

- (c) Weapon: Any legal weapon.
- (d) Bag limit: One additional any buck black-tailed deer.
- (e) Number of permit hunters selected: 1

(11) MULE DEER RAFFLE PERMIT

(a) Season dates: September 1 - December 31
 (b) Hunt Area: Those GMUs open to mule deer hunting EXCEPT those GMUs closed to mule deer hunting by the fish and wildlife commission.

- (c) Weapon: Any legal weapon.
- (d) Bag limit: One additional any buck mule deer.
- (e) Number of permit hunters selected: 1

(12) WHITE-TAILED DEER RAFFLE PERMIT

(a) Season dates: September 1 - December 31
 (b) Hunt Area: Those GMUs open to white-tailed deer hunting EXCEPT those GMUs closed to white-tailed deer hunting by the fish and wildlife commission.

- (c) Weapon: Any legal weapon.
- (d) Bag limit: One additional any buck white-tailed deer.
- (e) Number of permit hunters selected: 1

(13) WESTSIDE ELK RAFFLE PERMIT

(a) Season dates: September 1 - December 31
 (b) Hunt Area: Western Washington EXCEPT GMU 485, those GMUs closed to elk hunting, and those GMUs not open to (~~branch-antlered~~) bull elk hunting by the fish and wildlife commission.

- (c) Weapon: Any legal weapon.
- (d) Bag limit: One additional any bull elk.
- (e) Number of permit hunters selected: 1

(14) EASTSIDE ELK RAFFLE PERMIT

(a) Season dates: September 1 - December 31
 (b) Hunt Area: Eastern Washington EXCEPT GMUs 157, 334, and those GMUs closed to elk hunting, and those GMUs not opened to (~~branch-antlered~~) bull elk hunting by the fish and wildlife commission.

- (c) Weapon: Any legal weapon.
- (d) Bag limit: One additional any bull elk.
- (e) Number of permit hunters selected: 1

(15) CALIFORNIA BIGHORN SHEEP RAFFLE PERMIT

(a) Season dates: September 1 - December 31
 (b) Hunt Area: The director is authorized to select areas open for this hunt based on population objectives, harvest objectives, and recent harvest parameters as identified by the department. The selection of hunt areas will be made no later than December 1 for the following year, and will be posted on the department's web site no later than January 1 except that

sheep units in Walla Walla, Columbia, Garfield, Asotin, or Pend Oreille counties are not open.

- (c) Weapon: Any legal weapon.
- (d) Bag limit: One California bighorn ram.
- (e) Number of permit hunters selected: 1

(16) MOOSE RAFFLE PERMIT

(a) Season dates: September 1 - December 31
 (b) Hunt Area: Any open moose unit.

- (c) Weapon: Any legal weapon.
- (d) Bag limit: One moose of either sex.
- (e) Number of permit hunters selected: 2

(17) MOUNTAIN GOAT RAFFLE PERMIT

(a) Season dates: September 1 - December 31
 (b) Hunt Area: The director is authorized to select areas open for this hunt based on population objectives, harvest objectives, and recent harvest parameters as identified by the department. The selection of hunt areas will be made no later than December 1 for the following year, and will be posted on the department's web site no later than January 1.

- (c) Weapon: Any legal weapon.
- (d) Bag limit: One mountain goat of either sex.
- (e) Number of permit hunters selected: 1

(18) TURKEY RAFFLE PERMIT

(a) Season dates: April 1 - May 31 and September 1 - December 31

- (b) Hunt Area: Statewide.
- (c) Weapon: Archery or shotgun only.
- (d) Bag limit: Three additional wild turkeys, but not to exceed more than one turkey in Western Washington or two turkeys in Eastern Washington.

(e) Number of permit hunters selected: 1

(19) ROCKY MOUNTAIN BIGHORN SHEEP RAFFLE PERMIT

(a) Bag limit: One Rocky Mountain bighorn ram.
 (b) Hunt Area: GMUs 113, 172.

(c) Season dates: September 1 - December 31

- (d) Weapon: Any legal weapon.
- (e) Number of permit hunters selected: 1

(20) THREE-DEER RAFFLE PERMIT

(a) Bag limit: One additional any buck black-tailed deer, one additional any buck mule deer, and one additional any buck white-tailed deer; total harvest not to exceed three animals.

(b) Hunt Area: For black-tailed deer, those GMUs open to black-tailed deer hunting EXCEPT GMU 485 and those GMUs closed to deer hunting by the fish and wildlife commission. For mule deer, those GMUs open to mule deer hunting EXCEPT those GMUs closed to mule deer hunting by the fish and wildlife commission. For white-tailed deer, those GMUs open to white-tailed deer hunting EXCEPT those GMUs closed to white-tailed deer hunting by the fish and wildlife commission.

(c) Season dates: September 1 - December 31

- (d) Weapon: Any legal weapon.
- (e) Number of permit hunters selected: 1

(21) NORTHEAST WASHINGTON BIG GAME RAFFLE PERMIT

(a) Bag limit: Permit hunter may harvest three of six possible species. Species that may be harvested under this permit include: One additional any buck white-tailed deer, one additional any bull elk, one any bull moose, one additional any legal cougar, one additional any legal black bear, and one

additional any legal turkey (gobbler and turkey with visible beard ONLY); total harvest not to exceed three animals.

(b) Hunt Area: GMUs 101-124.

(c) Season dates:

(i) September 1 - December 31 for white-tailed deer, elk, and moose.

(ii) April 15 - May 31 and September 1 - December 31 for black bear.

(iii) September 1 - March 31 for cougar. April 15 - May 31 for turkey.

(d) Weapon: Any legal weapon EXCEPT archery and shotgun only for turkey.

(e) Number of permit hunters selected: 1

(22) SOUTH-CENTRAL WASHINGTON BIG GAME RAFFLE PERMIT

(a) Bag limit: One additional any bull elk, one additional any buck deer, and one California bighorn sheep ram; total harvest not to exceed three animals.

(b) Hunt Area: For elk, any 300 or 500 series GMU EXCEPT GMU 334 and those GMUs closed to elk hunting and those GMUs not open to (~~branch-antlered~~) bull elk hunting by the fish and wildlife commission. For deer, any 300 or 500 series GMU EXCEPT those GMUs closed to deer hunting by the fish and wildlife commission. For California bighorn sheep, the director is authorized to select areas open for this hunt based on population objectives, harvest objectives, and recent harvest parameters as identified by the department. The selection of hunt areas will be made no later than December 1 for the following year, and will be posted on the department's web site no later than January 1. For bighorn sheep, any bighorn herd located south of U.S. Highway 2 in Chelan County and west of the Columbia River in Kittitas and Yakima counties.

(c) Season dates: September 1 - December 31

(d) Weapon: Any legal weapon.

(e) Number of permit hunters selected: 1

(23) SOUTHEAST WASHINGTON BIG GAME RAFFLE PERMIT

(a) Bag limit: Permit hunter may harvest four of five possible species. Species that may be harvested under this permit include: One additional any buck white-tailed deer, one additional any buck mule deer, one additional any bull elk, one additional any legal cougar, and one additional any legal black bear; total harvest not to exceed four animals.

(b) Hunt Area: GMUs 139-154 and 162-186.

(c) Season dates: September 1 - December 31 for white-tailed deer, mule deer, and elk. April 15 - June 15 and September 1 - December 31 for black bear. September 1 - March 31 for cougar

(d) Weapon: Any legal weapon.

(e) Number of permit hunters selected: 1

(24) NORTH-CENTRAL WASHINGTON BIG GAME RAFFLE PERMIT

(a) Bag limit: Permit hunter may harvest three of five possible species. Species that may be harvested under this permit include: One additional any buck white-tailed deer, one additional any buck mule deer, one any ram California bighorn sheep, one additional any legal cougar, and one additional any legal black bear; total harvest not to exceed three animals.

(b) Hunt Area: For white-tailed deer, mule deer, cougar, and black bear, any 200 series GMU EXCEPT those GMUs

closed to deer hunting by the fish and wildlife commission. For California bighorn sheep, the director is authorized to select areas open for this hunt based on population objectives, harvest objectives, and recent harvest parameters as identified by the department. The selection of hunt areas will be made no later than December 1 for the following year, and will be posted on the department's web site no later than January 1 in Okanogan or Chelan counties north of US Highway 2.

(c) Season dates:

(i) September 1 - December 31 for white-tailed deer, mule deer, and California bighorn sheep.

(ii) April 15 - May 15 and September 1 - December 31 for black bear.

(iii) September 1 - March 31 for cougar.

(d) Weapon: Any legal weapon.

(e) Number of permit hunters selected: 1

SPECIAL INCENTIVE PERMITS

(25) WESTERN WASHINGTON ELK INCENTIVE PERMITS

(a) Hunt Area: Western Washington EXCEPT GMUs 418, 485, 522, and those GMUs closed to elk hunting or closed to (~~branch-antlered~~) bull elk hunting by the fish and wildlife commission.

(b) Season dates: September 1 - December 31

(c) Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

(d) Bag limit: One additional elk.

(e) Number of permit hunters selected: 2

(26) EASTERN WASHINGTON ELK INCENTIVE PERMITS

(a) Hunt Area: Eastern Washington EXCEPT GMUs 157, 334, and those GMUs closed to elk hunting or closed to (~~branch-antlered~~) bull elk hunting by the fish and wildlife commission.

(b) Season dates: September 1 - December 31

(c) Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

(d) Bag limit: One additional elk.

(e) Number of permit hunters selected: 2

(27) DEER INCENTIVE PERMITS

(a) Hunt Area: Statewide, for use in any area open to general or permit hunting seasons EXCEPT GMUs 157, 418, 485, 522, and those GMUs closed to deer hunting by the fish and wildlife commission.

(b) Season dates: September 1 - December 31

(c) Weapon: Any legal weapon, EXCEPT hunters must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons and any legal weapon at other times if there are no firearm restrictions.

(d) Bag limit: One additional any deer.

(e) Number of permit hunters selected: 5

PERMIT ISSUANCE PROCEDURE

(28) Auction permits: The director will select a conservation organization(s) to conduct annual auction(s). Selection of the conservation organizations will be based on criteria adopted by the Washington department of fish and wildlife.

Big game and wild turkey auctions shall be conducted consistent with WAC 220-412-060.

(29) Raffle permits: Raffle permits will be issued to individuals selected through a Washington department of fish and wildlife drawing or the director may select a conservation organization(s) to conduct annual raffles. Selection of a conservation organization will be based on criteria adopted by the Washington department of fish and wildlife. Big game and wild turkey raffles shall be conducted consistent with WAC 220-412-040.

(30) Special incentive permits: Hunters will be entered into a drawing for special deer and elk incentive permits for prompt reporting of hunting activity in compliance with WAC 220-413-100.

(31) For permit hunts where the permittee may harvest multiple species, the permittee must select the species he/she wants to hunt within fourteen days of notification of being selected.

QUALIFICATIONS FOR PARTICIPATION AND REQUIREMENTS:

(32) Permittees shall contact the appropriate regional office of the department of fish and wildlife when entering the designated hunt area or entering the region to hunt outside the general season.

(33) The permittee may be accompanied by others; however, only the permittee is allowed to carry a legal weapon or harvest an animal.

(34) Any attempt by members of the permittee's party to herd or drive wildlife is prohibited.

(35) If requested by the department, the permittee is required to direct department officials to the site of the kill.

(36) The permit is valid during the hunting season dates for the year issued.

(37) The permittee will present the head and carcass of the bighorn sheep killed to any department office within seventy-two hours of date of kill.

(38) The permittee must abide by all local, state, and federal regulations including firearm restriction areas and area closures.

(39) Hunters awarded the special incentive permit will be required to send the appropriate license fee to the department of fish and wildlife headquarters in Olympia. The department will issue the license and transport tag and send it to the special incentive permit winner.

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

WAC 220-413-200 Reducing the spread of hoof disease—Unlawful transport of elk hooves. (1) It is unlawful to transport the hooves of harvested elk beyond the site where the animal was killed in Game Management Units 407, 418, 437, 454, 501 through 564, 633, 636 and 642 through 699, except when specifically authorized by the department or when acting as an agent of the department in the limited capacity of cooperating with research or management actions regarding hoof disease as directed by the department.

(2) Violation of this section is an infraction under RCW 77.15.160 Infractions.

WSR 17-17-097

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 18, 2017, 1:41 p.m., effective September 18, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-450-0015, 388-470-0045, and 388-470-0055 to implement income and asset exclusions for achieving a better life experience (ABLE) tax-deferred accounts and associated distributions.

Distributions from ABLE accounts can be used to cover qualified expenses including healthcare, education, community-based supports, employment training, assistive technology, housing, and transportation. Funds kept in, and disbursed from, ABLE accounts are exempt when determining eligibility for medicaid, supplemental security income, and other federal means-tested programs such as temporary assistance for needy families, and Supplemental Nutrition Assistance Program.

ABLE accounts were created under the Achieving a Better Life Experience Act of 2014. They are not mentioned in current program rules and must be added.

Citation of Rules Affected by this Order: Amending WAC 388-450-0015, 388-470-0045, and 388-470-0055.

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

Other Authority: RCW 74.04.300.

Adopted under notice filed as WSR 17-09-062 on April 18, 2017.

Changes Other than Editing from Proposed to Adopted Version: Replaced the term "qualified distributions" in WAC 388-450-0015 with "distributions for qualified disability expenses" in order to remain consistent with language in the federal ABLE statute (P.L. 113-295).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: August 17, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-02-006, filed 12/26/14, effective 1/26/15)

WAC 388-450-0015 What types of income are not used by the department to figure out my benefits? ~~((This section applies to cash assistance and Basic Food benefits.))~~

(1) ~~((There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are))~~ We do not count the following types of income when we determine your cash assistance and basic food benefits:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal income tax refunds and earned income tax credit (EITC) payments in the month received;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(f) Energy assistance payments;

(g) Educational assistance we do not count under WAC 388-450-0035;

(h) Native American benefits and payments we do not count under WAC 388-450-0040;

(i) Income from employment and training programs we do not count under WAC 388-450-0045;

(j) Money withheld from a benefit to repay an overpayment from the same income source ~~((For Basic Food, we do not exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and SSI));~~

(k) Legally obligated child support payments received by someone who gets ~~((TANF/SFA))~~ temporary assistance for needy families (TANF) or state family assistance (SFA) benefits;

(l) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as voluntary agency (VOLAG) payments; ~~((and))~~

(m) Payments we are directly told to exclude as income under state or federal law ~~((:));~~

(n) Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; and

(o) ~~((For Basic Food only:))~~ Distributions for qualified disability expenses from an achieving a better life experience (ABLE) account;

(2) For basic food only:

(a) We do not count the total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf ~~((:)); and~~

(b) We do count money withheld because you were overpaid for not meeting requirements of a federal, state, or local means tested programs such as temporary assistance for needy families (TANF), state family assistance (SFA), aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and supplemental security income (SSI).

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance? (1) We count the following resources toward your assistance unit's resource limits for cash assistance to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) ~~((below. These are resources that are easily changed into cash. Some examples of liquid resources are))~~ of this section, including but not limited to:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit ~~((CDs))~~ (CD) less any withdrawal penalty;

(iv) Available retirement funds or pension benefits ~~((:));~~ less any withdrawal penalty;

(v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(vi) Available trusts or trust accounts;

(vii) Lump sum payments as described in chapter 388-455 WAC; ~~((or))~~ and

(viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources ~~((:));~~

(b) The cash surrender value (CSV) of whole life insurance policies ~~((:));~~

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements ~~((:));~~

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child ~~((:));~~

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220 ~~((:));~~

(f) Any real property like a home, land, or building ~~((:))~~ not specifically excluded in ~~((subsection (3) below:))~~ this section;

(g) The equity value of vehicles as described in WAC 388-470-0070 ~~((:));~~

(h) ~~((Personal property that is not:~~

~~((i) A household good;~~

~~((ii) Needed for self-employment; or~~

~~((iii) Of "great sentimental value," due to personal attachment or hobby interest.~~

~~((i))~~ Resources of a sponsor as described in WAC 388-470-0060 ~~((:));~~

~~((j) For cash assistance only;)~~ (i) Sales contracts(-);
and

(j) Personal property that is not:

(i) A household good;

(ii) Needed for self-employment; or

(iii) Of great sentimental value due to personal attachment or hobby interest.

(2) The following types of liquid resources do not count when we determine your eligibility:

(a) Bona fide loans, including student loans;

(b) Basic food benefits;

(c) Income tax refunds for twelve months from the date of receipt;

(d) Earned income tax credit (EITC) in the month received and for up to twelve months;

(e) Advance earned income tax credit payments;

(f) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(g) Individual development accounts (IDAs) established under RCW 74.08A.220;

(h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a ~~((decision of the))~~ department decision;

(i) Underpayments received under chapter 388-410 WAC;

(j) Educational benefits that are excluded as income under WAC 388-450-0035;

(k) The income and resources of an SSI recipient;

(l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

(m) Foster care payments provided under Title IV-E ~~((and/or))~~ state foster care maintenance payments, or both;

(n) Adoption support payments;

(o) All funds in an achieving a better life experience (ABLE) account;

(p) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and

~~((p))~~ (q) Resources specifically excluded by federal law.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan ~~((on returning))~~ to return to the home and ~~((you))~~ are out of the home because of:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty(-);

(c) Indian lands held jointly with a tribe or land that can be sold only with the approval of the Bureau of Indian Affairs; and

(d) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment.

~~((this section and))~~ subsection (3)(d)(iv) of this section used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

~~((d) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.~~

~~((4))~~ (5) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

~~((5))~~ (6) If you sell your home, you have ninety days to reinvest the sale proceeds ((from the sale of a home)) into an exempt resource.

~~((a))~~ If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. If we determine you have good cause, we will give you more time based on your circumstances. If you do not have good cause, we will count your sale proceeds as a resource. Some examples of good cause ~~((are))~~ include:

~~((i))~~ (a) Closing on your new home is taking longer than anticipated;

~~((ii))~~ (b) You are unable to find a new home that you can afford;

~~((iii))~~ (c) Someone in your household is receiving emergent medical care; ((or

~~((iv))~~ (d) Your children are in school and moving would require them to change schools.

~~((b) If you have good cause, we will give you more time based on your circumstances.~~

~~((c) If you do not have good cause, we count the money you got from the sale as a resource.))~~

AMENDATORY SECTION (Amending WSR 12-08-002, filed 3/21/12, effective 4/21/12)

WAC 388-470-0055 How do my resources count toward the resource limit for basic food? (1) For basic food, if your assistance unit (AU) is not categorically eligible (CE) under WAC 388-414-0001, we count the following resources toward your AU's resource limit to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources~~((These are resources that are easily changed into cash. Some examples of liquid resources are))~~ easily changed into cash, including but not limited to:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit ~~((CDs))~~ (CD) less any withdrawal penalty;

(iv) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(v) Available trusts or trust accounts; ~~((or))~~ and

(vi) Lump sum payments~~((A lump sum payment))~~, which is money owed to you from a past period of time that you get but do not expect to get on a continuing basis(-);

(b) Nonliquid resources, personal property, and real property not specifically excluded in subsection (2) ~~((below))~~ of this section;

(c) Vehicles as described in WAC 388-470-0075((-)); and

(d) The resources of a sponsor as described in WAC 388-470-0060.

(2) The following resources do not count toward ~~((your))~~ the resource limit described in WAC 388-470-0005(8):

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A ~~((house))~~ home you do not live in, if you plan ~~((on returning))~~ to return to the home and ~~((you))~~ are out of the home because of one or more of the following circumstances:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty((-);

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis;

(iv) Is essential to the employment or self-employment of a household member ~~((Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing));~~ ~~((or))~~

(v) Is essential for the maintenance or use of an income-producing vehicle; or

(vi) Has an equity value equal to or less than half of the resource limit as described in WAC 388-470-0005((-);

(d) Household goods;

(e) Personal effects;

(f) Life insurance policies, including policies with cash surrender value (CSV);

(g) One burial plot per household member;

(h) One funeral agreement per household member, up to fifteen hundred dollars;

(i) Pension plans or retirement funds not specifically counted in subsection (1) ~~((above))~~ of this section;

(j) Sales contracts, if the contract is producing income consistent with its fair market value;

(k) Government payments issued for the restoration of a home damaged in a disaster;

(l) Indian lands held jointly with ~~((the))~~ a tribe((-);) or land that can be sold only with the approval of the Bureau of Indian Affairs;

(m) Nonliquid resources that have a lien placed against them;

(n) Earned income tax credits (EITC):

(i) For twelve months, if you were a basic food recipient when you got the EITC and you remain on basic food for all twelve months; or

(ii) The month you get it and the month after, if you were not getting basic food when you got the EITC((-);

(o) Energy assistance payments or allowances;

(p) The resources of a household member who gets ~~((SSI, TANF/SFA, ABD assistance, or PWA))~~ supplemental security income (SSI), temporary assistance for needy families (TANF), state family assistance (SFA), aged, blind, or

disabled (ABD) cash assistance, or pregnant women assistance (PWA) benefits;

(q) Retirement funds or accounts that are tax exempt under the Internal Revenue Code;

(r) Education funds or accounts in a tuition program under ~~((section))~~ Title 26 U.S.C. Sec. 529 or 530 of the federal Internal Revenue Code of 1986, as amended;

(s) All funds in an achieving a better life experience (ABLE) account;

(t) Resources specifically excluded by federal law; and

~~((t))~~ (u) Federal income tax refunds for twelve months whether or not you were receiving basic food assistance at the time you got the refund.

(3) Property excluded under subsection (2)(c)(iv) of this section used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit. ~~((Exception:))~~ Exception: Federal tax refunds are not counted for twelve months even when mixed with countable resources.

~~((4))~~ (5) If you sell your home, you have ninety days to reinvest the sale proceeds ~~((from the sale of a home))~~ into an exempt resource.

~~((a))~~ If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. If we determine you have good cause, we will give you more time based on your circumstances. If you do not have good cause, we will count the sale proceeds as a resource. Some examples of good cause ~~((are))~~ include:

~~((i))~~ (a) Closing on your new home is taking longer than anticipated;

~~((ii))~~ (b) You are unable to find a new home that you can afford;

~~((iii))~~ (c) Someone in your household is receiving emergent medical care; ~~((or~~

~~((iv))~~ (d) Your children are in school and moving would require them to change schools.

~~((b))~~ If you have good cause, we will give you more time based on your circumstances.

~~((c))~~ If you do not have good cause, we count the money you got from the sale as a resource.)

WSR 17-17-100

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-205—Filed August 18, 2017, 3:22 p.m., effective September 18, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend rules for commercial salmon fishing in Puget Sound, including WAC 220-47-307 Closed areas—Puget Sound salmon, 220-47-311 Purse seine—Open periods, 220-47-401 Reef net—Open periods, 220-47-411 Gill-net—Open periods, and 220-47-428 Beach seine—Open periods.

Citation of Rules Affected by this Order: Amending WAC 220-47-307, 220-47-311, 220-47-401, 220-47-411, and 220-47-428.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 17-06-077 on March 1, 2017, and WSR 17-13-075 on June 16, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 18, 2017.

J. W. Unsworth
Director

AMENDATORY SECTION (Amending WSR 16-18-067, filed 9/2/16, effective 10/3/16)

WAC 220-47-307 Puget Sound salmon—Closed areas(~~—Puget Sound salmon~~). It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC ((~~220-47-266~~)) 220-354-330.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 -

(1) The San Juan Island Preserve as defined in WAC ((~~220-47-262~~)) 220-354-320.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost

point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC ((~~220-47-252~~)) 220-354-310.

Area 7B -

(1) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

(2) That portion of Bellingham Bay and Portage Bay adjacent to Lummi Indian Reservation is closed north and west of a line from the intersection of Marine Drive and Hoff Road (48°46'59"N, 122°34'25"W) projected 180° true for 2.75 nautical miles (nm) to a point at 48°45'11"N, 122°34'25"W, then 250° true for 1.4 nm to a point at 48°44'50"N, 122°35'42"W, then 270° true for 1.4 nm to 48°44'50"N, 122°37'08"W, then 230° true for 1.3 nm to 48°44'24"N, 122°37'52"W, then 200° true for 1 nm to 48°43'45"N, 122°38'12"W, then 90° true for 1 nm to a point just northeast of Portage Island (48°43'45"N, 122°37'14"W), then 160° true for 1.4 nm to a point just east of Portage Island (48°42'52"N, 122°36'37"W).

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 -

(1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlenn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A -

(1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, except when open for pink fisheries.

(2) Additional coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 -

(1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional pink seasonal closure: The area east inside of the line originating from West Point and extending west to the closest midchannel buoy, thence true through Point Wells until reaching latitude 47°44'500"N, thence extending directly east to the shoreline.

(4) Additional purse seine pink seasonal closure: The area within 500 feet of the eastern shore in Area 10 is closed to purse seines north of latitude 47°44'500"N.

(5) Additional coho and chum seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 -

(1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Areas 12, 12B, and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

Area 12 - Additional purse seine chum seasonal closures:

(1) Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line are closed to purse seines except this area is open for purse seines on October 24 and October ~~((3+))~~ 30.

(2) Those waters of Area 12 within 2 miles of the Hood Canal Bridge are closed to purse seines on October 24 and October ~~((3+))~~ 30.

Area 12A -

(1) Those waters north of a line projected due east from Broad Spit.

(2) Those waters within 1,000 feet of the mouth of the Quilcene River.

Area 12B -

(1) Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Area 12C -

(1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodspout marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
220-47-307	220-354-080

AMENDATORY SECTION (Amending WSR 16-18-067, filed 9/2/16, effective 10/3/16)

WAC 220-47-311 Puget Sound salmon—Purse seine—Open periods. (1) It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	- 10/10, ((10/12, 10/13)) 10/11, 10/14, 10/15, ((10/16, 10/17,)) 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4 ((5))
	7AM - 5PM	- 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11 ((5-11/12))

AREA	TIME	DATE	AREA	TIME	DATE
<p>Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC ((220-47-301)) <u>220-354-100</u> (7)(a) through (f).</p>				<u>7AM - 5PM</u>	<u>11/7, 11/9, 11/13, 11/21, 11/29</u>
7B, 7C:	6AM - 8PM	-	10:	<u>7AM - 7PM</u>	<u>Limited participation - 5 boats 8/23, 8/29, 8/31, 9/5, 9/7</u>
	<u>7AM - 7PM</u>	-	10, 11:	7AM - 6PM	-
		<u>8/16, 8/23, 8/30, 9/6</u>			<u>((10/20, 10/24, 10/31)) 10/18, 10/24, 10/30</u>
7B:	((6AM - 8PM	-		7AM - 5PM	-
	<u>7AM - 7PM</u>	<u>9/11, 9/13, 9/15</u>			<u>((11/08, 11/14, 11/16, 11/22)) 11/7, 11/9, 11/13, 11/21</u>
	<u>7AM</u>	<u>9/5, 9/7, 9/9</u>	12, 12B:	7AM - 6PM	-
	<u>((9/18)</u>	<u>((9/12, 9/14, 9/16))</u>			<u>((10/20, 10/24, 10/31)) 10/18, 10/24, 10/30</u>
	<u>9/24</u>	<u>9/18, 9/20, 9/22</u>		7AM - 5PM	-
	<u>7AM</u>	<u>6PM ((10/29)) 11/4</u>			<u>((11/08, 11/14, 11/16)) 11/7, 11/9, 11/13, 11/21</u>
	<u>((10/31)) 11/6</u>	<u>4PM ((11/4)) 11/10</u>	12C:	((7AM - 6PM	-
	<u>7AM</u>	<u>4PM ((11/4)) 11/10</u>			<u>10/31))</u>
	<u>((11/7)) 11/13</u>	<u>4PM ((11/11)) 11/17</u>		7AM - 5PM	-
	<u>7AM</u>	<u>4PM ((11/18)) 11/24</u>			<u>((11/08, 11/14, 11/16, 11/22)) 11/7, 11/9, 11/13, 11/21, 11/27</u>
	<u>((11/14)) 11/20</u>	<u>4PM ((11/25)) 11/30</u>	<p>Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC ((220-47-301)) <u>220-354-100</u> (7)(a) through (f).</p>		
	<u>7AM</u>	<u>4PM ((11/25)) 11/30</u>	(2) It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:		
	<u>((11/21)) 11/27</u>	<u>4PM 12/8</u>	(a) Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 20 in Area 7B.		
	<u>7AM 12/4</u>		(b) Coho salmon - At all times in Areas 7, 7A, 10, and 11, and prior to September 1 in Area 7B.		
<p>Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.</p>			(c) Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.		
8:	Closed		(d) All other saltwater and freshwater areas - Closed for all species at all times.		
8A:	Closed				
8D:	((Closed))	-			
	<u>7AM - 7PM</u>	<u>9/19, 9/26, 10/3, 10/10</u>			
	<u>7AM - 6PM</u>	<u>10/18, 10/24, 10/30</u>			

AMENDATORY SECTION (Amending WSR 16-18-067, filed 9/2/16, effective 10/3/16)

WAC 220-47-411 Puget Sound salmon—Gillnet—Open periods. It is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gillnet only, definition WAC ((220-16-046)) <u>220-350-170</u> and lawful gear description WAC ((220-47-302)) <u>220-354-140</u> .	7AM - 7PM	9/21, 9/22, ((9/23)) <u>9/25</u> , 9/26, 9/27, 9/28, 9/29, ((9/30)) <u>10/2</u> , 10/3, 10/4, 10/5, 10/6, ((10/7)) <u>10/9</u> , 10/10, 10/11, 10/12, 10/13, ((10/14)) <u>10/16</u> , 10/17, 10/18, 10/19, 10/20, ((10/21)) <u>10/23</u> , 10/24, 10/25, 10/26, 10/27((10/28))	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

AREA	TIME		DATE(S)	MINIMUM MESH
7, 7A:	7AM	-	Midnight; use of recovery box required 10/10, ((10/12, 10/13,) <u>10/11, 10/14, 10/15, ((10/16, 10/17,) 10/18, 10/19, 10/20, 10/21((-10/22))</u>	6 1/4"
	7AM	-	Midnight <u>10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11((-11/12))</u>	6 1/4"

Note: In Areas 7 and 7A after October 9 and prior to October 23, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC ((~~220-47-302~~) 220-354-140) (5)(a) through (f) when coho and Chinook release is required.

7B, 7C:	7PM	-	8AM NIGHTLY ((8/7, 8/8, 8/9) <u>8/13, 8/14, 8/15, ((8/16, 8/17) 8/20, 8/21, 8/22, 8/23, ((8/24) 8/27, 8/28, 8/29, 8/30</u>	7"
((7B, 7C:))	7AM ((8/28) <u>9/3</u>	-	7AM ((9/2) <u>9/8</u>	5"
((7B:))	7AM ((9/4) <u>9/10</u>	-	7AM ((9/9) <u>9/15</u>	5"
<u>7B:</u>	7AM ((9/11) <u>9/17</u>	-	7AM ((9/16) <u>9/22</u>	5"
	7AM ((9/18) <u>9/24</u>	-	Midnight ((10/29) <u>11/4</u>	5"
	7AM ((10/31) <u>11/6</u>	-	4PM ((11/4) <u>11/10</u>	6 1/4"
	6AM ((11/7) <u>11/13</u>	-	4PM ((11/11) <u>11/17</u>	6 1/4"
	6AM ((11/14) <u>11/20</u>	-	4PM ((11/18) <u>11/24</u>	6 1/4"
	7AM ((11/21) <u>11/27</u>	-	4PM ((11/25) <u>11/30</u>	6 1/4"
	<u>7AM 12/4</u>	=	<u>4PM 12/8</u>	

Note: In Area 7C the minimum mesh size is 7" through 9/15.

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8:	5AM	-	11PM	Closed	5"
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Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8A:	6PM	-	8AM	Closed	((5"))
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Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8D:	((6PM) <u>6AM</u>	-	((8AM) <u>10PM</u>	((Closed) <u>9/19</u>	5"
	<u>6AM 9/21</u>	=	<u>10PM 9/22</u>		<u>5"</u>
	<u>7AM</u>	=	<u>9PM</u>	<u>9/26, 10/3, 10/10</u>	<u>5"</u>
	<u>7AM 9/28</u>	=	<u>9PM 9/29</u>		<u>5"</u>
	<u>7AM 10/5</u>	=	<u>9PM 10/6</u>		<u>5"</u>
	<u>7AM 10/12</u>	=	<u>9PM 10/13</u>		<u>5"</u>
	<u>7AM</u>	=	<u>8PM</u>	<u>10/17, 10/24</u>	<u>5"</u>

AREA	TIME		DATE(S)	MINIMUM MESH
	<u>7AM</u>	-	<u>8PM 10/20</u>	<u>5"</u>
	<u>10/19</u>			
	<u>7AM</u>	-	<u>8PM 10/27</u>	<u>5"</u>
	<u>10/26</u>			
	<u>7AM</u>	-	<u>7PM</u>	<u>5"</u>
	<u>10/31</u>			
	<u>7AM 11/2</u>	-	<u>7PM 11/3</u>	<u>5"</u>
	<u>6AM</u>	-	<u>6PM</u>	<u>5"</u>
	<u>11/7</u>			
	<u>6AM 11/9</u>	-	<u>6PM 11/10</u>	<u>5"</u>
	<u>6AM</u>	-	<u>6PM</u>	<u>6 1/4"</u>
			<u>11/15, 11/16, 11/17, 11/22, 11/23, 11/24</u>	
	<u>7AM</u>	-	<u>6PM</u>	<u>6 1/4"</u>
			<u>11/29, 11/30, 12/1</u>	
9A: Skiff gillnet only, definition WAC ((220-16-046)) 220-350-170 and lawful gear description WAC ((220-47-302)) 220-354-140.	<u>7AM</u>	-	<u>7PM ((10/29))</u>	<u>5"</u>
	<u>((8/14))</u>		<u>11/4</u>	
	<u>8/21</u>			

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

10:	7PM	-	7AM	((Closed)) <u>Limited participation - 5 boats 8/22, 8/28, 8/30, 9/5, 9/7</u>	4 1/2" minimum and 5 1/2" maximum
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Note: In Area 10 fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods. Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 90 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC ((220-47-302)) 220-354-140 (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.

10, 11:	5PM	-	9AM	NIGHTLY ((10/16, 10/25, 10/27, 11/1, 11/3)) <u>10/19, 10/22, 10/25, 10/31, 11/2</u>	6 1/4"
	((5PM	-	7AM	NIGHTLY 10/19	6-1/4")
	4PM	-	8AM	((11/6, 11/9, 11/15, 11/20, 11/23)) <u>11/5, 11/14, 11/16, 11/19, 11/22</u>	6 1/4"
	4PM	-	7AM	NIGHTLY ((11/17)) <u>11/8</u>	6 1/4"
12A: Skiff gillnet only, definition WAC ((220-16-046)) 220-350-170 and lawful gear description WAC ((220-47-302)) 220-354-140.	7AM	-	7PM	Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gillnet gear.	5"

Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

12, 12B:	7AM	-	8PM	((10/17,)) <u>10/19, 10/23, 10/25</u>	6 1/4"
	7AM	-	7PM	((10/25, 10/27, 11/1, 11/3)) <u>10/31, 11/2</u>	6 1/4"
	6AM	-	6PM	((11/7, 11/9, 11/15, 11/17)) <u>11/6, 11/8, 11/14, 11/16, 11/20, 11/22</u>	6 1/4"
12C:	((7AM	-	7PM	11/1, 11/3))	
	6AM	-	6PM	((11/7, 11/9, 11/15, 11/17)) <u>11/6, 11/8, 11/14, 11/16, 11/20, 11/22</u>	6 1/4"
	7AM	-	6PM	((11/21, 11/23)) <u>11/28, 11/30</u>	6 1/4"

All other saltwater and freshwater areas - Closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
220-47-311	220-354-120
220-47-411	220-354-160

AMENDATORY SECTION (Amending WSR 16-18-067, filed 9/2/16, effective 10/3/16)

WAC 220-47-401 Puget Sound salmon—Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7	5AM - 9PM Daily	((9/18-11/12)) <u>9/17 - 11/17</u>

(2) It is unlawful at all times to retain unmarked Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or unmarked coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in the logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091.

(4) All other saltwater and freshwater areas - Closed.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
220-47-401	220-354-180

AMENDATORY SECTION (Amending WSR 16-18-067, filed 9/2/16, effective 10/3/16)

WAC 220-47-428 Puget Sound salmon—Beach seine—Open periods. (1) It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)
12A:	7AM - 7PM	<u>8/21, 8/22, 8/23, 8/24, 8/25, ((8/26)) 8/28, 8/29, 8/30, 8/31, 9/1, 9/2, 9/5, 9/6, 9/7, 9/8, ((9/9)) 9/11, 9/12, 9/13, 9/14, 9/15, ((9/16)) 9/18, 9/19, 9/20, 9/21, 9/22, ((9/23)) 9/25, 9/26, 9/27, 9/28, 9/29((9/30))</u>
12C, Hoodspout Hatchery Zone:	7AM - 7PM	((7/25, 7/27, 8/1, 8/3, 8/8, 8/10, 8/15, 8/17, 8/22, 8/24, 8/29, 8/31)) <u>7/31, 8/2, 8/7, 8/9, 8/14, 8/16, 8/21, 8/23, 8/28, 8/30, 9/4, 9/6</u>

November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).

(2) It is unlawful to retain the following salmon species taken with beach seine gear within the following areas during the following periods:

- (a) Chinook salmon - At all times in Area 12A.
- (b) Chum salmon - In all areas prior to October 10.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
220-47-428	220-354-210

**WSR 17-17-104
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-207—Filed August 18, 2017, 3:47 p.m., effective September 18, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Changes to coastal Dungeness crab regulations are needed to revise the structure of the replacement buoy tag program and provide a mechanism for commercial Dungeness crab fishermen to lawfully transport commercial crab gear through Washington waters that have buoy tags issued by another state. Both measures improve the enforceability of the Washington crab pot limit program.

Citation of Rules Affected by this Order: Amending WAC 220-340-430 and 220-340-440.

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

Adopted under notice filed as WSR 17-13-074 on June 16, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 18, 2017.

Brad Smith, Chair
Fish and Wildlife Commission

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

WAC 220-340-430 Commercial crab fishery—Buoy tag, pot tag, and buoy requirements. (1) Buoy tag and pot tag required.

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy tag and pot tag that meet the requirements of this section, except as provided by (b) and (c) of this subsection. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(b) Persons operating under a valid coastal gear recovery permit as provided in WAC ~~((220-340-450))~~ 220-340-440 may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(c) Persons operating under a valid coastal gear transport permit as provided in WAC 220-340-440 may possess crab pots or buoys bearing the tags issued by another state, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(2) **Commercial crab fishery pot tag requirements:** Each shellfish pot used in the commercial crab fishery must have a durable, nonbiodegradable tag securely attached to the pot that is permanently and legibly marked with the license owner's name or license number and telephone number. If the tag information is illegible, or the tag is lost for any reason, the pot is not in compliance with state law. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Commercial crab fishery buoy tag requirements.**

(a) The department issues crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license.

(b) In coastal waters each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and

the buoy tag must be attached to the end of the first buoy, at the end away from the crab pot buoy line.

(c) In Puget Sound, all crab buoys must have the department-issued buoy tag attached to the outermost end of the buoy line.

(d) If there is more than one buoy attached to a pot, only one buoy tag is required.

(e) Replacement crab buoy tags.

(i) Puget Sound: The department only issues additional tags to replace lost tags to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration, under penalty of perjury, in the presence of an authorized department employee. The declaration must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery ~~((15 days after the season is opened))~~ beginning March 1 and after a signed affidavit is received by an authorized department employee. The affidavit must be signed by the primary or alternate operator fishing the commercial crab gear and state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

(A) Coastal crab license holders with a 300-pot limit may replace lost tags according to the following schedule:

(I) Period 1, up to ~~((45))~~ 10 tags.

(II) Period 2, ~~((40))~~ 5 additional tags with no more than ~~((25))~~ 15 tags total issued through the end of Period 2.

~~((III) Period 3, 5 additional tags with no more than 30 tags total issued through the end of the season.))~~

(B) Coastal crab license holders with a 500-pot limit may replace lost tags according to the following schedule:

(I) Period 1, up to ~~((25))~~ 15 tags.

(II) Period 2, ~~((45))~~ 10 additional tags with no more than ~~((40))~~ 25 tags total issued through the end of Period 2.

~~((III) Period 3, 10 additional tags with no more than 50 tags total issued through the end of the season.))~~

(C) Replacement tag periods are defined as follows:

(I) Period 1: ~~((The first business day after 15 days following the season opening through the next 30 days.))~~ March 1 through April 30.

(II) Period 2: ~~((The first business day after the end of Period 1 through the next 30 days.))~~

~~((III) Period 3: The first business day after the end of Period 2 through the end of the season.))~~ May 1 through June 30. No replacement tags will be issued for the current season after July 1.

(D) In the case of extraordinary loss of crab pot gear, the department may issue replacement tags in excess of the amount listed in this subsection on a case-by-case basis.

(4) A violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(5) **Commercial crab fishery buoy requirements.**

(a) All buoys attached to commercial crab gear must consist of a durable material and remain floating on the water's surface when 5 pounds of weight is attached.

(b) No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum

of 30 percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white. Red and white colors are reserved for personal use crab gear as described in WAC 220-330-020.

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

(i) All buoys fished under a single license must be marked in a uniform manner with one buoy brand number registered by the license holder with the department and be of identical color or color combinations.

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

(6) Violation of subsection (5) of this section is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

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

WAC 220-340-440 Commercial crab gear—Possession of another's gear and tag tampering. (1) **Possession of gear bearing another's crab pot tag or crab buoy tag.** It is unlawful for any person to possess, use, control, or operate any crab pot bearing a tag identifying the pot as belonging to another person, or any buoy not bearing tags issued by the department to the person possessing them, except:

(a) An alternate operator designated on a primary license may possess and operate crab buoys and crab pots bearing the tags of the license holder.

(b) Persons operating under a valid coastal gear recovery permit issued by the department may possess crab pots or buoys bearing the tags of another license holder, provided the permittee adheres to provisions of the permit.

(c) Persons operating under a valid coastal gear transport permit issued by the department may possess crab pots or buoys bearing the tags issued by another state, provided the permittee adheres to provisions of the permit.

(2) Violation of subsection (1) of this section is punishable under RCW 77.15.520, 77.15.522, 77.15.750, or 77.70.-500, depending on the circumstances of the violation.

(3) **Pot tag or buoy tag tampering.** It is unlawful for any person to remove, damage, or otherwise tamper with crab buoy or pot tags not issued to that person, except: A person may possess the buoy tags or pot tags of another when the person is operating under a valid coastal gear recovery permit or emergency gear recovery permit issued by the department, and adheres to the permit's provisions.

(4) Violation of subsection (3) of this section is a gross misdemeanor punishable under RCW 77.15.180 Unlawful interference with fishing or hunting gear—Penalty.

WSR 17-17-109
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed August 21, 2017, 8:57 a.m., effective September 21, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the rule changes and recodification of selected regulations is to streamline and clarify rules related to people with disabilities who hunt and fish and to ensure compliance with the Americans with Disabilities Act (ADA) Title II and Section 504 of the Rehabilitation Act.

Citation of Rules Affected by this Order: Amending WAC 220-413-130, 220-413-140, 220-413-150, 220-310-150, and 220-220-240.

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

Adopted under notice filed as WSR 17-13-077 on June 16, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 4 [6], 2017.

Brad Smith
Director

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

WAC 220-413-140 Hunting of game birds and animals by persons with a disability. (1) Definitions:

(a) "Hunter with a disability" means a person with a permanent disability who possesses a disabled hunter permit issued by the department.

(b) "Disabled hunter permit" means a permit, card, or endorsement to a license issued by the department to any person with a permanent disability who applies to the department and presents such evidence as the director may require showing that the applicant is a person with a qualifying disability.

(i) Upon approval of the application, the department will issue a vehicle identification placard.

(ii) A designated hunter companion card will be issued to the holder of a disabled hunter permit along with the issuance of a hunting license.

(c) "Designated hunter companion" means a designated person who only assists (~~or acts on behalf of a hunter with a~~

~~disability in the)) with that physical function the hunter with a disability is unable to perform, such as stalking, shooting, tracking, retrieving, or the tagging of game birds and game animals.~~

(d) "Designated hunter companion card" means an identification card issued by the department to a hunter with a disability for use by another person in assisting or acting on the behalf of the hunter with a disability while engaging in hunting activities.

(e) "Accompany" means the hunter with a disability and the designated hunter companion are in the physical presence of each other, not to exceed a 1/4-mile separation. While stalking or shooting an animal, the hunter with a disability and the designated hunter companion must have a form of reliable and direct communication.

(2) It is unlawful for a hunter with a disability to fail to obtain all required licenses, tags, or stamps before hunting.

(3) It is unlawful for a designated hunter companion to assist a hunter with a disability unless the designated hunter companion has the designated hunter companion card on his or her person. A designated hunter companion must have a valid hunting license issued by Washington state or another state.

(a) The designated hunter companion must accompany the hunter with a disability when stalking or shooting game on behalf of the hunter with a disability.

(b) The designated hunter companion does not need to accompany the hunter with a disability while tracking an animal wounded by either hunter, or while tagging or retrieving a downed animal on behalf of the hunter with a disability.

(4) It is unlawful for the hunter with a disability or the designated hunter companion to fail to:

(a) Immediately cut, notch, or date any required tag upon harvesting a game bird or animal; and

(b) Affix the tag to the carcass of the game bird or animal as soon as reasonably possible after killing the game.

(5) A violation of subsection (2), (3), or (4) of this section is punishable under RCW 77.15.400, 77.15.410, 77.15.430, or 77.15.750 or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

(6) Game birds or game animals killed, tagged or retrieved by a designated hunter companion on behalf of a hunter with a disability do not count against the designated hunter companion's bag or possession limit.

(7) It is unlawful for a hunter with a disability to possess a loaded firearm in a motor vehicle, or shoot from a motor vehicle, unless the vehicle is stopped, the vehicle is removed from the maintained portion of the roadway, and the motor is turned off. A disabled hunter vehicle identification placard must be displayed and visible.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
220-413-130	220-200-170
220-413-150	220-200-160

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

WAC 220-220-240 ((Fishing for)) Harvesting of shellfish, ((freshwater)) food fish or ((saltwater)) game fish by persons ((of)) with a disability. (1) Definitions:

(a) ~~("Designated harvester" means a licensed fisher who accompanies a disabled fisher and assists the disabled fisher in the taking of shellfish, game fish or food fish.~~

~~(b) "Disabled fisher") "Harvester with a disability" means a person ((of)) with a permanent disability who possesses a valid ((fishing license or shellfish license)) disabled harvester permit issued by the department((-A disabled fisher must have all required licenses and catch record cards before fishing.~~

~~(c) "Disabled");~~

~~(b) "Disabled harvester permit" means a permit, card, or endorsement to a license issued by the department to any person with a permanent disability who applies to the department and presents such evidence as the director may require showing that the applicant is a person with a qualifying disability;~~

~~(i) A designated harvester companion card will be issued to the holder of a disabled harvester permit along with the issuance of a harvesting license.~~

~~(c) "Designated harvester companion" means a designated person who only assists with that physical function the harvester with a disability is unable to perform during his or her recreational activity in the taking of shellfish, food fish, or game fish;~~

~~(d) "Designated harvester ((identification)) companion card" means ((a)) an identification card issued by the department to ((any person of)) a harvester with a disability ((who applies to the department and presents such evidence as the director may require showing that the applicant is a person of disability. Upon issuance of a disabled license, the department will also issue a designated harvester identification card.~~

~~(d) "Person of disability" means:~~

~~(i) A permanently disabled person who is not ambulatory over natural terrain without a prosthesis or assistive device; or~~

~~(ii) A permanently disabled person who is unable to hold or use any legal fishing or shell fishing device; or~~

~~(iii) A person who is totally blind or visually impaired.~~

~~This definition includes, but is not limited to, permanently disabled persons with upper or lower extremity impairments who have lost the use of one or both upper or lower extremities, or who have a significant limitation in the use of upper or lower extremities, or who have a diagnosed disease or disorder which substantially impairs or interferes with mobility of the use of upper extremities.~~

~~(e) "Visually impaired" means central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field is no greater than 20 degrees)) for use by another person in assisting or acting on the behalf of the harvester with a disability while engaging in fishing or harvesting activities.~~

~~(2) It is unlawful for a harvester with a disability to fail to obtain all licenses, permits and catch record cards prior to fishing.~~

(3) The designated harvester companion, when accompanied by the ~~((disabled fisher))~~ harvester with a disability, may assist the ~~((disabled fisher))~~ harvester with a disability in taking shellfish, game fish and food fish or engage in the taking of shellfish, game fish, and food fish on behalf of the ~~((disabled fisher))~~ harvester with a disability.

~~((3))~~ (4) It is unlawful for a designated harvester companion to assist a ~~((disabled fisher))~~ harvester with a disability unless the ~~((disabled fisher))~~ harvester with a disability is present and participating in the fishing activity~~((; except, the disabled fisher)), except:~~

(a) The harvester with a disability is not required to be present at the location where the designated harvester companion is harvesting shellfish for the ~~((disabled person))~~ harvester with a disability. The ~~((licensee))~~ harvester with a disability is required to be in the direct line of sight of the designated harvester companion who is harvesting shellfish for him or her, unless it is not possible to be in a direct line of sight because of a physical obstruction or other barrier. If such a barrier or obstruction exists, the ~~((licensee))~~ harvester with a disability is required to be within one-quarter mile of the designated harvester companion who is harvesting shellfish for him or her and must have a form of reliable and direct communication.

~~((4))~~ (5) It is unlawful for a designated harvester companion to assist a ~~((disabled fisher))~~ harvester with a disability unless the designated harvester companion is licensed and has the designated harvester ~~((identification))~~ companion card on his or her person.

~~((5))~~ (6) Shellfish, game fish or food fish harvested by a designated harvester companion on behalf of a ~~((disabled fisher))~~ harvester with a disability becomes part of the ~~((disabled fisher's))~~ harvester with a disability's bag or possession limit, and must be kept separate from the designated ~~((harvester's))~~ harvester companion's bag or possession limit.

(7) A violation of this section is punishable under RCW 77.15.380.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
220-220-240	220-305-120

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

WAC 220-310-150 Fly fishing. (1) It is unlawful to fish in waters restricted to "fly fishing only" with the use of:

- (a) A fixed spool reel.
- (b) Fishing line other than conventional fly line or conventional "Tenkara" fly line, except that other line may be used for backing and leader if it is attached to not less than 25 feet of conventional fly line.
- (c) Hooks that exceed 1/2 inch when measured from point to shank.
- (d) Not more than two flies each with a barbless single hook.

- (e) Bait.
- (f) Weight attached to the leader or line.
- (2) Only knotless nets may be used to land fish in waters restricted to "fly fishing only."

(3)(a) A violation of gear restrictions in subsection (1) or (2) of this section is an infraction, punishable under RCW 77.15.160, unless the person possesses fish taken with prohibited gear.

(b) It is unlawful to possess fish taken with gear in violation of the provisions of this section. Possession of fish while using gear in violation of the provisions of this section is a rebuttable presumption that the fish were taken with such gear. Possession of such fish is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the fish are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.

(4) "Fly" means a lure on which thread, feathers, hackle, foam, rubber, or yarn cover a minimum of half the shank of the hook. Metallic colored tape, metal wire, metal tape, tinsel, mylar, or beadeyes may be used as an integral part of the design of the fly pattern.

~~((5))~~ Notwithstanding the provisions of this section, persons who have a permanent disability that significantly limits the use of one or both upper extremities may use spinning gear and may fish from a floating device equipped with an electric motor in lakes where fishing from a floating device is allowed in fly fishing only waters as provided for in this section.

(a) A fisher with a disability must apply for a fly fishing special use permit by presenting a letter from a physician stating that the fisher's disability is permanent and that, because of the inability to use one or both upper extremities, the fisher is physically incapable of using conventional fly fishing gear.

(b) The fisher will be issued a fly fishing special use permit in the form of a wearable tag. The fisher must have the special use permit in his or her possession at all times while using spin casting gear in fly fishing only waters, and may display the permit on outer clothing.

(c) It is permissible for persons in possession of a fly fishing special use permit to use the following gear:

- (i) Fishers may use spin casting gear with a casting bubble.
- (ii) Monofilament line with no limit on the breaking strength of the line.
- (iii) Hook size and barb restrictions, fishing fly requirements, and bait and weight prohibitions as provided for in this section apply to both conventional fly fishing and spin bubble fly fishing.)

WSR 17-17-126

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed August 22, 2017, 9:32 a.m., effective October 10, 2017]

Effective Date of Rule: October 10, 2017.

Purpose: The rule allows employers whose workers will be temporarily laid off for more than four, but fewer than eight weeks to initiate a request for standby for up to eight

weeks. Approval of standby waives the worksearch requirement, which allows employers a better opportunity to retain a skilled workforce. It also streamlines agency workload by eliminating the need for a supplemental request when claimants have been approved for four or fewer weeks of standby and the employer anticipates the expected return to work date will be longer.

Citation of Rules Affected by this Order: Amending WAC 192-110-015.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 17-14-087 on June 30, 2017.

A final cost-benefit analysis is available by contacting Christina Streuli, Employment Security Department, P.O. Box 9046, Olympia, WA 98507, phone 360-902-9647, fax 360-902-9605, TTY Teresa Eckstein, State EO Officer, 711 or 360-902-9354, email Cstreuli@esd.wa.gov, web site esd.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 21, 2017.

Dale Peinecke
Commissioner

AMENDATORY SECTION (Amending WSR 17-01-051, filed 12/13/16, effective 1/13/17)

WAC 192-110-015 Applications by standby workers—RCW 50.20.010. (1) What is "standby?"

(a) "Standby" means you are temporarily unemployed because of a lack of work but:

(i) You expect to return to work with your regular employer within four weeks; or

(ii) You expect to begin full-time work with a new employer within two weeks; or

(iii) You are temporarily unemployed due to natural disaster.

(b) You do not have to register for work or look for other work while you are on standby.

(c) You must be available for all hours of work offered by your regular employer.

(2) How long can I be on standby?

(a) You can ask to be on standby for up to four weeks, beginning with the date of the request.

(b) We will ask your employer to verify that you are on standby (~~and~~), including your expected return to work date:

(i) If your employer does not reply, you can be on standby for up to four weeks;

(ii) If your employer confirms you are on standby, you can be on standby (~~for up to four weeks or~~) until the return to work date given by your employer, (~~whichever is earlier~~) subject to the limitations of (c) of this subsection;

(iii) If your employer replies that you are not on standby or do not have a return to work date within eight weeks, we will require you to immediately register for work and to look for work.

(c) Your regular employer may ask (~~to extend your~~) that you be placed on standby (~~status for more than four, but no more than~~) for a maximum of eight(8) weeks (except as provided in (2)(d) below). This request must be approved by the department. We will consider the following before deciding whether to approve standby for more than four weeks:

(i) How long you have been out of work;

(ii) Whether other suitable work is available;

(iii) The impact on you and your employer if you accept other work; and

(iv) Other factors that apply to your situation.

(d) At his or her discretion, the commissioner may grant standby for more than eight weeks in a benefit year. Exceptions can be made due to natural disaster. Exceptions can also be made in other extraordinary circumstances when the employer applies in writing and shows there are conditions that apply to the business that are so unique or unusual compared to similar businesses that having their employees on standby for more than eight weeks is necessary.

(e) We can approve standby if you have obtained a definite offer of bona fide full-time work that has a probable start date within two weeks, which includes the week of the job offer and up to two additional weeks. If the standby request under this subsection is part of your initial claim, standby begins with the date of the request.

(f) The job, however, must be:

(i) With a new employer or with a former employer to whom you are no longer attached as provided in subsection (3)(f) of this section; and

(ii) Covered by Title 50 RCW or the comparable laws of another state or the federal government.

(3) Are there conditions that apply to a request for standby?

(a) You must have a probable date when you will return to work for your regular employer;

(b) We will not approve standby if you only have prospects of future work with your regular employer or a promise of more work at some unspecified date;

(c) We will not approve standby with your regular employer unless the employment is covered by Title 50 RCW or the comparable laws of another state or the federal government;

(d) Except for claimants who qualify as part-time eligible workers under RCW 50.20.119, we will not approve standby if you regularly work less than full-time. For purposes of this section, "full-time" means forty hours each week or the number of hours that are full-time for your occupation and labor market area;

(e) Any week(s) that you do not qualify for benefits will not be considered as part of the maximum eight weeks of standby; and

(f) After eight consecutive weeks of unemployment, we will no longer consider you attached to that employer. You must meet the job search requirements specified by RCW 50.20.010 (1)(c) and 50.20.240.

WSR 17-17-128

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed August 22, 2017, 9:38 a.m., effective September 22, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The former rule requires employers to file their tax and wage reports under their employees' Social Security number. The new rule allows employers to utilize the employees' individual taxpayer identification number (ITIN) in situations where the employee does not have a Social Security number.

Citation of Rules Affected by this Order: Amending WAC 192-310-010.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 17-14-086 on June 30, 2017.

A final cost-benefit analysis is available by contacting Christina Streuli, Employment Security Department, P.O. Box 9046, Olympia, WA 98507, phone 360-902-9647, fax 360-902-9605, TTY Teresa Eckstein, State EO Officer, 711 or 360-902-9354, email Cstreuli@esd.wa.gov, web site esd.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 22, 2017.

Dale Peinecke
Commissioner

AMENDATORY SECTION (Amending WSR 13-23-008, filed 11/7/13, effective 12/8/13)

WAC 192-310-010 What reports are required from an employer? (1) Business license application. Every person or unit with one or more individuals performing services

for it in the state of Washington must file a business license application with the department of revenue.

(2) Employer registration:

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses or domestic partners of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than ten percent, or ten percent or more, and the family relationship of corporate officers to other corporate officers who own ten percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) An employer who omits required information when registering with the department, or fails to provide the department with the required information within thirty days of registration, must pay a penalty of twenty-five dollars for each violation unless the penalty is waived by the department.

(d) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit corporation.

(3) Quarterly tax and wage reports:

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

(b) Report of employees' wages. Each calendar quarter, every employer must file a report of employees' wages with the commissioner. This report must list each employee by full name, Social Security number, and total hours worked and wages paid during that quarter.

(i) Social Security numbers are required for persons working in the United States;

(ii) If an individual has a Social Security card, he or she must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their Social Security card on the first day they are paid;

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing he or she has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for his or her records; ~~((and))~~

(iv) If the employee does not show his or her Social Security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030); and

(v) For the purposes of this section, if an employee does not have a Social Security number but does have an individual taxpayer identification number (ITIN), the ITIN qualifies as a Social Security number. If the employee later obtains a Social Security number, the employer should use the Social Security number when filing the report of employees' wages.

(c) Format. Employers must file the quarterly tax and wage reports in one of the following formats:

(i) Electronically, using the current version of employer account management services (EAMS), *UIFastTax*, *UIWebTax*, or ICESA Washington; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. So, reports are due by April 30, July 31, October 31, and January 31, in that order. If these dates fall on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

(e) Termination of business. Each employer who stops doing business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due on the date the account is closed; and

(ii) A report of employees' wages for the current calendar quarter which includes all wages paid as of the date the account is closed.

WSR 17-17-129

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed August 22, 2017, 9:47 a.m., effective September 22, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The new rule eliminates outdated language and repeals rules that are no longer supported by statute or no longer necessary to administer the unemployment insurance program.

Citation of Rules Affected by this Order: Repealing WAC 192-150-090, 192-110-200, 192-320-020, 192-320-030 and 192-320-035; and amending WAC 192-150-060, 192-150-085, 192-150-110, 192-150-160, and 192-150-180.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 17-12-055 on June 2, 2017.

A final cost-benefit analysis is available by contacting Christina Streuli, Employment Security Department, P.O. Box 9046, Olympia, WA 98507, phone 360-902-9647, fax 360-902-9605, TTY Teresa Eckstein, State EO Officer, 711 or 360-902-9354, email Cstreuli@esd.wa.gov, web site esd.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 21, 2017.

Dale Peinecke
Commissioner

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-110-200 Maximum benefits payable—RCW 50.20.120 (1)(b).

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-150-060 Leaving work because of disability—Notice to employer—RCW 50.20.050 ~~((1)(b)(ii) and))~~ (2)(b)(ii). (1) If you leave work because of a disability you must notify your employer about your disabling condition before the date you leave work or begin a leave of

absence. Notice to the employer shall include any known restrictions on the type or hours of work you may perform.

(2) Any restrictions on the type or hours of work you may perform must be supported by a physician's statement or by the terms of a collective bargaining agreement or individual hiring contract.

(3) Nothing in unemployment insurance law requires your employer to offer you alternative suitable work when you have a disability, or modify your duties so that you can perform your current job. However, any offer from your employer of other suitable work must be made prior to the date you leave work or begin a leave of absence. You are not required to request alternative work from your employer to be found available for work.

(4) If your employer offers you alternative work or otherwise offers to accommodate your disability, you must demonstrate good cause to refuse the offer. This may include, but is not limited to, information from your physician that the accommodation offered by your employer was inadequate to reasonably accommodate your medical condition, or information demonstrating that the alternative work offered you by your employer was not suitable.

(5) If you refuse an offer of work from any employer after your job separation or after beginning a leave of absence, the department will determine whether you refused an offer of suitable work as provided in RCW 50.20.080.

(6) If you are on a leave of absence due to your disability, you must promptly request reemployment from your employer when you are again able to return to work.

(7) This section also applies to individuals on a leave of absence because of a pregnancy-related disability.

(8) ~~((For claims with an effective date of January 4, 2004, or later,))~~ In addition to the requirements of this section you are not eligible for unemployment benefits unless you terminate your employment and are not entitled to be reinstated to the same or similar position.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-150-085 How to qualify after benefits have been denied. (1) Benefits may be denied under RCW 50.20-050 for voluntarily leaving work, RCW 50.20.060 for being discharged for misconduct, and RCW 50.20.080 for refusing an offer of suitable work or job referral. The denial of benefits will continue indefinitely until you show that:

(a) At least seven calendar weeks have elapsed following the week the act occurred that resulted in the denial of benefits; and

(b) You have obtained bona fide work and earned wages of at least seven times your suspended weekly benefit amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state or the federal government.

(2) ~~((For claims with an effective date of January 4, 2004, or later,))~~ Benefits may be denied under RCW 50.20-066 for being discharged for misconduct or gross misconduct. The denial of benefits will continue indefinitely until you show that:

(a) At least ten calendar weeks have elapsed following the week the act occurred that resulted in the denial of benefits; and

(b) You have obtained bona fide work and earned wages of at least ten times your suspended weekly benefit amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state or the federal government.

AMENDATORY SECTION (Amending WSR 10-01-156, filed 12/22/09, effective 1/22/10)

WAC 192-150-110 Mandatory military transfers—RCW 50.20.050 ~~((1)(b)(iii) and)~~ (2)(b)(iii). (1) Any military transfer is considered mandatory if your spouse or domestic partner receives orders from the military to relocate to a new duty station, regardless of whether the transfer is temporary or permanent.

(2) You may show good cause to quit work if you relocate for your spouse or domestic partner's employment that was due to a mandatory military transfer if:

(a) Your spouse or domestic partner's new duty station is outside your existing labor market ~~((For claims with an effective date prior to July 2, 2006, the new duty station must be in Washington or another state (including the District of Columbia, Puerto Rico, and the U.S. Virgin Islands) that allows benefits to individuals who quit work to accompany their military spouse));~~ and

(b) You continued to work for your previous employer for as long as was reasonable prior to the move.

(3) For purposes of this section, the term "military" includes the following: U.S. Navy, U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard, activated reserve members of any of these service branches, activated members of the National Guard, commissioned officers of the National Oceanographic and Atmospheric Administration, and commissioned officers of the regular or reserve corps of the U.S. Public Health Service.

(4) Good cause for quitting work is not established under this section if:

(a) You quit work to return to your home of record or to another location rather than accompanying your spouse or domestic partner to a new duty location; or

(b) Your spouse or domestic partner leaves military service and you elect to relocate to your home of record or elsewhere.

AMENDATORY SECTION (Amending WSR 09-07-011, filed 3/5/09, effective 4/5/09)

WAC 192-150-160 Entering approved apprenticeship training—RCW 50.20.050 (2)(b)(xi). (1) ~~((Effective date: RCW 50.20.050 (2)(b)(xi) and this section apply to job separations that occur on or after June 12, 2008.~~

~~(2))~~ **Application.** This section applies only if you quit work to enter into related/supplemental (classroom) instruction that is part of an apprenticeship program. If you quit work to begin employment for an employer who is a party to an apprenticeship agreement, the department will review the separation under RCW 50.20.050 (2)(b)(i) and WAC 192-

150-050 to determine if you left work to accept a bona fide job offer.

~~((3))~~ (2) Definitions. For purposes of this chapter:

(a) "To enter" means to begin participation in the apprenticeship program.

(i) The term "to enter" includes:

(A) Apprentices who accept temporary work with an employer who is not a party to the apprenticeship agreement and quit work to reenter training.

(B) Apprentices who quit work for a participating employer to enter a different apprenticeship program.

(ii) The term "to enter" does not include:

(A) Claimants applying for an apprenticeship program who at the time of quitting work are not enrolled in apprenticeship or preapprenticeship training. Their eligibility for benefits will be reviewed under RCW 50.20.050(2).

(B) Current apprentices who temporarily stop work for a participating employer to attend related/supplemental instruction that is a required component of their apprenticeship agreement. Claimants in this situation are considered to be on temporary layoff from work. Their eligibility for commissioner approved training will be reviewed under WAC 192-200-020(3).

(b) "Active participation" means attending classes, engaging in other activities that are part of the related/supplemental instruction, and working or seeking work in accordance with the apprenticeship agreement.

(c) The terms "apprentice," "apprenticeship agreement," "apprenticeship program," "approved," and "related/supplemental instruction" have the meanings described in WAC 296-05-003.

~~((4))~~ (3) Establishing good cause. If you quit work to enter an apprenticeship program, you will have good cause within the meaning of RCW 50.20.050 (2)(b)(xi) if you satisfactorily demonstrate that:

(a) You have been accepted into and are entering an apprenticeship program approved by the Washington state apprenticeship training council;

(b) Prior to leaving work, you had a confirmed start date for related/supplemental instruction; and

(c) You continued in your employment for as long as was reasonably consistent with whatever arrangements were necessary to begin the related/supplemental instruction. In any event, you will not be eligible for benefits until the week prior to the week the related/supplemental instruction begins.

AMENDATORY SECTION (Amending WSR 09-24-008, filed 11/20/09, effective 12/21/09)

WAC 192-150-180 Quitting part-time work—RCW 50.20.050(3). (1) ~~(Effective date: RCW 50.20.050(3) and this section apply to job separations that occur on or after July 26, 2009.~~

~~(2))~~ Definitions. For purposes of this section:

(a) "Part-time work" means fewer than 35 hours of work per week.

(b) "Full-time work" means work of 35 or more hours per week.

~~((3))~~ (2) If you are simultaneously employed in a part-time job and a full-time job, you will not be denied benefits

for quitting the part-time job under the following circumstances:

(a) You quit the part-time job before losing your full-time job;

(b) You did not know in advance that your full-time job would be ending; and

(c) You are eligible for benefits based on the separation from your full-time job.

~~((4))~~ (3) If you are denied benefits under RCW 50.20.050(3), the period of denial is the same as that under RCW 50.20.050 (2)(a). This means you will be denied for a period of seven weeks and until you earn at least seven times your weekly benefit amount in covered employment.

~~((5))~~ (4) Examples. The following are examples only and do not mean that the department would rule the same in similar situations.

(a) *You quit a part-time job two weeks before being laid off from your full-time job.* Benefits are allowed because you meet the criteria of subsection ~~((3))~~ (2) of this section.

(b) *You quit a part-time job before the hours at your full-time job were reduced.* Benefits are allowed because you meet the criteria of subsection ~~((3))~~ (2) of this section.

(c) *You quit a part-time job two weeks before the end of a temporary full-time job.* You had prior knowledge that the full-time job was ending. Benefits would be denied unless you had good cause for quitting the part-time job under RCW 50.20.050(2).

(d) *You quit a part-time job two weeks before being discharged from the full-time job.*

(i) If the separation from the full-time job was for misconduct, benefits would be denied for quitting the part-time job because you are not eligible for benefits based on the separation from the full-time job.

(ii) If the separation from the full-time job was not misconduct, benefits would be allowed because you meet the criteria of subsection (3).

(e) *You quit the part-time job and the full-time job on the same day.* The department will determine if you had good cause to quit both jobs under RCW 50.20.050(2).

(f) *You quit a part-time job but are still employed full-time at your other job.* The department will determine if you had good cause to quit under RCW 50.20.050(2).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-150-090 How to qualify for benefits after leaving work for marital or domestic reasons.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-320-020 How is the industry average calculated for rate years 2005, 2006, and 2007? (RCW 50.29.025.)

- WAC 192-320-030 How are unemployment insurance tax rates determined for a current "qualified employer"?
- WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports through rate year 2010?

WSR 17-17-131
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 22, 2017, 10:05 a.m., effective October 22, 2017]

Effective Date of Rule: October 22, 2017.

Purpose: The purpose of this adoption was to update the logging safety standards of chapter 296-54 WAC, Safety standards—Logging operations, per multiple petitions that were received from the Washington Contract Loggers Association (WCLA) in 2010 and 2014. The department of labor and industries (L&I) started rule making in response to the petitions. However, in 2012, L&I put their rule-making efforts on hold to launch the logger safety initiative (LSI). WCLA petitioned L&I again in 2014 to reopen rule-making efforts following the successful launch of the LSI program. Also, references, formatting and minor housekeeping changes were updated throughout the chapter specified above.

Citation of Rules Affected by this Order: New WAC 296-54-520 Chain shot awareness and prevention, 296-54-52001 Chain shot awareness and prevention training, 296-54-52003 Cutting system inspection, 296-54-52005 Cutting system maintenance, 296-54-52007 Cutting system operation and 296-54-99015 Appendix 6—Sample chain shot training program; repealing WAC 296-54-595 Transporting crews, 296-54-59510 Speeders used to transport crews, 296-54-59520 Trailers used to transport crews, 296-54-597 Railroads, 296-54-59710 Railroad construction and maintenance, 296-54-59720 Railroad operations and 296-54-59730 Railroad maintenance—Loading or unloading; and amending WAC 296-54-501 Scope and application, 296-54-503 Variance, 296-54-505 Definitions, 296-54-507 Employer's responsibilities, 296-54-509 Employee's responsibility, 296-54-511 Personal protective equipment (PPE), 296-54-51110 Head protection, 296-54-51120 Eye and face protection, 296-54-51130 Hearing protection, 296-54-51140 Hand protection, 296-54-51150 Respiratory protection, 296-54-51170 Foot protection, 296-54-51190 Highly visible clothing, 296-54-513 Arrangement of work areas and emergency contact, 296-54-515 Accident prevention program, 296-54-51510 Safety and health meetings, 296-54-51520 First-aid training, 296-54-51530 First-aid kits, 296-54-517 Lockout/tagout procedures, 296-54-519 Miscellaneous requirements, 296-54-521 Motor vehicles, 296-54-523 Inspection and repair of equipment and vehicles, 296-54-527 Seat belts, 296-54-529 Overhead electrical lines clearance, 296-54-531 Truck loads, 296-54-537 Chain saws, 296-54-539 Falling and bucking—

General, 296-54-53910 Falling and bucking—Falling, 296-54-53920 Falling and bucking—Bucking, 296-54-53930 Falling and bucking—Danger trees, 296-54-53940 Falling and bucking—Spring boards and tree jacking, 296-54-541 Tree pulling, 296-54-543 Mechanized falling, 296-54-545 Climbing equipment and passline, 296-54-54730 Rigging—Shackles, 296-54-54740 Rigging—Straps. Straps must be used according to the following requirements, 296-54-54750 Rigging—Blocks, 296-54-54760 Rigging—Hanging blocks, 296-54-557 Wire rope, 296-54-55720 Wire rope—Splicing, 296-54-55730 Wire rope—Attaching and fastening, 296-54-561 Guylines, 296-54-563 Guying tail/lift trees, 296-54-567 Rigging skylines, 296-54-569 Anchoring, 296-54-573 Logging machines—General, 296-54-57350 Logging machines—Tractors and skidders, 296-54-57355 Logging machines—Protective structures for operators, 296-54-575 Landing area, 296-54-577 Yarding, skidding, landing, 296-54-58130 Helicopter logging—Fueling area, 296-54-583 Loading logs, 296-54-589 Log trucks—General, 296-54-58950 Log trucks—Wrappers and binders, 296-54-591 Stationary log truck trailer loading, 296-54-593 Log unloading, booms and rafting—Storage and sorting areas—General, 296-54-59340 Log unloading, booms and rafting grounds—Dry land sorting and storage, 296-54-601 Signals and signal systems, 296-54-604 Radio signaling permits, 296-54-605 Radio systems used for voice communication, activation of audible signals, or control of equipment, 296-54-607 Radio signal systems—Specifications and test procedures, 296-54-701 Wood spar trees, 296-54-70110 Wood spar trees—Guylines, 296-54-705 Truck and equipment maintenance shops, and 296-54-99003 Appendix 2—Sample minimum lockout/tagout procedure.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 17-07-104 on March 21, 2017.

Changes Other than Editing from Proposed to Adopted Version: Below is a summary of changes from the proposed language:

WAC 296-54-51160 Leg protection.

- Added "1998" to the ASTM title in subsection (1), which indicates the earliest year for leg protection requirements for employers to follow.
- Added a new Note after subsection (1) that states "You may use leg protection that meets newer versions of the ASTM standard" for those employers that have previously purchased leg protection that still meet the requirements.

WAC 296-54-99015 Appendix 6—Sample chain shot training program.

- Section 1 General Information, bullet (3): Updated 230 feet to 250 feet to be consistent with what is in the definition of chain shot in WAC 296-54-505 Definitions and 296-54-52001 Chain shot awareness and prevention training. It now reads as follows:

"The "shot cone zone" is the area along the plane of the guide bar where pieces of a broken chain usually travel unless pieces are deflected. The SCZ angles out approximately at a 15 degree angle on both sides of the guide bar and a distance that possibly exceeds ((230)) 250 feet."

A final cost-benefit analysis is available by contacting Tari Enos, P.O. Box 44620, Olympia, WA 98504, phone 360-902-5541, fax 360-902-5619, email tari.enos@lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 6, Amended 66, Repealed 7.

Number of Sections Adopted on the Agency's own Initiative: New 6, Amended 66, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 66, Repealed 7.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 22, 2017.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-54-501 Scope and application. This chapter establishes safety practices for all types of logging operations, log road construction and other ~~((forest activities using logging machinery and/or power saws regardless of the end use of the wood))~~ similar activities. This chapter does not apply to log handling at sawmills, plywood mills, pulp mills, or other manufacturing operations governed by specific safety standards. This chapter provides minimum safety requirements for the logging industry. The logging industry is also covered by the general safety standards, chapter 296-24 WAC; occupational health standards, chapter 296-62 WAC; the safety and health core rules, chapter 296-800 WAC; or others that may apply. Chapter 296-52 WAC, which covers the possession, handling and use of explosives, applies when explosives are used in logging operations.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-503 Variance. If ~~((an employer))~~ you find~~((s))~~ it impractical to comply with specific requirements of this chapter, the department may permit a variation from the requirements. However, ~~((the employer))~~ you must still provide equal protection by substitute means. To request a variance, write to:

WISHA Services Division—Variance Request
Department of Labor & Industries

P.O. Box ((44648)) 44650
Olympia, WA ((98504-4648)) 98504-4650

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-505 Definitions. A-frame((-)). A structure made of two independent columns fastened together at the top and separated by a reasonable width at the bottom to stabilize the unit from tipping sideways.

An operation((-)). Any place where logging or log related activities are taking place.

Approved((-)). Approved by the department of labor and industries.

Arch((-)). Any device attached to the back of a vehicle and used for raising one end of logs to facilitate movement.

Authorized person((-)). A person approved or assigned by the employer to perform a specific type of duty(s) or to be at a specific location at a certain time(s).

Backcut (felling cut)((-)). The cut in a felling operation made on the opposite side from the undercut.

Backline((-)). The portion of the haulback that runs between the spar/spar tree and the corner block.

Ballistic nylon((-)). A nylon fabric of high tensile properties designed to provide protection from lacerations.

Barrier((-)). A fence, wall or railing to prevent passage or approach.

Base of tree((-)). That portion of a natural tree not more than three feet above ground level.

Bight of the line((-)). A hazardous zone created by running lines under tension. Any section of a line between the ends.

Binder((-)). A hinged lever assembly for connecting the ends of a wrapper to tighten the wrapper around the load of logs or materials.

Boomboat((-)). Any boat used to push or pull logs, booms, bundles, or bags, in booming ground operations.

Boomscooter((-)). A small boat, usually less than fourteen feet in length, equipped with an outboard motor, having directional pushing capabilities of 360 degrees.

Brailing((-)). When tiers of logs, poles, or piles are fastened together with a type of dogline and the ends of the side members are then fastened together for towing.

Brow log((-)). A log or a suitable substitute placed parallel to any roadway at a landing or dump to protect the carrier and facilitate the safe loading or unloading of logs, timber products, or materials.

Buck((-)). Means the process of severing a tree into sections (logs or bolts).

Butt((-)). The bottom of the felled part of a tree.

Butt welding((-)). The practice of welding something end to end.

Cable tree thinning((-)). The selective thinning of a timber stand using mobile yarding equipment specifically designed or adapted for the purpose. Cable tree thinning includes skyline, slackline, or modified slackline, overhead cable systems.

Cable yarding((-)). The movement of felled trees or logs from the area where they are felled to the landing on a system composed of a cable suspended from spars and/or

towers. The trees or logs may be either dragged across the ground on the cable or carried while suspended from the cable.

Chain shot. When the saw chain breaks, when using a mechanical timber harvester or processor, fragments or pieces are projected with tremendous force, and can travel a distance greater than 250 feet.

Chain shot danger zone or shot cone zone. The area included within 15 degrees on either side of the guide bar and up to a distance of at least 250 feet.

Chock((--)). A block, often wedge shaped, which is used to prevent movement; e.g., a log from rolling, a wheel from turning.

Choker((--)). A length of wire rope with attachments for encircling the end of a log to be yarded.

Chunking((--)). To clear nonusable material from a specified area.

Cold deck((--)). A pile of yarded logs left for future removal.

Competent person((--)). One who is capable of identifying hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous.

Corner block((--)). The first block the haulback passes through on its way to the tail block.

Crotch line((--)). Two short lines attached to the same ring or shackle, used for loading or unloading.

Cutter((--)). An employee whose primary job is to fall, buck, or limb trees before they are moved to the landing area.

Danger trees((--)). Any tree of any height, dead or alive, that presents a hazard to workers because of rot, root, stem or limb damage, lean, or any other observable condition created by natural process or man-made activity.

~~((Dapped — A notch in a timber for receiving part of another timber.))~~

DBH((--)). Diameter at breast height.

Deadman((--)). Buried log or other object used as an anchor.

Debark((--)). To remove bark from trees or logs. Debark generally denotes mechanical means as opposed to manual peeling.

Deck((--)). A stack of trees or logs.

Designated person((--)). An employee who has the requisite knowledge, training, and experience to perform specific duties.

Directional falling((--)). A mechanical means to control the direction of falling timber.

~~((Dog line — Type of line used to fasten logs or timber products together by the use of dogs.))~~

Domino felling((--)). The partial cutting of multiple trees which are left standing and then pushed over with a pusher tree.

Donkey((--)). Any machine with a series of drums used to yard logs.

Double ended logs((--)). Two logs end to end on the same lay.

Drop zone((--)). The area where the helicopter delivers logs from the logging site.

Droplines((--)). A short line attached to the carriage or carriage block which is used as an extension to the main line.

Drum((--)). A mechanical device on which line is spooled or unspooled.

Dry land storage((--)). Decks of logs stored for future removal or use.

Dutchman((--)).

((*) (a) A block used to change direction of line lead (sideblocking).

((*) (b) A method used to pull a tree against its lean by leaving a section of the undercut on one corner of the face. The portion left consists of a single saw kerf in one side of the face, with the face completely removed on the opposite side of the face cut. A single saw kerf must never extend completely across the stump.

Experienced person((--)). A person who has been trained and has participated in the subject process for a period of time long enough to thoroughly acquaint the person with all facets of the process.

F.O.P.S.((--)). Falling object protective structure.

Fair lead((--)). Sheaves, rolls, or a combination thereof arranged to receive a line coming from any direction for proper line spooling on to a drum.

Fell (fall)((--)). To cut down trees.

Feller (faller)((--)). An employee who fells trees.

Front end loader((--)). A mobile machine mounted on a wheeled or tracked chassis, equipped with a grapple, tusk, bucket, or fork-lift device, and employed in the loading, unloading, stacking, or sorting of logs or materials.

Grounded((--)). The placement of a component of a machine on the ground or on a device where it is firmly supported. Grounded may also relate to the placement of a tree on the ground or a method to dissipate static or electrical charges.

Guarded((--)). Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable enclosures, covers, casings, shields, troughs, railings, screens, mats, or platforms, or by location, to prevent injury.

Guard rail((--)). A railing to restrain a person.

Guyline((--)). A line used to support or stabilize a spar, tail/lift tree, intermediate support tree or equipment. A guyline is considered a standing line.

Gypsy drum((--)). A mechanical device wherein the line is not attached to the drum and is manually spooled to control the line movement on and off the drum.

Haulback((--)). A line used to pull the buttrigging and mainline to the logs to be yarded.

Haulback block((--)). Any block the haulback line passes through including the corner block and tailblock.

Hay rack((--)).

((*) (a) A type of loading boom where two tongs are used and logs are suspended.

((*) (b) A transporting vehicle with multiple sets of bunks attached to a rigid frame usually used for hauling logs.

Haywire((--)). See strawline.

Hazardous falling area((--)). The area within a circle centered on the tree being felled and having a radius not less than twice the height of that tree.

Head tree((--)). The tree where yarding and/or loading takes place. (See spar)

Heel boom((--)). A type of loading boom where one tong is used and one end of the log is pulled up against the boom.

High lead((--)). A system of logging wherein the main line is threaded through the main line block, which is attached near the top of the spar, to obtain a lift of the logs being yarded.

High visibility colors((--)). White, bright, or fluorescent colors that stand out from the surrounding background color so they are easily seen.

Hobo log and/or hitchhiker((--)). A free or unattached log that is picked up by a turn and is transported with the turn.

Hooktender((--)). The worker that supervises the method of moving the logs from the woods to the landing.

Hot deck((--)). A landing where logs are being moved.

Hydraulic jack((--)). A mechanical device, powered by internal pressure, used to control the direction in which a tree is to be felled.

In the clear((--)). A position within the work area where the probability of hazardous contact with falling trees, moving logs, rootwads, chunks, material, rigging and equipment is minimized by distance from the hazards and/or use of physical barriers, such as stumps, trees, terrain or other objects providing protection.

Examples:

((*) (a) Back behind on the uphill side of the turn and out of reach of any unpeeling logs.

((*) (b) Out of the bight.

((*) (c) In the logged off area.

((*) (d) In a position where movement will not be obstructed.

Intermediate support system((--)). A system for supporting a loaded skyline in a support jack by one of the two following methods:

((*) (a) Double tree support - The skyline is suspended on a single piece of wire rope supported by two trees so that the load is shared between the two trees.

((*) (b) Single tree support - The skyline is suspended on a single piece of wire rope, single-eyed choker or double-eyed strap supported by a single tree. The support tree may be vertical or leaning.

Jackstrawed((--)). Trees or logs piled in an unorderly manner.

Jaggers((--)). Any projecting broken wire in a strand of cable.

Kerf((--)). The part of timber products taken out by the saw teeth.

Knob((--)). A metal ferrule attached to the end of a line.

Landing((--)). Any place where logs are laid after being yarded, awaiting subsequent handling, loading, and hauling.

Landing chute((--)). The head of the skid trail or road where the logs are temporarily placed before handling, loading and hauling.

Lay((--)).

((*) (a) The straight-line distance it takes a strand of wire rope to make one complete spiral around the core of a rope.

((*) (b) The position of a log in a pile, on a load, or in the fell and bucked.

Limbing((--)). To cut branches off felled or standing trees.

Loading boom((--)). Any structure projecting from a pivot point to guide a log when lifted.

Lodged tree (hung tree)((--)). A tree leaning against another tree or object which prevents it from falling to the ground.

Log((--)). A tree segment suitable for subsequent processing into lumber, pulpwood, or other wood products, including, but not limited to, poles, piling, peeler blocks, sections and/or bolts.

Log bronco((--)). A sturdily built boat usually from twelve to twenty feet in length, used to push logs or bundles of logs in a generally forward direction in booming and rafting operations.

Log dump((--)). A place where logs are removed from transporting equipment. It may be either dry land or water, parbuckled over a brow log or removed by machine.

Log stacker((--)). A mobile machine mounted on a wheeled or tracked chassis, equipped with a frontally mounted grapple, tusk, or forklift device, and employed in the loading, unloading, stacking, or sorting of logs.

Logging machine((--)). A machine used or intended for use to yard, move, or handle logs, trees, chunks, trailers, and related materials or equipment.

Note: A self-loading log truck is only considered a logging machine when in use for loading and unloading.

Note: A helicopter is not considered a logging machine.

Logging operations((--)). Operations associated with felling and/or moving trees, logs, veneer bolts, poles, pilings, and other forest products from the stump to the point of delivery. Such operations are such, but not limited to, marking, felling, bucking, limbing, debarking, chipping, yarding, loading, unloading, storing, and the transporting of machines, equipment and personnel from one site to another.

Long sticks((--)). An overlength log or tree length that creates a hazard by exceeding the safe perimeters of the landing.

Machine((--)). A piece of stationary or mobile equipment having a self-contained power plant, that is operated off-road and used for the movement of material. Machines include but are not limited to tractors, skidders, front-end loaders, scrapers, graders, bulldozers, rough terrain logging shovels, log stackers and mechanical felling devices, such as tree shears and feller-bunchers.

Mainline((--)). The line attached to the buttrigging used to pull logs to the landing.

Mainline block((--)). The block hung in the portable spar or tower through which the mainline passes.

~~((Mainline train - Any train that is made up for travel between the woods and log dump.))~~

Matchcutting((--)). The felling of trees without using an undercut.

Mechanized falling((--)). Falling of standing timber by a self-propelled mobile wheeled or tracked machine equipped with a shear or other powered cutting device.

Mechanized feller((--)). Any such machine as described in WAC 296-54-541 and 296-54-543, and includes

feller/bunchers and similar machines performing multiple functions.

Mechanized logging machine((-)). A feller-buncher, single-grip harvester, processor, forwarder, clambunk, or log loader.

Mobile log loader((-)). A self-propelled log loading machine mounted on wheels or tracks, incorporating a boom and employed in the loading or unloading of logs by means of grapples or tongs.

Mobile yarder((-)). A logging machine mounted on wheels, tracks, or skids, incorporating a vertical or inclined spar, tower, or boom, employed in skyline, slackline, high lead or grapple overhead cable logging systems.

Molle((-)). A single strand of wire rope rolled into a circle with six wraps. A molle can be used as a temporary method of connecting the eye splices of two lines. A molle is used in most pin shackles in place of a cotter key.

Must((-)). The same as "shall" and is mandatory.

New job site((-)). A location of operations when the loading station and/or the yarder or cutting operations are moved to a new area outside of the current sale or contracted unit.

Pass line((-)). A small line threaded through a block at the top of the spar to assist the high climber.

Permissible (as applied to any device, equipment or appliance)((-)). Such device, equipment, or appliance has the formal approval of the United States Bureau of Mines, American Standards Association, or National Board of Fire Underwriters.

Portable spar or tower((-)). A movable engineered structure designed to be used in a manner similar to which a wood spar tree would be used.

Qualified person((-)). A person, who by possession of a recognized degree, certificate, professional standing, or by extensive knowledge, training, and experience, has successfully demonstrated ability to solve or resolve problems relating to the subject matter, the work, or the project.

Rated capacity((-)). The maximum load a system, vehicle, machine or piece of equipment was designed by the manufacturer to handle.

Reach((-)). A steel tube or wood timber or pole connected to the truck and inserted through a tunnel on the trailer. It steers the trailer when loaded and pulls the trailer when empty.

Reload((-)). An area where logs are dumped and reloaded or transferred as a unit to another mode of transportation.

Rollway((-)). Any place where logs are dumped and they roll or slide to their resting place.

Root wad((-)). The ball of a tree root and dirt that is pulled from the ground when a tree is uprooted.

R.O.P.S.((-)) Roll over protection structure.

Rub tree((-)). A tree used to guide a turn around an area.

Running line/running rope((-)). Any moving line directly involved with the yarding of logs.

Safety factor((-)). The ratio of breaking strength to a safe working strength or loading.

Safety glass((-)). A type of glass that will not shatter when broken.

Sail block((-)). A block hung inverted on the sail guy to hold the tong block in proper position.

Scaler((-)). The person who measures the diameter and length of the logs, determines specie and grade, and makes deductions for footage calculations.

Serviceable condition((-)). A state or ability of a tool, machine, vehicle or other device to operate as it was intended by the manufacturer to operate.

Shall((-)). A requirement that is mandatory.

Shear log((-)). A log placed in a strategic location to divert passage of objects.

Shore skids((-)). Any group of timbers spaced a short distance apart on which logs are rolled.

Should((-)). Means recommended.

Signal person((-)). The person designated to give signals to the machine operator.

~~((Siwash — To change the lead of a line with a physical object such as a stump or tree instead of a block.))~~

Skidder((-)). A machine or animal used to move logs or trees to a landing.

Skidding((-)). Movement of logs or trees on the surface of the ground to the place where they are to be loaded.

Skidding line((-)). The main haulage line from a carriage to which chokers are attached. Sometimes referred to a mainline.

Skyline((-)). The line suspended between two points on which a block or carriage travels.

Slackline((-)). A form of skyline where the skyline cable is spooled on a donkey drum and can be raised or lowered.

Slack puller((-)). Any weight or mechanical device used to increase the movement of a line when its own weight is inadequate.

Slope (grade)((-)). The increase or decrease in altitude over a horizontal distance expressed as a percentage. For example, change of altitude of 20 feet (6 m) over a horizontal distance of 100 feet (30 m) is expressed as a 20 percent slope.

Snag((-)). A dead standing tree or a portion thereof. (See Danger tree)

Snorkel((-)). A loading boom modified to extend its limitations for yarding.

Spar/spar tree((-)). A tree or device (rigged for high-lead, skyline or slackline yarding) used to yard logs by any method of logging.

~~((Speeder — A small self-powered vehicle that runs on a railroad track.))~~

Spike((-)). A long heavy nail similar to a railroad spike.

Springboard((-)). A board with an iron tip used by fallers to stand on while working above ground level.

Spring pole((-)). A tree, segment of a tree, limb, or sapling which is under stress or tension due to the pressure or weight of another object.

Spurious response attenuation. A measure of the receiver's ability to discriminate between a desired signal to which it is resonant and an undesired signal at any other frequency to which it is also responsive.

Square lead((-)). The angle of 90 degrees.

~~((Squirrel — A weight used to swing a boom when the power unit does not have enough drums to do it mechanically.))~~

Squirrel tree—A topped tree, guyed if necessary, near the spar tree in which the counter balance (squirrel) of a tree rigged boom is hung.)

Standing line((—))₂

((★) (a) Guyline.

((★) (b) A nonoperating rope with end terminations to support a boom or mast.

Stiff boom((—))₂ Two or more boom sticks wrapped together on which boom persons walk or work.

Strap((—))₂ Any short piece of line with an eye or "D" in each end.

Strap socket or D((—))₂ A socket with a closed loop arranged to be attached to the end of a line by the molten zinc, or an equivalent method. It is used in place of a spliced eye.

Strawline((—))₂ A light cable used in rigging up, or in moving other cables or blocks. The smallest line on the yarder. (Mainline - Haulback line - Strawline.)

Strip((—))₂ A definite location of timber on which one or more cutting crews work.

Swamping((—))₂ The falling or cutting of brush around or along a specified place.

Swede connection((—))₂ A line configuration made by wrapping two choker lines in the same direction around a tree or log connecting the line knobs to opposite line bells.

Swifter((—))₂ A piece of equipment used to tie the side sticks of a log raft together to keep the raft from spreading.

Swing cut((—))₂ An intentional dutchman left on one corner of an undercut or a backcut in which the holding wood on one side is cut through in conjunction with an intentional dutchman to achieve a desired lay for the tree being fell.

Tail block((—))₂ A block used to guide the haulback line at the back corner of the yarding area.

Tail hold((—))₂ An anchor used for making fast any line or block.

Tail/lift tree((—))₂ The tree at the opposite end from the head tree on which the skyline or other type rigging is hung.

Tie back((—))₂ To use a twister(s) (or similar system/device) that has a breaking strength equal to fifty percent of the breaking strength of the mainline or skyline whichever is greater. To secure or support one anchor by securing it to a second anchor(s) such as wrapping one stump and choking another.

Tie down((—))₂ A chain, cable, steel strips or fiber webbing and binders attached to a truck, trailer or other conveyance as a means to secure loads and to prevent them from shifting or moving when they are being transported.

Tight line((—))₂ When either the mainline or haulback are held and power is exerted on the other or when power is exerted on both at the same time.

Tong line block((—))₂ The block hung in a boom through which the tong line operates.

Tongue((—))₂ A device used to pull and/or steer a trailer.

Topping((—))₂ Cutting off the top section of a standing tree.

Tower((—))₂ (See portable spar or tower).

Tractor((—))₂ A machine of wheel or track design used in logging.

Tractor logging((—))₂ The use of any wheeled or tracked vehicle in the skidding or yarding of logs.

Transfer (as used in loading)((—))₂ Changing of logs in a unit from one mode of transportation to another.

Tree jack((—))₂ A grooved saddle of wood or metal rollers contained within two steel plates, attached to a tree with a strap, used as a guide for skyline, sail guy, or similar static line. It is also formed to prevent a sharp bend in the line.

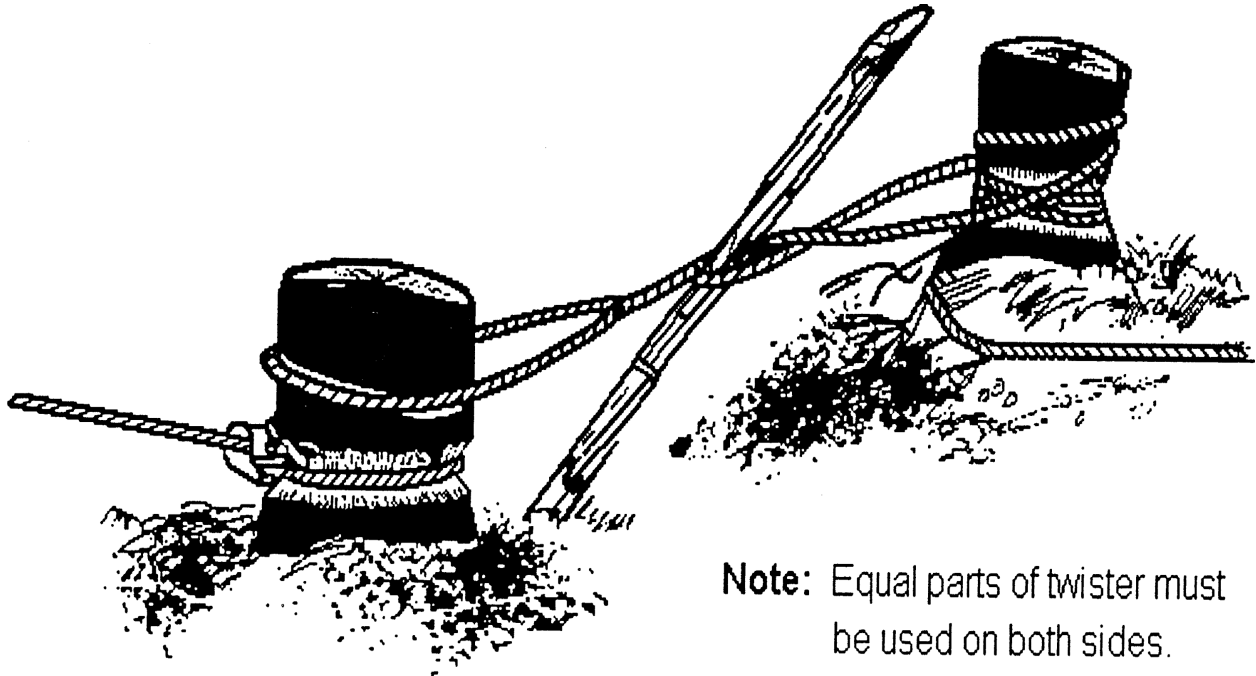
Tree plates((—))₂ Steel bars sometimes shaped as elongated J's, which are fastened near the top of a tree to hold guylines and prevent them from cutting into the tree when tightened. The hooks of the J are also used to prevent the mainline block strap from sliding down the tree.

Tree pulling((—))₂ A method of falling trees in which the tree is pulled down with a line.

Tug((—))₂ A boat, usually over twenty feet in length, used primarily to pull barges, booms of logs, bags of debris, or log rafts.

Turn((—))₂ Any log or group of logs attached by some means to power and moved from a point of rest to a landing.

Twister((—))₂ A line (usually small diameter wire rope "haywire") that supports a tailhold stump, guyline stump, or tree that does not appear to be strong enough. This is done by connecting the tailhold to another stump or tree opposite by wrapping the two with a line. This line is then tightened by placing a piece of large-diameter limb between the wrappings and twisting them together.



TWISTER ROPE

Note: Equal parts of twister must be used on both sides.

Undercut((—))₂ A notch cut in a tree to guide the direction of the tree fall and to prevent splitting or kickback.

V-lead((—))₂ A horizontal angle of less than ninety degrees formed by the projected lines of the mainline from the drum of the logging machine through the block or fairlead and the yarding log or turn.

Vehicle/crew bus((—))₂ A car, bus, truck, trailer or semi-trailer owned, leased, or rented by the employer that is used for transportation of employees or movement of material.

WAC((—))₂ Washington Administrative Code.

Waistline((—))₂ That portion of the haulback running between the corner block and the tail block.

Winching((—))₂ The winding of cable or rope onto a spool or drum.

Within the stakes((—))₂ When one-half the log diameter is below the stake top.

Work areas((—))₂ Any area frequented by employees in the performance of assigned or related duties.

Wrapper((—))₂ A cable assembly or chain used to contain a load of logs.

Wrapper rack((—))₂ Barrier used to protect a person while removing binders and wrappers from a loaded logging truck.

Yarder (donkey)((—))₂ A machine with a series of drums used to yard logs.

Yarding((—))₂ The movement of logs from the place they are felled to a landing.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

WAC 296-54-507 Employer's responsibilities. ((The employer)) **You** must comply with the requirements of all safety and health regulations and must:

- (1) Provide safety training for each employee.
- (2) Take additional precautions to ensure safe ((logging)) operations when extreme weather or other extreme conditions create hazards. If the ((logging)) operation cannot be made safe, the work must be discontinued until safe to resume.

- (3) Ensure that danger trees within reach of landings, rigging, buildings, or work areas are either fell before regular ((logging)) operations begin, or arrange work so that employees are not exposed to the related hazards.

- (4) Develop and maintain a hazard communication program as required by WAC 296-901-140. The program must provide information to all employees about hazardous chemicals or substances to which they are exposed, or may become exposed, in the course of their employment.

- (5) Ensure that intoxicating beverages and narcotics are prohibited on or near the worksite. ((The employer)) **You** must remove from the worksite any employee under the influence of alcohol or narcotics.

Note: Narcotics do not include prescription drugs taken under a doctor's direction if the use does not endanger any employee.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-509 Employee's responsibility. (1) Employees must coordinate and cooperate with ~~((the employer))~~ you and other employees in an attempt to eliminate accidents.

(2) Employees must be aware of and follow all safe practices that apply to their work.

(3) Employees should offer safety suggestions that may contribute to a safer work environment.

(4) Intoxicating beverages and narcotics must not be permitted or used by employees in or around the worksites. Employees under the influence of alcohol or narcotics must not be permitted on the worksite.

EXCEPTION: This rule does not apply to employees taking prescription drugs and/or narcotics as directed by a physician if the use does not endanger the employee or others.

(5) Employees must conduct themselves in a workman-like manner while on the worksite.

(6) Employees must make prompt report to their immediate supervisor of each industrial injury or occupational illness, regardless of the degree of severity.

AMENDATORY SECTION (Amending WSR 09-05-071, filed 2/17/09, effective 4/1/09)

WAC 296-54-511 Personal protective equipment (PPE). (1) Protective equipment, including personal protective equipment for eyes, face, head, hearing and extremities, protective clothing, respiratory devices and protective shields and barriers, must be used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

(2) Personal protective equipment, including any personal protective equipment provided by an employee, must be maintained in a serviceable condition.

(3) ~~((Design-))~~ All personal protective equipment must be of safe design and construction for the work to be performed. ~~((All safety belts and attachments must meet the requirements of section 3 of ANSI A10.14-1975-))~~

(4) Personal protective equipment, including any personal protective equipment provided by an employee, must be inspected before initial use during each workshift. Defects or damage must be repaired or the unserviceable personal protective equipment must be replaced before work is commenced.

(5) Personal protective equipment required by this standard ~~((shall))~~ must be provided at no cost to the employee.

Note: The employer is not required to provide logging boots for employees. The cost of logging boots may be borne by employees. The employer must ensure, however, that logging boots as well as all PPE provided by the employer, are worn by employees and are in serviceable condition and meet the requirements in subsection (5) of this section.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-51110 Head protection. ~~((The employer))~~ You must provide, at no cost to the employee, and ensure that all employees ~~((involved in the logging operation or any of its related activities wear head protection))~~ wear a hard hat whenever there is a potential exposure to danger of flying or falling objects, unless the employees are protected by FOPS, cabs, or canopies meeting the requirements of this chapter.

(1) ~~((Hard hats purchased after February 20, 1995, must meet the requirements of ANSI Z89.1-1986, "American National Standard for Personnel Protection - Protective Headwear for Industrial Workers - Requirements," or the employer must demonstrate that they are equally effective.))~~ Head protection (hard hats) must comply with any of the following consensus standards:

(a) ANSI Z89.1-2009, "American National Standard for Industrial Head Protection";

(b) ANSI Z89.1-2003, "American National Standard for Industrial Head Protection"; or

(c) ANSI Z89.1-1997, "American National Standard for Personnel Protection - Protective Headwear for Industrial Workers - Requirements."

Note: You may use protective helmets that do not meet these ANSI standards if you can demonstrate that they are equally effective as those constructed in accordance with the above ANSI standards.

(2) ~~((Hard hats purchased before February 20, 1995, must meet the requirements of ANSI Z89.1-1969, "American National Standard Safety Requirements for Industrial Head Protection," or the employer must demonstrate that they are equally effective.~~

~~((3)))~~ Hard hats must be maintained in serviceable condition.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-54-51120 Eye and face protection. ~~((The employer))~~ You must provide, at no cost to the employee, and ensure that each employee wears:

(1) Eye protection meeting the requirements of WAC 296-800-160, where there is potential for eye injury from falling or flying objects; and

(2) Face protection meeting the requirements of WAC 296-800-160, where there is potential for facial injury such as, but not limited to, operating a chipper. An employee using a chain saw may use either eye or face protection.

Note: The employee does not have to wear separate eye protection when the face protection also covers the eyes.

Note: Mesh type screen goggles or face shields, which conform to ANSI Z87.1, may be used while operating a chain saw or during chipping operations.

AMENDATORY SECTION (Amending WSR 03-11-060, filed 5/19/03, effective 8/1/03)

WAC 296-54-51130 Hearing protection. ((The employer)) You must provide hearing protection when required by chapter 296-817 WAC, Hearing loss prevention (noise).

AMENDATORY SECTION (Amending WSR 06-07-142, filed 3/21/06, effective 5/1/06)

WAC 296-54-51140 Hand protection. (1) ((The employer)) You must provide, and make sure that each employee handling wire rope or other rough materials uses(;) hand protection that provides adequate protection from puncture wounds, cuts, and lacerations.

(2) Hand protection must be maintained in serviceable condition.

AMENDATORY SECTION (Amending WSR 05-20-055, filed 10/3/05, effective 12/1/05)

WAC 296-54-51150 Respiratory protection. ((The employer)) You must provide respiratory protection when required by chapter 296-842 WAC, Respirators.

AMENDATORY SECTION (Amending WSR 12-01-086, filed 12/20/11, effective 2/1/12)

WAC 296-54-51160 Leg protection. (1) ((The employer)) You must provide, at no cost to the employee, and ensure that each employee who operates a chain saw wears leg protection ((constructed with cut-resistant material, such as ballistic nylon-)) meeting the requirements of ASTM F1897-1998 "American Society for Testing and Materials Standard Specification for Leg Protection for Chain Saw Users." The leg protection must cover the full length of the thigh to the top of the boot on each leg to protect against contact with a moving chain saw.

Note: You may use leg protection that meets newer versions of the ASTM standard.

EXCEPTION: This requirement does not apply to an employee working aloft in trees when supported by climbing spurs and climbing belt, or when an employee is working from a vehicle-mounted elevating and rotating work platform meeting the requirements of chapter 296-869 WAC, Elevating work platforms.

(2) Leg protection must be maintained in serviceable condition.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-51170 Foot protection. (1) Each employee must wear foot protection that covers and supports the ankle, such as heavy-duty ((logging)) boots.

(2) Each employee who operates a chain saw must wear cut resistant foot protection that will protect the employee against contact with a running chain saw.

For example: Leather logging boots, insulated rubber pacs, and rubber boots with cut protection will meet the cut-resistant requirement of this section.

(3) All employees whose duties require them to walk on logs or boomsticks must wear sharp-calked boots, or the equivalent.

EXCEPTION 1: When calks are ineffective because of ice, snow, or other conditions and other footwear does not provide suitable protection, employees must be prohibited from working on logs or boomsticks.

EXCEPTION 2: The employer may allow employees to wear nonslip boots instead of calks when the nonslip boots provide greater employee protection than calks (such as at scaling stations, log sorting yards, etc.). The nonslip boots must still provide firm ankle support and secure footing.

(4) Foot protection must be maintained in serviceable condition.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-51190 Highly visible clothing. (1) Employees working on landings or in log sorting yards on or from the ground, must wear at least one piece of highly visible equipment, whether it be their hard hat((s)), yellow or orange vests, or other similarly colored garments, to make employees more visible to equipment operators.

Note: The department recommends that hard hats and vests or outer garments be luminous or reflective.

(2) An employee working as a flagger must wear a hard hat and vest or other garment of high visibility colors. Warning vests and hard hats worn at night must be reflective.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-513 Arrangement of work areas and emergency contact. (1) Employee work areas must be spaced and employee duties organized so the actions of one employee do not create a hazard for any other employee.

(2) Work areas must be assigned so that:

(a) Trees cannot fall into an adjacent occupied work area;

(b) The distance between work areas is at least two tree lengths of the trees being fell;

(c) The distance between work areas reflects the degree of slope, the density of the growth, the height of the trees, the soil structure and other hazards reasonably anticipated at the worksite; and

(d) A distance of more than two tree lengths is maintained between work areas on any slope where rolling or sliding of trees or logs is reasonably foreseeable.

(3) Each employee must be within visual, audible, or radio/telephone contact with another person who can assist in case of emergency.

(4) In any logging operation where cutting, yarding, or loading are performed, there must be at least two employees working as a team.

(5) Each employee must have visual or audible signal contact with another employee as often as this schedule requires:

(a) Cutters - 30 minutes.

(b) All other employees - 2 hours, which allows for making layouts, notching guyline stumps, etc., during normal work hours.

Exception: The requirements for a two-person team and check-in schedule do not apply to operators of motor vehicles, mechanized logging machines, watchpersons or certain other jobs which, by their nature, are singular employee assignments. However, a procedure for checking the welfare of these employees during their working hours must be instituted and all employees so advised.

(6) Mechanics or other employees must not be assigned to work on equipment by themselves when there is a probability of a fall from elevated work locations or equipment. Also, if the work is of such nature that heavy parts require moving, or there is a probability that anything heavy could fall on the person, there must be another person in the immediate area to render assistance.

(7) ~~((The employer))~~ You must establish a method of checking the employees in from the woods at the end of each shift, including operators of all movable equipment. Each immediate supervisor must account for their crew.

(8) Each logging worksite must have at least one serviceable and operable two-way radio, phone, or radio/phone combination available to reach emergency service. Citizen band radios are permitted only as a secondary means of communication.

(9) Each logging worksite must have an emergency medical plan to ensure rapid emergency medical care for employees with major illnesses and injuries. The plan must be in writing and include the following:

(a) Township, range, and section numbers or latitude and longitude ~~((or UMS Grid System coordinates))~~;

(b) Directions by road, or escort provisions to the site;

(c) Telephone number of emergency medical services; and

(d) Provisions for emergency vehicle(s) access, when working behind locked gate(s).

AMENDATORY SECTION (Amending WSR 06-07-142, filed 3/21/06, effective 5/1/06)

WAC 296-54-515 Accident prevention program. (1) ~~((The employer))~~ You must develop a formal accident prevention program, tailored to the needs of the particular ~~((logging))~~ workplace or operation and to the type of hazards involved. The program must be implemented in a manner that is effective in practice.

(2) The accident prevention program must be in writing.

(3) The accident prevention program must cover at least the following elements:

(a) A safety training program that describes the employer's total safety program.

(b) How and when to report injuries;

(c) The location of first-aid supplies;

(d) Safe use, operation and maintenance of tools, machines and vehicles the employee uses or operates;

(e) How to report unsafe conditions and practices;

(f) The use and care of required personal protective equipment;

(g) An on-the-job review of the practices necessary to perform job assignments safely; and

(h) Recognition of safety and health hazards associated with the employee's specific work tasks, including using measures and work practices to prevent or control those hazards.

(4) ~~((The employer))~~ You must document and maintain current records of required training, including:

~~((a))~~ (a) Who was trained;

~~((b))~~ (b) The date(s) of the training; and

~~((c))~~ (c) The signature of the trainer or ~~((the employer))~~ yours.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-51510 Safety and health meetings. (1) ~~((The employer))~~ You must hold safety and health meetings at ~~((the following intervals:~~

~~(a) Each time the employer moves to a new job site; and~~

~~(b) Monthly after the initial job site meeting))~~ least monthly.

(2) A safety and health meeting must be held each time you move logging or timber felling operations to a new job site.

Note: When moving to a new job site, site specific hazards should be identified and discussed during the prejob safety meeting.

(3) Safety and health meetings may be conducted individually, in crew meetings, in larger groups, or as part of other staff meetings.

~~((3))~~ (4) Attendance and subject(s) must be documented.

(Note: When moving to a new job site, site-specific hazards should be identified and discussed during the prejob safety meeting.)

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-51520 First-aid training. (1) At logging worksites, each employee, including supervisors, must ~~((receive or have received))~~ hold a valid certificate of first-aid and CPR training. New employees not holding a valid ~~((first-aid card))~~ certificate of training must be trained within ~~((a reasonable time, not to exceed six months from hiring))~~ six months of being hired and they must be working on a crew where at least one person holding a valid certificate of first-aid and CPR training is present at all times.

EXCEPTION: Log truck drivers are not required to receive first-aid and CPR training if they are not involved with falling, yarding, loading, or processing logs.

(2) ~~((Each employee's first-aid and CPR training and/or certificate of training must be current.))~~ At road construction and maintenance worksites, whenever two or more employees are present, a person or persons holding a valid certificate of first-aid and CPR training must be present at all times.

(3) At least two persons holding a valid certificate of first-aid training must be present or available at all times in sorting yard operations.

(4) First-aid and CPR training must cover at least the following:

- (a) The definition of first aid.
- (b) Legal issues of applying first aid (Good Samaritan Laws).
- (c) Basic anatomy.
- (d) Patient assessment and first aid for the following:
 - (*) (i) Respiratory arrest.
 - (*) (ii) Cardiac arrest.
 - (*) (iii) Hemorrhage.
 - (*) (iv) Lacerations/abrasions.
 - (*) (v) Amputations.
 - (*) (vi) Musculoskeletal injuries.
 - (*) (vii) Shock.
 - (*) (viii) Eye injuries.
 - (*) (ix) Burns.
 - (*) (x) Loss of consciousness.
 - (*) (xi) Extreme temperature exposure (hypothermia/hyperthermia).
 - (*) (xii) Paralysis.
 - (*) (xiii) Poisoning.
 - (*) (xiv) Artificial ventilation.
- (e) CPR.
- (f) Applying dressings and slings.
- (g) Treating strains, sprains, and fractures.
- (h) Immobilizing injured persons.
- (i) Handling and transporting injured persons.
- (j) Treating bites, stings, or contact with poisonous plants or animals.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-51530 First-aid kits. (1) ~~((The employer)) You~~ must provide first-aid kits(~~(:~~

~~(a) At each worksite where trees are being cut (e.g., falling, bucking, limbing);~~

~~(b) At each active landing/logging site; and~~

~~(c) In the absence of readily accessible first-aid supplies such as first-aid kits, first-aid stations, first-aid rooms or their equivalent, all transport vehicles, log trucks, speeders, road graders and similar equipment must be equipped with not less than a ten package first-aid kit; and~~

~~(d) The number of first-aid kits and the content of each kit must reflect the degree of isolation, the number of employees, and the hazards reasonably anticipated at the worksite.~~

~~(2) Following is the minimally acceptable number and type of required first-aid supplies to meet the requirements of subsection (1)(a) and (b) of this section.)) at all worksites.~~

(2) Worksite first-aid kits must contain the following minimum supplies at all times:

Note: The contents of the first-aid kit listed should be adequate for small worksites of two or three employees. For larger or multiple logging operations conducted at the same location, the employer should provide additional first-aid kits or additional quantities of supplies in the first-aid kits.

- (a) Gauze pads (at least 4 x 4 inches).
- (b) Two large gauze pads (at least 8 x 10 inches).
- (c) Box adhesive bandages (band-aids).
- (d) One package gauze roller bandage at least 2 inches wide.
- (e) Two triangular bandages.
- (f) Wound cleaning agent such as sealed moistened tow-lettes.
- (g) Scissors.
- (h) At least one blanket.
- (i) Tweezers.
- (j) Adhesive tape.
- (k) Latex gloves.
- (l) Resuscitation equipment such as resuscitation bag, airway, or pocket mask.
- (m) Two elastic wraps.
- (n) Splint.
- (o) One stretcher or equivalent weather proof litter at any three or more person worksite, and at all logging sites.

(3) Transport vehicles, log trucks, ~~((speeders))~~ and road graders must have at least the following number and type of first-aid supplies:

- ~~((4)) (a) Ten~~ package kit.
- ~~((4)) (b) One~~ pkg. adhesive bandages, 1" (16 per pkg.).
- ~~((4)) (c) One~~ pkg. bandage compress, 4" (1 per pkg.).
- ~~((4)) (d) One~~ pkg. scissors and tweezers (1 each per pkg.).
- ~~((4)) (e) One~~ pkg. triangular bandage, 40" (1 per pkg.).
- ~~((4)) (f) One~~ pkg. antiseptic soap or pads (3 per pkg.).
- ~~((5)) (g) Five~~ pkgs. employer's choice.

(4) When six or more employees are generally being transported on any one trip, the first-aid kit must be increased in size following the requirements of subsection (2) of this section. Subsection (2)(h), (n) and (o) are optional.

(5) ~~((The employer)) You~~ must maintain the contents of each first-aid kit in a serviceable condition.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-517 Lockout/tagout procedures. (1) ~~((The employer)) You~~ must establish and implement written procedures for lockout/tagout to prevent the accidental start up or release of stored energy of ~~((logging))~~ machinery that is shut down for repairs, maintenance, or adjustments.

(2) Lockout/tagout procedures must contain specific steps for:

- (a) Shutting down, blocking, and securing machines to control hazardous energy;
- (b) Locking and/or tagging out machinery; and
- (c) Release from lockout/tagout.

(3) Lockout/tagout procedure details must include at least the following:

(a) Employees performing maintenance, repairs, or adjustments have knowledge of the hazardous energy to be controlled and the means to control the energy.

- (b) ~~((Logging))~~ Machine shutdown.
- (*) (c) Apply brakes, swing locks, etc.
- (*) (d) Place the transmission in the manufacturer's specified park position.

((★)) (e) Lower to the ground or secure each moving element such as, but not limited to, blades, booms, grapples, buckets, saws, and shears to prevent a release of stored energy.

((★)) (f) Shut down machinery and ensure that a responsible person removes and maintains possession of the ignition/master key.

((★)) (g) Engage hydraulic safety locks when applicable.

((★)) (h) Before working on hydraulic or air systems, relieve pressure by bleeding tanks or lines and operate controls to dissipate residual stored energy (pressure).

((★)) (i) Place lockout and/or tagout device.

(4) (~~((Release from lockout/tagout.))~~) Before lockout or tagout devices are removed and machinery is started, the work area must be inspected to ensure that all tools have been removed, guards are replaced, and employees are in the clear.

(5) (~~((The employer))~~) You must provide padlocks and/or tags for locking and/or tagging out (~~((logging))~~) machinery that are durable enough to withstand the environment.

(6) Tags must have a legend such as "do not start" or "do not operate." Tags must be placed so they are obvious to anyone attempting to operate the machinery.

Note: In lockout, padlocks are commonly used to prevent access to ignition/master switches or battery disconnects.

(7) (~~((Energy sources.))~~) Stored or residual energy such as that in elevated machine members, rotating saws, hydraulic systems, air pressure and springs, must be dissipated or restrained by methods such as grounding, repositioning, blocking, chaining, bleeding down, etc.

(8) (~~((The employer))~~) You must provide training to ensure that the purpose and function of the lockout/tagout program are understood by employees performing maintenance, repairs, or adjustments covered by this section. This program must be reviewed at least annually and training provided as needed. This training may be accomplished through safety meetings.

Note: See appendix 2 for a sample lockout/tagout program (energy control program).

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

WAC 296-54-519 Miscellaneous requirements. (1) Spikes, drift bolts, nails, or other metal must not be left in any recoverable log.

(2) (~~((The employer))~~) You must provide and maintain portable fire extinguishers on each machine and vehicle.

(3) Machines, vehicles, and portable powered tools (unless diesel powered) must not be fueled while the motors are running.

Note: See WAC 296-54-58130(3) for exceptions related to helicopters.

(4) Flammable liquids must be stored, handled, transported, and used according to the requirements of chapter 296-24 WAC, Part E, and the following:

(a) Flammable liquids must not be transported in the driver compartment or in any passenger-occupied area of a machine or vehicle.

(b) Flammable liquids, including chain-saw and diesel fuel, may be used to start a fire, if the employer ensures that in the particular situation its use does not create a hazard for an employee.

(5) Smoking is prohibited in battery charging areas and within fifty feet of all refueling operations. Precautions must be taken to prevent open flames, sparks, or electric arcs in battery charging or refueling areas.

(6) When charging batteries:

(a) The vent caps must be kept in place to avoid electrolyte spray;

(b) Caps must be functioning; and

(c) The battery (or compartment) cover(s) must be open to dissipate heat.

(7) Tools and other metallic objects must be kept away from the tops of uncovered batteries.

(8) Explosives and blasting agents must be stored, handled, transported, and used according to the requirements of chapter 296-52 WAC, Possession and handling of explosives.

NEW SECTION

WAC 296-54-520 Chain shot awareness and prevention. "Chain shot" is the high velocity separation and ejection of a piece or pieces of cutting chain from the end of a broken chain in mechanized timber harvesting. Chain shot exposes both machine operators and bystanders to a risk of serious injury or death. Chain shot typically occurs near the drive end of the cutting system but can also come from the bar tip area.

A chain shot consists of two breaks in a chain. First, the loop of the chain breaks and forms two ends. One end moves past the drive sprocket or bar tip and is rapidly accelerated due to a whip-like motion of the chain end. The whip action causes the second break, releasing small parts at extremely high speed.

NEW SECTION

WAC 296-54-52001 Chain shot awareness and prevention training. (1) Employees who will be working on or around any kind of machinery equipped with a hydraulic driven bar and chain are to receive chain shot awareness training appropriate to their job. This training must include:

(a) Clearance distances for workers around the machine. All bystanders and nonessential personnel should stay clear of the shot cone. Chain shot can travel in excess of 250 feet from the saw. See Illustration 1 for an explanation of the impact area for chain shot awareness.

(b) Personnel expected to maintain chains are to be trained in the proper repair, assembly, inspection, and sharpening as specified by the chain manufacturer.

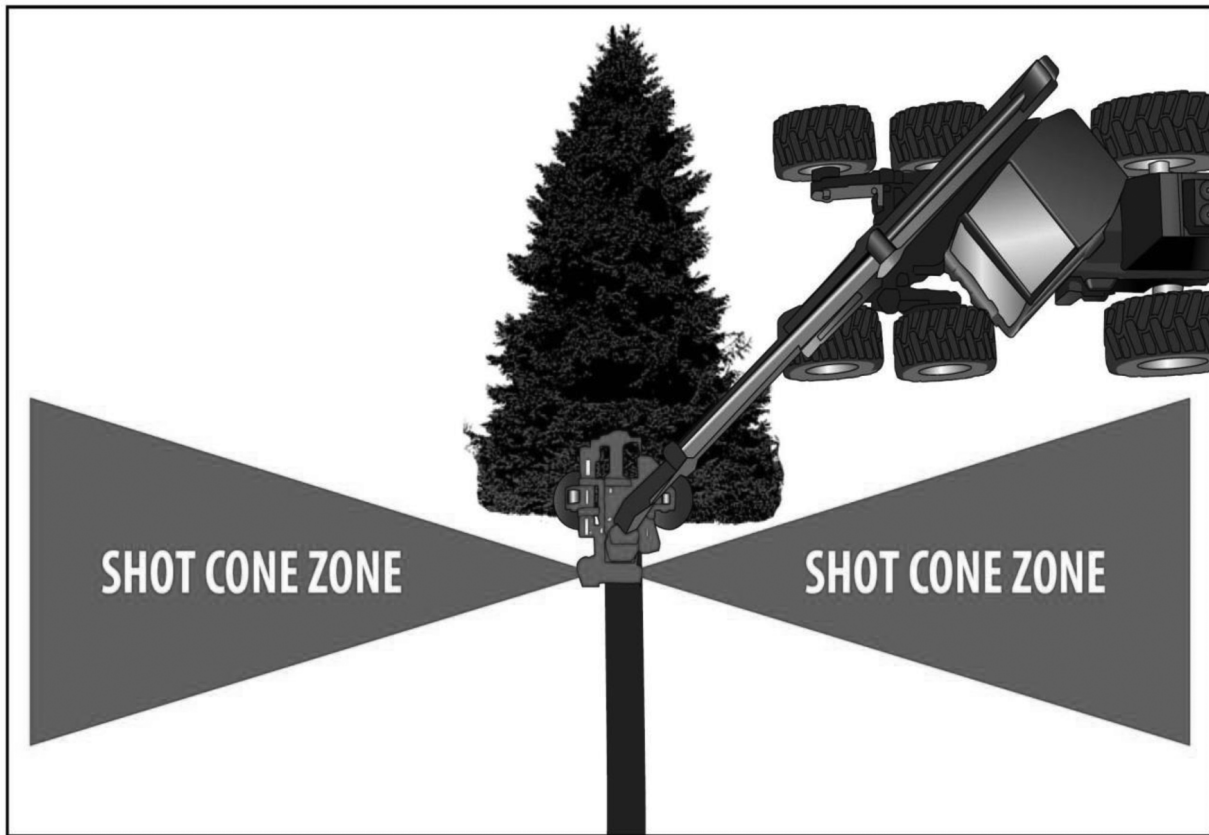
(2) Operators are to be trained specifically on:

(a) When possible, position the saw bar so the chain shot cone is directed away from the operator and other personnel.

(b) How to properly inspect the cutting system and report any problems.

Note: See WAC 296-54-99015 Appendix 6 - Sample chain shot training program.

Illustration 1: Shot Cone Zone

NEW SECTION**WAC 296-54-52003 Cutting system inspection.** (1)

The cutting system must be inspected before initial use during each workshift. Inspections must include:

- (a) The lubrication system for leaks or damage.
 - (b) The chain for cracks or worn/damaged parts.
 - (c) The bar for wear and straightness and ensure the tip is properly secured.
 - (d) Sprocket.
 - (e) Chain catcher if equipped; and
 - (f) Chain shot guard if equipped.
- (2) You must repair defects or damage or the unserviceable machine must be replaced before beginning work.

NEW SECTION**WAC 296-54-52005 Cutting system maintenance.** (1)

- Sharpen chains to the manufacturer's specifications.
- (2) Maintain proper bar and chain lubrication, making sure to use the right type and amount of lubricant.
- (3) Replace the drive sprocket when it has excessive wear.
- (4) Clean guide bar grooves and oil port holes regularly.
- (5) To keep wear even the bar should be flipped regularly.

NEW SECTION**WAC 296-54-52007 Cutting system operation.** (1)

When possible, keep the chain shot cone clear of the operator and other persons.

- (2) Follow the chain manufacturer's recommendation for chain speed. "Boosting" or exceeding the manufacturer's recommendation is prohibited.
- (3) Maintain proper chain tension.

AMENDATORY SECTION (Amending WSR 01-17-033, filed 8/8/01, effective 9/1/01)

WAC 296-54-521 Motor vehicles. (1) The seats of each vehicle must be securely fastened.

(2) Each school bus type vehicle that will transport nine or more passengers must have a substantial barricade behind the driver. The barricade must extend from the floor to at least a level even with the top of the driver's head.

(3) Adequate provisions must be made for safe entrances and exits. Each vehicle must have mounting steps and handholds wherever it is necessary to prevent an employee injury when entering or leaving the vehicle.

(4) When equipment or tools are carried inside the vehicle, ((the employer)) you must provide and use racks, boxes, holsters or other means to transport tools so that a hazard is not created for any vehicle operator or passenger.

(5) No one may enter or exit any vehicle until the vehicle is completely stopped.

(6) Employees must keep all parts of the body within the vehicle.

(7) Heat and light must be available in the passenger area of the vehicle. Use of stoves in vehicles is prohibited.

(8) Vehicles designed to transport nine or more passengers must have an emergency exit that:

(a) Is at least six and one-half square feet in area, with the smallest dimension being at least eighteen inches;

(b) Is placed at the back of the vehicle or near the back on the side opposite the regular entrance; and

(c) Has an unobstructed route to and from the exit.

(9) When no fuel is transported in the crew vehicle, a minimum rated 5/BC dry chemical fire extinguisher must be kept in the passenger compartment. When fuel is transported on the crew vehicle according to subsection (12) of this section, a minimum rated 10/BC dry chemical fire extinguisher must be kept in the passenger compartment. The extinguishing agent must be nontoxic and preferably noncorrosive.

Note: For additional requirements relating to portable fire extinguishers see WAC 296-800-300.

(10) Exhaust systems must be designed and maintained to eliminate the exposure of passengers to toxic agents.

(11) Operating and maintenance instructions must be available in each vehicle. Each vehicle operator and maintenance employee must comply with the operating and maintenance instructions.

(12) Fuel must be transported or stored only in approved safety containers. Enclosed areas where fuels are carried or stored must be vented so that a hazardous concentration of fumes cannot accumulate. All containers or drums must be properly secured to the vehicle while being transported. Commercially built pick-up or flatbed trucks with a maximum seating capacity of six persons may be used to carry fuel in or on the bed of such vehicles, if the fuel is not carried in the crew compartment. Van-type vehicles may be used to carry fuel only when a vapor-proof bulkhead is installed between the passenger compartment and storage compartment. A maximum of forty-two gallons of gasoline may be carried or stored in the compartment and each container must have a maximum capacity seven gallons.

(13) Motor vehicles used regularly to transport employees must be covered against the weather and equipped and operated according to applicable state of Washington motor vehicle laws.

(14) All operators of crew vehicles must be experienced drivers and have a valid operator's license for the class of vehicle being operated.

(15) Dump trucks must only be used in an emergency to transport workers and have adequate safety chains or locking devices that eliminate the possibility of the body of the truck being raised while employees are riding in the truck. "**Emergency**" means any unforeseen circumstances that call for immediate action when danger to life or danger from fire exists.

(16) An effective means of signaling must be provided for communication between the driver and the passengers being transported when they are in separate compartments.

(17) The passenger load limit of a crew vehicle must not exceed the seating capacity of the vehicle.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-523 Inspection and repair of equipment and vehicles. (~~Defective equipment.~~) (1) **Defective** equipment in need of repair must be reported to management as soon as possible and such equipment must not be used until repairs are completed if there is a possible hazard to safety of the operator or other employees.

(2) Each vehicle used to perform any logging operation must be inspected before initial use during each workshift. Defects or damage must be repaired or the unserviceable vehicle must be replaced before work is commenced.

(3) Each vehicle, machine and piece of equipment used to perform any logging operation must be maintained in serviceable condition.

AMENDATORY SECTION (Amending WSR 06-07-142, filed 3/21/06, effective 5/1/06)

WAC 296-54-527 Seat belts. Each machine equipped with ROPS or FOPS and each vehicle (whether provided by the employee or (~~the employer~~) **you**) must meet the following requirements:

(1) A seat belt must be provided for each vehicle, vehicle occupant, and all machines equipped with ROPS.

Note: An employer is not required to retrofit a vehicle that was not equipped with seat belts at the time of manufacture.

(2) Each employee must use the available seat belt while the vehicle or machine is being operated.

(3) Each employee must securely and tightly fasten the seat belt to restrain the employee within the vehicle or machine cab.

(4) Each machine seat belt must meet the requirements of the Society of Automotive Engineers Standard SAE J386, June 1985, "Operator Restraint Systems for Off-Road Work Machines." Seat belts need not be provided for equipment that is designed **only** for stand-up operations.

(5) Seat belts must not be removed from any vehicle or machine. (~~The employer~~) **You** must replace each seat belt that was removed from any vehicle or machine that was equipped with seat belts at the time of manufacture.

(6) Each seat belt must be maintained in a serviceable condition.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-529 Overhead electrical lines clearance. One of the following conditions must exist in work areas where equipment or machines are operated near electrical distribution and transmission lines:

(1) The lines have been deenergized and visibly grounded at the point of work;

(2) Insulating barriers that are not a part of or an attachment to the equipment or machinery are erected to prevent physical contact with the lines; or

(3) All of the following requirements are met:

	Line Voltage	Required minimum clearance between lines and any part of equipment or machine
(a)	50 kV or below	ten feet
(b)	over 50 kV	ten feet plus 0.4 inch for each 1 kV over 50 kV, or twice the length of the line insulator, but never less than ten feet
For equipment or machinery in transit with no load and any boom or extended equipment lowered:		
(c)	50 kV or below	four feet
(d)	50-345 kV	ten feet
(e)	345-750 kV	sixteen feet

(4) Someone must be designated to observe proper clearance and to give timely warning for all operations where it is difficult for the operator to see well enough to maintain the clearance.

(5) All overhead wires (~~shall~~) must be considered energized unless the line owner or the electrical utility authorities ensure that it is not an energized line and has been visibly grounded.

(6) Special precautions must be taken to prevent trees from falling into power lines. (~~The employer~~) You must notify the power company immediately if a felled tree makes contact with any power line. Before falling any tree that appears will hit a power line, the employer must notify the power company. If a tree does contact a power line, all employees must remain clear of the area until the power company ensures that there is no electrical hazard.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-531 Truck roads. (1) Haul road grades must not exceed 20 percent unless:

- (a) Special equipment and safety measures are used to accommodate the steep grade; or
- (b) The logging equipment or truck is specifically designed and approved by the manufacturer for operation on grades over twenty percent.

(2) Truck road surfaces must meet the following requirements:

- (a) Truck roads are wide enough and even to ensure the safe operation of equipment.
- (b) Hazards such as broken planking, deep holes, large rocks, logs, etc., that make equipment operation unsafe, must be immediately corrected.
- (c) On blind curves, one of the following must be implemented:
 - (i) Truck roads are wide enough for two trucks to pass;
 - (ii) A signal system is maintained; or
 - (iii) Speed is limited so that the vehicle can be stopped in one-half the visible distance.

(3) For all portions of roads under (~~the~~) your direct control (~~of the employer, the employer~~), you must ensure that:

- (a) All danger trees are fell a safe distance back from the roadway;
- (b) Rocks that present a hazard are cleared from banks; and
- (c) Brush and other materials that obstruct the view at intersections or on sharp curves are cleared.
- (4) All bridge structures used in the logging operation must meet the following requirements:
 - (a) Structures are adequate to support the maximum imposed loads without exceeding the maximum safe working unit stresses;
 - (b) Bridges have an adequate number of reflectors to clearly define the entrance to the bridge;
 - (c) Structures are maintained in good condition and repair;
 - (d) Structures are inspected at least annually by a qualified authorized person; and
 - (e) A record maintained of each inspection must be available to a representative of the department on request.
- (5) Shear rails must be installed on both outside edges of bridges. The shear rails must be securely fastened and made of material able to withstand the impact generated by contact with the wheels of a loaded vehicle. The top of shear rails must be at least fifteen inches above the bridge surface. Bridges in use before 1980 with outside shear rails a minimum of ten inches high or center shear rails at least five inches high are permissible until repairs are needed.
- (6) (~~The employer~~) You must implement measures that minimize dust to the degree that visibility is sufficient to allow an operator to safely operate a vehicle. Vehicle operators must travel at a speed consistent with road conditions.
- (7) Pneumatic-tired equipment must have fenders as described in the Society of Automotive Engineers Technical Report J321a.

(8) Employee(s) must be assigned to flag on roads or provide other equivalent protection where hazardous conditions are created from logging such as, but not limited to:

- (a) Running wire rope lines or rigging across road grades, excluding guylines and standing skylines if lines remain a safe distance above the road to allow a vehicle to pass under; or
- (b) The movement of logs, chunks, or debris across or suspended over road grades.

EXCEPTION: Where there is no through traffic, such as on a dead end road or where the property owner's permission or proper authority is granted to close a section of road, warning signs and barricades may be used instead of flagger(s).

AMENDATORY SECTION (Amending WSR 06-07-142, filed 3/21/06, effective 5/1/06)

WAC 296-54-537 Chain saws. (1) Operators must inspect chain saws daily to ensure that handles and guards are in place, and controls and other moving parts are functional.

- (a) Each chain saw placed into initial service after February 9, 1995, must be equipped with a chain brake and, shall otherwise meet the requirements of ANSI B175.1-1991

"Safety Requirements for Gasoline-Powered Chain Saws" and the requirements of this chapter;

(b) Each chain saw placed into service before February 9, 1995, must be equipped with a protective device that minimizes chain saw kickback, i.e., reduced kickback bar, chains, bar tip guard, or chain brake;

(c) No chain saw kickback device shall be removed or otherwise disabled; and

(d) Chain saws must be operated and adjusted in accordance with the manufacturer's instructions.

(2) Saw pinching and subsequent chain saw kickback must be prevented by using wedges, levers, guidelines, and saw placement, or by undercutting.

(3) Chain saws must be:

(a) Shutoff while fueling;

(b) Fueled outdoors at least ten feet from anyone smoking or from other potential sources of ignition; and

(c) Started at least 10 feet (3 m) from the fueling area.

(4) Chain saws must have a positive means of stopping the engine.

(5) Unless the carburetor is being adjusted, the chain saw must be shut off before any adjustments or repairs are made to the saw, chain, or bar.

(6) Using a chain saw with a faulty clutch is prohibited.

(7) The bar must be handled only when the chain saw motor is shut off.

(8) The drive end of the chain saw bar must be guarded.

(9) The chain saw must have an automatic throttle control that will return the engine to idle speed when the throttle is released.

Note: Idle speed is when the engine is running and the chain does not rotate on the bar.

(10) The chain saw must be started:

(a) With the chain brake engaged, unless the manufacturer prohibits; or

(b) On the ground, log or where otherwise firmly supported. Drop starting a chain saw is prohibited.

(11) A chain saw must be held with the thumbs and fingers of both hands encircling the handles during operation unless ~~((the employer))~~ you demonstrate~~((s))~~ that a greater hazard is posed by keeping both hands on the chain saw in a specific situation.

(12) The chain saw must be carried in a manner that will prevent operator contact with the cutting chain and muffler.

(13) The chain saw must be shut off or at idle before the faller starts to retreat.

(14) The chain saw must be shut down or the chain brake engaged whenever a saw is carried:

(a) Further than 50 feet (15.2 m); or

(b) Less than 50 feet if conditions such as, but not limited to, the terrain, underbrush, and slippery surfaces, may create a hazard for an employee.

(15) ~~((Using a chain saw to cut directly over head is prohibited.))~~ A chain saw must not be used to cut directly overhead in a manner where the operator could lose control of the saw, or that would cause limbs, chunks of bark or pieces of wood to fall on the operator.

(16) The chain saw operator must be certain of footing before starting to cut. The chain saw must not be used in a position or at a distance that could cause the operator to

become off-balance, to have unsteady footing, or to relinquish a firm grip on the saw.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-539 Falling and bucking—General. (1) ~~((The employer))~~ You must assign work areas so that:

(a) Trees cannot fall into an adjacent occupied work area;

(b) The distance between work areas is at least two tree lengths of the trees being fell (see Figure 1: Distance Between Work Areas);

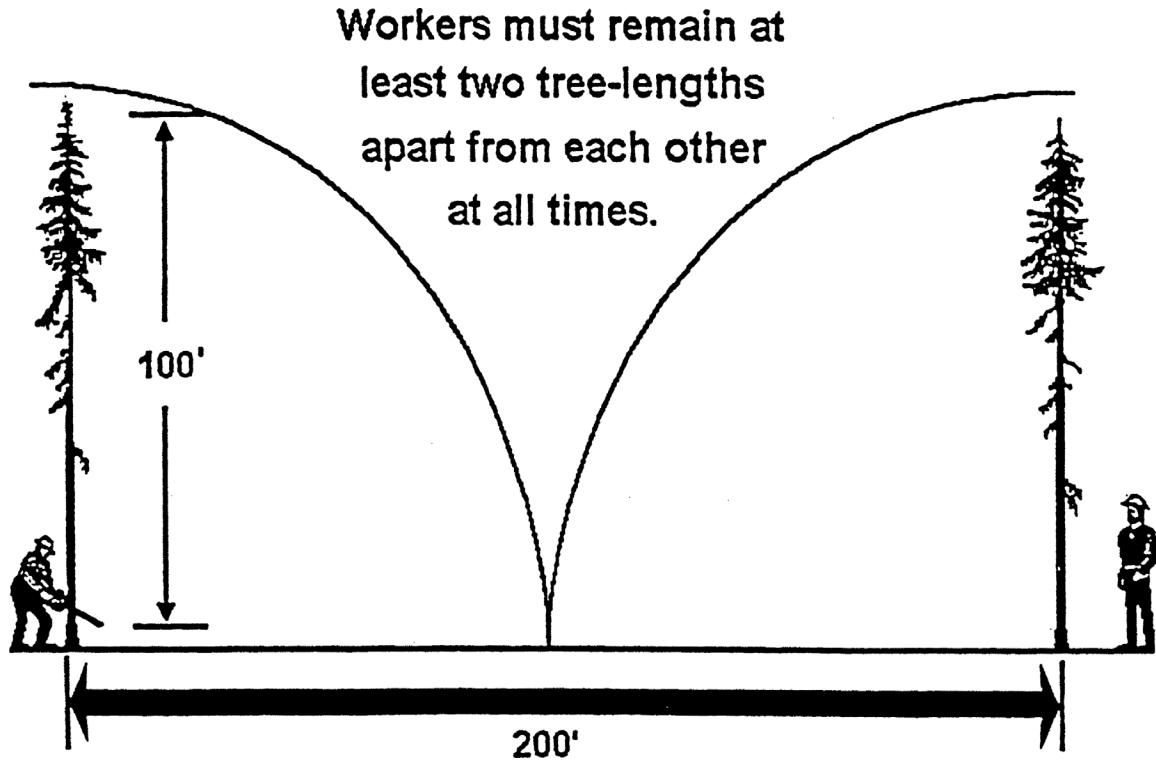


Figure 1: Distance Between Work Area

(c) The distance between work areas reflects the degree of slope, the density of the growth, the height of the trees, the soil structure and other hazards reasonably anticipated at the worksite; and

(d) A distance of more than two tree lengths is maintained between work areas on any slope where rolling or sliding of trees or logs is reasonably foreseeable.

EXCEPTION: This rule does not apply to a team of cutters working on the same tree.

(2) Before falling or bucking, conditions such as, but not limited to, snow and ice accumulation, the wind, the lean of tree, dead limbs, and the location of other trees, must be evaluated by the cutter and precautions taken so a hazard is not created for an employee. Accumulations of snow and ice that may create a hazard for an employee must be removed before beginning falling in the area, or the area must be avoided.

(3) Employees must not approach a cutter closer than two tree lengths of trees being felled until the cutter has acknowledged that it is safe to do so.

(4) A competent person, properly experienced in this type of work, must be placed in charge of falling and bucking operations. Inexperienced workers must not be allowed to fall timber, buck logs or windfalls unless working under the direct supervision of an experienced cutter.

(5) Trees must not be fell if the falling tree can strike any line in the logging operation and endanger workers.

(6) Before an employee falls or bucks any tree:

- (a) A sufficient work area must be swamped;
- (b) The cutter must plan and clear an escape path; and

(i) The escape path must extend diagonally away from the expected felling line unless such an escape path poses a greater hazard than an alternate escape path; and

(ii) An escape path must be used as soon as the tree or snag is committed to fall, roll, or slide.

(7) If a cutter has determined a tree cannot be safely fell, the work must stop until the cutter has conferred with a supervisor or an experienced cutter and determined the safest possible work method or procedure.

(8) The person in charge of cutting crews must regularly inspect the work of the cutting crews and is responsible to ensure the work is performed in a proper and safe manner.

(9) All cutters must carry or have in near proximity at all times:

- (a) An axe or suitable tool for driving wedges;
- (b) A minimum of two wedges;
- (c) A whistle carried on the person; and
- (d) A first-aid kit.

(i) The first-aid kit must contain at least two trauma bandages or equivalent absorbent gauze material and a means to secure the material in place.

(ii) First-aid supplies must be kept clean and dry.

(10) A flagperson(s) must be assigned on roads where hazardous conditions are created from falling trees. Where there is no through traffic, such as on a dead end road, warning signs or barricades may be used instead of a flagperson(s).

(11) ~~((A cutter must not fall a tree or danger tree alone when at least two cutters are necessary to minimize hazards.))~~
One worker must not fall a tree or danger tree when the assistance of another worker is necessary to minimize the risk of

injury caused by overhead hazards, loose bark, or interlocked limbs, conditions of the tree, terrain or cutting conditions.

(12) When manual falling or tree jacking, trees must not be felled directly uphill when the probability of the tree sliding back past the stump is likely.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-53910 Falling and bucking—Falling.

(1) Where felled trees are likely to roll and endanger workers, cutting must proceed from the bottom toward the top of the slope, and uphill from previously fell timber.

(2) A cutter must not be placed on a hillside immediately below another cutter or below other logging operations where there is probable danger.

(3) Cutters must be informed of the movement and location of other employees placed, passing, or approaching the vicinity of trees being fell.

(4) ~~Before falling trees, cutters must ((give audible warning when falling trees, and)):~~

~~(a) ((Indicate the direction of fall;~~

~~(b)) Ensure that all ((employees)) personnel are out of reach of the tree; and~~

~~((c))~~ ~~(b) Ensure that all ((employees)) personnel are in the clear of logs, fallen trees, snags, or other trees that may be struck by the falling tree.~~

~~((EXCEPTION: Audible warnings are not required when falling trees less than eighteen inches DBH, if the cutter has an unobstructed view of the entire area that could be affected by the tree being fell and is assured there is no one within the area.))~~

(5) While manual falling is in progress, all logging machines must be operated at least two lengths away from trees being manually fell.

EXCEPTION: This provision does not apply to logging machines performing tree pulling operations or logging machines called upon by the cutter to ground hazard trees. All cutters must be notified of the logging machine's entrance into the area and all falling within two tree lengths of the logging machine must stop.

(6) Trees must be fell into the open whenever conditions permit.

(7) Cutters must not fall into another strip; trade leaners on the line.

(8) Knocking over trees larger than six inches in diameter in lieu of cutting is prohibited, except as provided in WAC 296-54-53910(9).

(9) Domino falling of trees, including danger trees, is prohibited. Domino falling does not include the falling of a single danger tree by falling another single tree into it.

(10) Undercuts large enough to safely guide trees and eliminate the possibility of splitting must be used on all trees over six inches DBH.

For example: A tree with no perceptible lean, having an undercut depth of one-fourth of the diameter of the tree and a face opening equal to one-fifth of the diameter of the tree would meet the requirement.

(11) A cutter must place an adequate undercut and leave enough holding wood to ensure the tree will fall in the intended direction.

(12) The two cuts that form the undercut must not cross where they meet, except where a dutchman is required on either side of the cut.

(13) The undercut must not be made while other workers are in an area into which the tree could fall.

(14) A backcut must be made in each tree being fell.

(a) The backcut must be as level as possible;

(b) The backcut must leave enough hinge wood to hold the tree to the stump during most of its fall so that the hinge is able to guide the tree's fall in the intended direction; and

(c) The backcut must be above the level of the horizontal facecut to provide an adequate platform to prevent kickback.

EXCEPTION: This requirement does not apply to open-faced falling where two angled facecuts are used instead of a horizontal facecut.

(d) In tree-pulling operations the backcut may be at or below the undercut hinge point.

(15) Cutting holding wood instead of using wedges is prohibited. Swing cuts are prohibited except by an experienced person.

(16) Trees with face cuts and/or backcuts must not be left standing unless all the following conditions are met:

(a) The cutter clearly marks the tree;

(b) Discontinues work in the hazardous area;

(c) Notifies all workers who might be endangered; and

(d) Takes appropriate measures to ensure that the tree is safely fell before other work is undertaken in the hazardous area.

(17) Undercuts and backcuts must be made at a height above the highest ground level to enable the cutter to safely begin the cut, control the tree, and have freedom of movement for a quick escape from a falling tree.

(18) Lodged trees must be clearly marked and identified by a predetermined method and all persons in the area must be instructed not to pass or work within two tree lengths of the trees except to ground them.

Note: See Figure No. 2, for illustrations of undercuts.

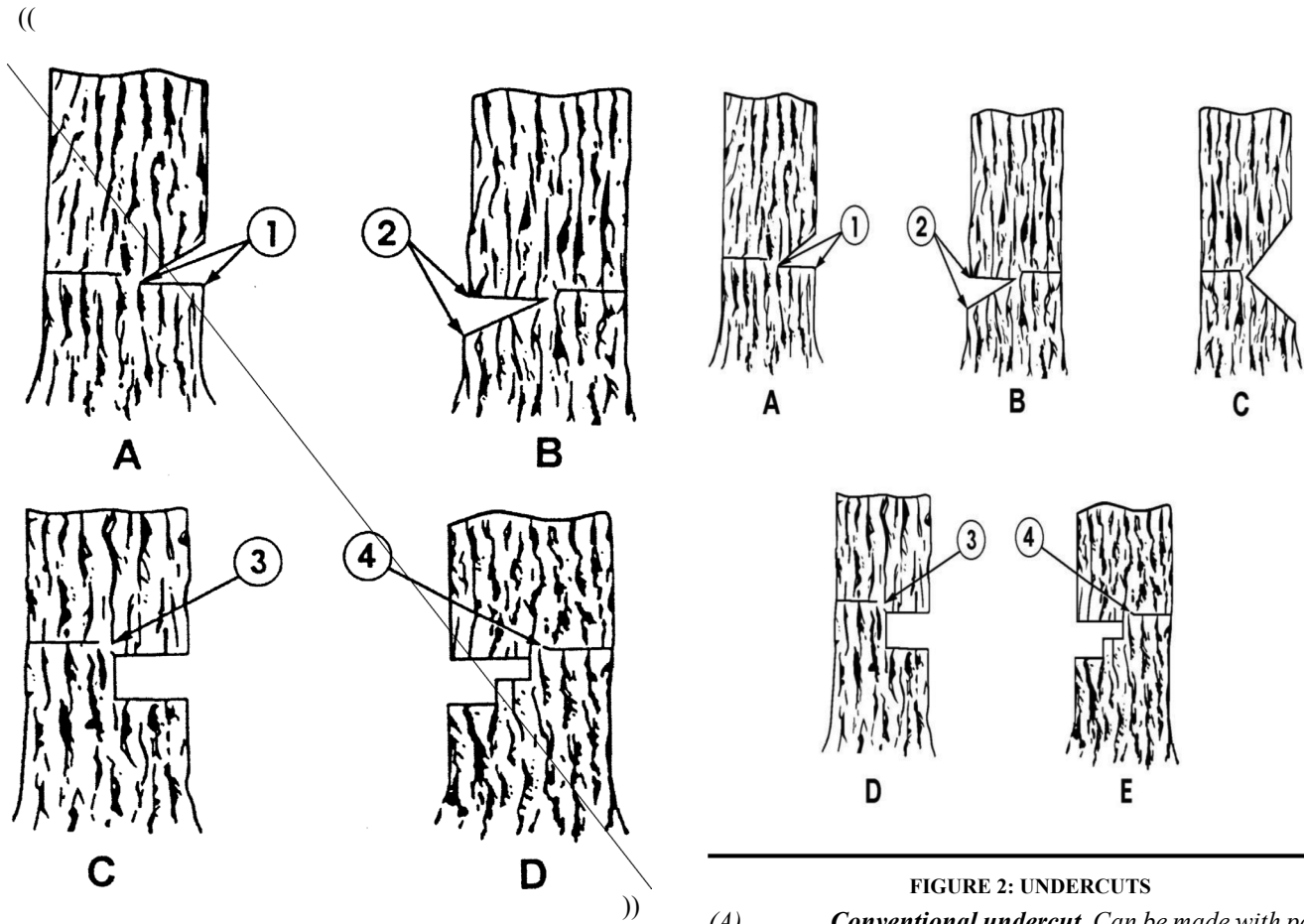


FIGURE 2: UNDERCUTS

- (A) **Conventional undercut.** Can be made with parallel saw cut and axe diagonal cut or both cuts with the saw. Generally used on trees of small diameter.
- (B) **Humboldt undercut.** Leaves square-end log. Same as (A), except that waste is put on the stump.
- (C) **Open face undercut.** Both cuts are made with the saw. The top and bottom face cuts generally form a 90 degree angle when completed. Works best on small diameter trees.
- (D) **Two parallel cuts with the saw.** The material between the cuts is chopped out with an axe-adz (pulaski) combination. Used on trees over 30 inches in diameter.
- (E) **Three parallel cuts with the saw, leaving a step.** Same in principle as (C). Used on trees of very large diameters.

Item

- 1 Undercut depth
- 2 Undercut height
- 3 Holding wood
- 4 Backcut

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-53920 Falling and bucking—Bucking.

(1) The tree (and root wad if applicable) must be carefully examined to determine which way the logs (and root wad) will roll, drop, or swing when the cut is completed. No worker shall be allowed in this danger zone during cutting. The cut must be made from a position that will not expose the cutter to potential injury.

(2) Logs must be completely bucked through whenever possible. If it becomes hazardous to complete a cut, then the log must be marked and identified by a predetermined method. Rigging crews must be instructed to recognize such marks and when possible, cutters must warn the rigging crew of locations where unfinished cuts remain.

(3) Cutters must give a timely warning to all persons within range of any log that may have a tendency to roll after being cut off.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-53930 Falling and bucking—Danger trees. (1) Each danger tree must be carefully checked for signs of loose bark, broken branches and limbs, or other damage before they are fell or removed. Accessible loose bark and other damage that may create a hazard for an employee must be removed or held in place before falling or removing the tree. When a danger tree has elevated loose bark that cannot be removed, the buddy system must be used to watch for and give warning of falling bark or other hazards.

(2) Danger trees that are unsafe to cut must be blown down with explosives or fell by other safe methods.

(3) To avoid use of wedges, which might dislodge loose bark or other material, danger trees (~~(must)~~) should be fell in the direction of lean unless other means (mechanical or dynamite) are used.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-53940 Falling and bucking—Springboards and tree jacking. (1) Springboards must be:

- (a) Made of clear, straight grained sound stock;
- (b) Long enough, wide enough, and strong enough; and
- (c) Replaced when they will no longer safely support the expected load at the extreme end.

(2) Springboard irons must be well lipped and firmly attached with bolts or other equally strong attachment.

(3) Saw chains must be stopped while shifting springboards.

(4) Jack plates must be used with hydraulic tree jacks and the base plate must be seated on solid wood inside the bark ring as close to level as possible.

(5) When necessary, two workers must be present at the tree during hydraulic tree jacking to lend assistance.

(6) Wedges must be used as a follow-up method while using tree jacks, and continuously moved in as the tree is jacked.

(7) All hydraulic tree jacks must be equipped with a check valve and the pump must be equipped with an operable pressure gauge.

(8) Jacking a tree straight uphill is prohibited when the tree may slide back past the stump.

(9) On slopes over 50% grade, tree(s) must at least be quartered to a degree that prevents employees from being exposed to the possibility of sliding or rolling trees or logs.

(10) Trees must not be felled directly uphill when the probability of the tree sliding past the stump is likely.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-541 Tree pulling. (1) The cutter must be responsible for determining if a tree can be safely pulled. If, for any reason, the cutter believes the tree pulling cannot be completed safely, the tree must be conventionally fell.

(2) When using a radio, positive radio communications must be maintained at all times between the tree pulling machine and cutter when tree pulling. An audible signal must be blown when the initial pull is made on the tree and the line is tightened. Hand signals, instead of radio communications and an audible signal, may be used only if the cutter is clearly visible to the tree puller operator.

(3) A choker with bell, or a line and sleeve shackle must be used as the means of attachment around the tree when tree pulling. (See also WAC 296-54-54710(4).) The bight on the line must be the minimum necessary to hold the choker or line around the tree.

(4) The tree pulling machine must be equipped with a torque converter, fluid coupler, or an equivalent device to ensure a steady even pull on the line attached around the tree.

(5) The tree pulling line must have as straight and direct path from the machine to the tree as possible. Physical obstructions that prevent a steady even pull on the tree pulling line must be removed or the line must be rerouted.

(6) ~~((Swashing,))~~ Using a physical object such as a stump or tree in lieu of a block, in order to change tree pulling lead, is prohibited.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-543 Mechanized falling. (1) A flagger(s) must be assigned on roads where hazardous conditions are created from falling trees. Where there is no through traffic, such as on a dead end road, warning signs or barricades may be used instead of a flagger(s).

(2) Self-propelled mobile falling equipment used for falling trees must be designed, or have auxiliary equipment installed, that will cause the tree to fall in the intended direction.

(3) Until the machine operator has acknowledged that it is safe to do so, no employee (~~((shall))~~) will approach a mechanical falling operation closer than a minimum of two tree lengths of the trees being fell.

(4) Mechanized falling must be conducted in a way that does not endanger people or equipment.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-545 Climbing equipment and passline.

(1) Standard climbing equipment must be furnished by ~~((the employer))~~ you. However, the climber may use personal equipment, if it meets the requirements of this section and is permitted by ~~((the employer))~~ you.

(a) The climber may fasten climbing rope by passing it through "D" rings fastened to the belt and around his body before tying it to itself.

(b) An extra set of climbing equipment must be kept at the ~~((jobsite))~~ job site and another person with climbing experience must be present.

(2) The climber must be equipped with a climbing equipment assembly that includes:

(a) A safety belt with double "D" rings;

(b) Steel spurs long and sharp enough to hold in any tree in which they are used; and

(c) A climbing rope (lanyard) made of ~~((wire core hemp, wire or chain construction))~~ a high-quality steel safety chain of 3/16-inch size or larger or a wire core rope.

(3) All climbing equipment must be maintained in good condition.

(4) Defective climbing equipment must be immediately removed from service.

(5) Going up a raised portable spar or tower without suitable equipment is prohibited.

(6) Only an employee directed by the climber may work directly under a tree. The climber must give warning before intentionally dropping any objects or when objects are accidentally dropped.

(7) Running lines must not be moved while the climber is working in the tree, except such "pulls" as climber directs and are necessary for the work.

(8) One experienced person must be assigned to transmit the climber's signals to the machine operator.

(a) This signal person must not otherwise be occupied while the climber is in the tree.

(b) The machine operator must not be distracted while the climber is using the passline.

(c) The designated signal person must be positioned clear of hazards from falling, flying, or thrown objects.

(9) The climber must be an experienced logger with proper knowledge of logging methods and the safety of rigging spar and tail trees.

(10) Noisy equipment such as power saws, tractors, and shovels must not be operated near where a climber is working when such noise will interfere with the climber's signals.

(11) Climbing and passline equipment must not be used for other purposes.

(12) Lineman hooks must not be used as spurs.

(13) Tools used by the climber, except the chain saw, must be safely secured to ~~((climbers))~~ climber's belt when not in use.

(14) Using snaps on a climber's rope is prohibited unless a secondary safety device between the belt and snap is used.

(15) A climber's rope must encircle the tree before the climber leaves the ground, except when the climber is riding the passline.

(16) While the climber is working in the tree, persons must keep ~~((a))~~ a sufficient distance from the tree to be clear of falling objects.

(17) When used, passline blocks must be kept in alignment and free from fouling.

(18) Loose equipment, rigging, or material must either be removed from the tree or securely fastened.

(19) Drums used for passlines must have enough flange depth to prevent the passline from running off the drum at any time.

(20) Passlines must:

(a) Be at least 5/16-inch and not over 1/2-inch in diameter;

(b) Not be subjected to sawing on other lines or rigging, and kept clear of all moving lines and rigging;

(c) Be one continuous length and in good condition with no splices, knots, molles, or eye-to-eye splices between the ends;

(d) Long enough to provide three wraps on the drum before the climber leaves the ground.

(21) Passline chains must be:

(a) At least 5/16-inch alloy or 3/8-inch high test chain and must not contain cold shuts or wire strands;

(b) Attached to the end of the passline with a screw-pin shackle, a slip-pin shackle with a nut and molle, or a ring large enough to prevent going through the pass block; and

(c) Fitted with links or rings to prevent workers from being pulled into the passline block.

(22) Pass blocks must:

(a) Be inspected before placing in each spar and the necessary replacements or repairs made before they are hung;

(b) Have the shells bolted under the sheaves;

(c) Have the bearing pin securely locked and nuts keyed, or the block positively secures the nut and pin;

(d) Be equipped with sheaves at least six inches in diameter; and

(e) Comply with WAC 296-54-54750.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-54730 Rigging—Shackles. (1) Shackles used to hang blocks, jacks, or rigging on spars, must have the pins secured with a nut and cotter key or a nut and molle.

(2) Flush pin, straight-sided shackles must be used for mainline, slackline and skyline extensions.

(3) Shackles with screw pins, knockout or slip pins may be used to anchor skylines, slackline, guyline, and/or guyline extensions.

(4) All other shackles must be screw pin type or have the pin secured with a nut and cotter key or a nut and molle, except as specified elsewhere for specific purposes.

(5) The opening between the jaws of shackles used to hang blocks, jacks, and rigging and to join or attach lines, must ~~((be a maximum of))~~ not be more than one inch greater than the size of the rope, swivel, or shackle to which it is attached.

(6) All shackles must be one size larger than the lines they connect and made of forged steel or material of equivalent strength.

For example: 1-inch Extra Improved Plow Steel (EIPS) line requires a 1 1/8-inch shackle, 1-inch swaged line require 1 1/4-inch shackle.

(7) Shackles used to join lines must be hung with the pin and "U" part of the shackle through the eyes of the lines.

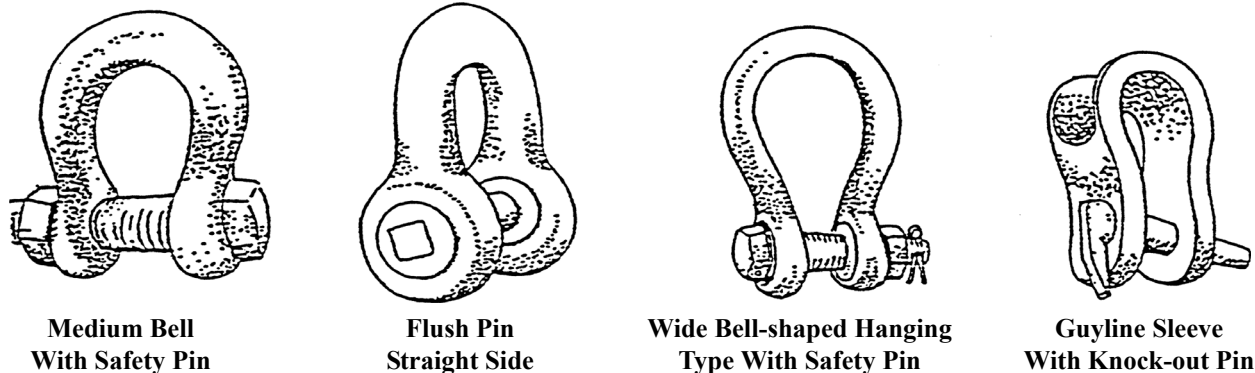


Figure 2-2: Shackles

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-54740 Rigging—Straps. Straps must be used according to the following requirements:

(1) Straps or chokers used to hang corner or tail blocks and straps used to anchor skylines/slacklines must be the size required by Table 1: Strap/Choker Size in Inches.

Running Line Size in Inches	Block or Skyline/ Slackline Hung in Both Eyes	Block Hung in Single Eye
5/16	1/4	1/2
3/8	3/8	9/16
7/16	7/16	5/8
1/2	1/2	3/4
9/16	9/16	7/8
5/8	5/8	1
3/4	3/4	1 1/8
7/8	7/8	1 1/4
1	1	1 3/8
1 1/8	1	
1 1/4	1	
1 3/8	1	
1 1/2	1 1/8	
1 5/8	1 1/4	
1 3/4	1 1/4	
1 7/8	1 3/8	
2	1 3/8	

Note: Both strap ends must be under equal tension.

(2) Straps/chokers must be equivalently sized for the line they support, e.g., extra improved plow steel (EIPS) line

requires EIPS straps or equivalent strength material, and swaged lines require swaged straps or equivalent strength material.

(3) When a single choker or single part strap is used to support lift blocks, jacks and tree shoes they must be adequately sized to support the applied loads.

((3)) (4) When a two part strap or two chokers are used to hang a block, jack, tree shoe, or rigging, both eyes or ends must be under equal tension.

((4)) (5) Where two equal length chokers are used instead of one choker to gain extra breaking strength, they must be arranged in a swede connection.

((5)) (6) Straps or chokers used to hang or support blocks, jacks, tree shoes, or rigging must be replaced when there is evidence of damaged or broken wires. They must:

- (a) Be made of new wire rope; or
- (b) Meet the pull test strength of new wire rope.

((6)) (7) Threading wire rope straps eye through eye is prohibited.

((7)) (8) Synthetic straps must be used as recommended by the manufacturer and only at a flat or downward angle unless wrapped one full turn around the tree support to prevent the strap from riding up on the support.

((8)) (9) Synthetic straps must be removed from service when wear reaches the limits prescribed by the manufacturer or when deterioration is evident.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-54750 Rigging—Blocks. (1) Load-bearing blocks must:

- (a) Not be used for heavier strains or lines than those for which they are constructed;
- (b) Be fitted with line guards;
- (c) Be designed and used to prevent fouling;
- (d) Be kept in proper alignment when in use;
- (e) Be equipped with bearing and yoke pins that will safely withstand the strains imposed, and are securely fastened; and

(f) Be equipped with sheaves designed for the size of the wire rope used.

EXCEPTION: Subsections (b), and (f) do not apply to rig-up ("Tommy Moore") blocks.

(2) Blocks with cracked or excessively worn sheaves or shells must not be used.

(3) Block bearings must be kept well lubricated.

(4) All pins in blocks must be properly secured by "Molle Hogans" or keys of the largest size the pin hole will accommodate. When blocks are hung in spars, pins must be secured with a nut and cotter pin or nut and molle.

(5) Lead blocks used for yarding, swinging, loading and unloading used in wood spars ~~((shall))~~ must:

(a) Be of the type and construction designed for this purpose; and

(b) Be bolted with not less than two bolts through the shells below the sheaves in a manner that will retain the sheave and line in case of bearing pin failure (this does not apply to haulback lead blocks)~~((; and))~~.

~~((;))~~ (6) Mainline blocks ~~((shall))~~ must have a sheave diameter of not less than twenty times the diameter of the mainline.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-54760 Rigging—Hanging blocks. (1) All logging systems must use enough corner or tail blocks to distribute the stress on anchors and attachments.

(2) Blocks (other than passline or haywire) must be hung by one of the following methods:

(a) Hanging the block in both eyes or Ds of the straps ~~((threaded))~~ threading eye through eye of wire rope straps ~~((are))~~ is prohibited; ~~((or))~~

(b) If chokers are used, the ferrule must be properly seated in the socket of the bell or hook to prevent the ferrule from coming unbuttoned. The chokers must be the size required in WAC 296-54-54740(1); or

(c) If single part straps are used, the straps must be secured with a shackle and be the size required in WAC 296-54-54740(1).

(3) The yoke pin of haulback blocks ~~((shall))~~ must be inserted with the head facing the direction from which the rigging approaches.

(4) When there is danger of tail block straps slipping up or off the stump or tree, the stump or tree must be adequately notched or the line properly wrapped and secured. When the tail tree or stump is not secure, it must be tied back.

AMENDATORY SECTION (Amending WSR 06-07-142, filed 3/21/06, effective 5/1/06)

WAC 296-54-557 Wire rope. (1) Wire rope must be of the same or better grade as originally recommended by the equipment manufacturer.

(2) Wire rope must be removed from service when any of the following conditions exist:

(a) In running ropes, six randomly distributed broken wires in one lay or three broken wires in one strand in one lay;

(b) Wear of one-third the original diameter of outside individual wires. Kinking, crushing, birdcaging, or any other damage resulting in distortion of the rope structure;

(c) Evidence of any heat damage from any cause;

(d) Reductions from nominal diameter of more than 3/64-inch for diameters to and including 3/4-inch, 1/16-inch for diameters 7/8-inch to 1-1/8-inch, inclusive, 3/32-inch for diameters 1-1/4-inches to 1-1/2-inches inclusive;

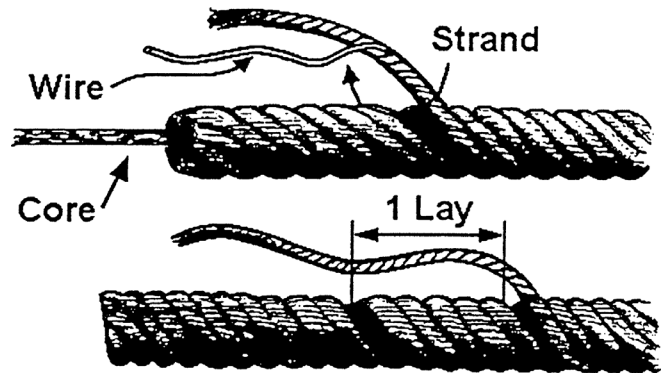
(e) In standing ropes, more than two broken wires in one lay in sections beyond end connections or more than one broken wire at an end connection; and

(f) ~~((In standing ropes, when twelve and one-half percent of the wires are broken within a distance of one wrap (lay); and~~

~~((g)))~~ Corroded, damaged, or improperly applied end connections.

EXCEPTION: Out-of-service requirements do not apply to chokers, grapple opening lines, tag lines, cat and skidder winch lines, and drop lines that are not used to move the carriage. However, an authorized, qualified person must thoroughly inspect these cables adhering to the requirements of WAC 296-54-54710 (1) and (3).

(3) Wire rope must be kept lubricated as conditions of use require.



Wire rope selection is an important element in cable logging.
WIRE ROPE

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-55720 Wire rope—Splicing. (1) Marlin spikes must be used for splicing. The marlin spikes must be:

(a) Large enough for the size of the line being spliced; and

(b) Maintained in good condition~~((;))~~.

(2) Short splices, eye-to-eye splices, cat's paws, and knots are prohibited except for moving nonload-bearing lines. Knots may be used on single drum tractors, grapple pickup lines, and dropline carriage systems using slider bells if the knot is tied on the end of the dropline.

(3) Wire rope one-half inch in diameter or less must be tucked at least two times provided the rope is used only as a strawline.

(4) Eye splices in all regular lay lines and straps must be tucked at least three times.

(5) Eye splices in lang lay lines must be tucked at least four times.

(6) Splices, other than eye splices, in lang lay loading lines are prohibited.

(7) Long splices must be used to permanently join regular lay running line.

(8) The length of line strand to be unraveled to make a long splice in wire rope must be as shown in Table 2: Length of Line Strand. The full length of the splice is twice the length of the rope to be unraveled.

Table 2: Length of Line Strand

Rope Diameter	To Be Unraveled	Total Length
1/4"	8'	16'
3/8"	8'	16'
1/2"	10'	20'
5/8"	13'	26'
3/4"	15'	30'
7/8"	18'	36'
1"	20'	40'
1-1/8"	23'	46'
1-1/4"	25'	50'
1-3/8"	28'	56'
1-1/2"	30'	60'
1-5/8"	33'	66'
1-3/4"	35'	70'
1-7/8"	38'	76'
2"	40'	80'

Note: Unraveling 40 lays of cable on each side will give the required length of splice regardless of the diameter.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-55730 Wire rope—Attaching end fastenings. (1) The manufacturer's recommendations must be followed when attaching sockets and other end fastenings.

(2) Using cable clips or clamps for joining lines is prohibited, except to transfer slack lines from one place to another.

(3) When U-bolt cable clips are used to form eyes, Table 3: U-bolt Cable Clips to Form Eyes must be used to determine the number and spacing of clips.

Table 3: U-bolt Cable Clips to Form Eyes

Improved Plow Steel Diameter of Rope	Number of Clips Forged	Required Other Material	Minimum Space Between Clips
3/8 to 5/8 inch	3	4	-3/4 inch
3/4 inch	4	5	4-1/2 inch

Improved Plow Steel Diameter of Rope	Number of Clips Forged	Required Other Material	Minimum Space Between Clips
7/8 inch	4	5	5-1/4 inch
1 inch	5	6	6 inches
1-1/8 inch	6	6	6-3/4 inch
1-1/4 inch	6	7	7-1/2 inch
1-3/8 inch	7	7	8-1/4 inch
1-1/2 inch	7	8	9 inches

(4) When U-bolt cable clips are used:

(a) For eye splices, the U-bolt wire rope clip must be attached so that the U section is in contact with the dead or short end of the rope (see Figure 3: Eyes Formed with U-bolt Cable Clips);

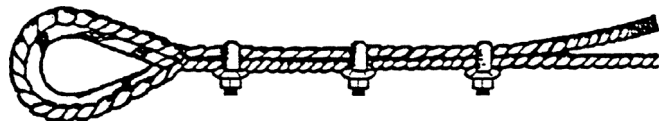
(b) U-bolt cable clips must be spaced at least six rope diameters apart to obtain the maximum holding power. Nuts must be tightened evenly and tightened again after application of the first sustained load. After the rope has been used and is under tension, the clips must be tightened again to take up any looseness caused by the tension reducing the rope diameter;

(c) With high strength wire rope, one more U-bolt cable clip must be added for each grade above improved plow steel; and

(d) Eyes formed with U-bolt cable clips are prohibited with running lines or straps.

(5) Wedge-type quick ferrules, such as "quick nub" must not be used as end fittings for guylines and skylines.

APPLICATION OF WIRE ROPE U-BOLT CLIPS Crosby Type



1. CORRECT METHOD—U-Bolts of clips on short end of rope. (No distortion on live end of rope)



2. WRONG METHOD—U-Bolts on live end of rope. (This will cause mashed spots on the live end of rope)



3. **WRONG METHOD**—Staggered clips; two correct and one wrong. *(This will cause a mashed spot in live end of rope due to wrong position of center clip)*

4. **After rope is in service, and is under tension, tighten clips to take up decrease in rope diameter.**

Figure 3: Eyes Formed with U-bolt Cable Clips

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-561 Guylines. (1) Guylines must be used with any logging equipment when required by the equipment manufacturer.

(2) At least the minimum number and angle of guylines recommended by the equipment manufacturer must be used.

(3) Unless otherwise specified by the equipment manufacturer, guylines must be of the following sizes:

(a) In highlead logging, the head spar guylines must be equal in breaking strength to the mainline.

(b) In skyline logging, if the skyline is one and three-eighths inch or greater, the head spar guylines must be at least one and three-eighths inch. If the skyline is less than one and three-eighths inch, the head spar guylines must be equal in breaking strength to the skyline.

(c) On all other cable logging machines, the guylines must have a breaking strength at least equal to the mainline/skyline, whichever is largest.

(d) Tail/lift and intermediate support trees must be adequately guyed to withstand any stress to which the tree may be subjected.

(4) When guylines are required for spars they must be positioned according to Table 4: Guyline Positioning, or according to the manufacturer's specifications.

Table 4: Guyline Positioning

Number of Guys on Spar	Number of Guys Sharing Load	Positioning Figure Number
1	1	4 - 1 Guyline Case
2	2	5 - 2 Guyline Case
3	3*	6 - 3 Guyline Case
	2	7 - 3 Guyline Case (2)
4	2	8 - 4 Guyline Case
5	2	9 - 5 Guyline Case

Number of Guys on Spar	Number of Guys Sharing Load	Positioning Figure Number
	3	10 - 5 Guyline Case (2)
6	2	11 - 6 Guyline Case
	3	12 - 6 Guyline Case (2)
7	3	13 - 7 Guyline Case
8	2	14 - 8 Guyline Case
	4	15 - 8 Guyline Case (2)

* For metal spars designed to operate without snap guy

(5) ~~((a))~~ Guylines supporting metal spars must be made of plow steel or better material and must be maintained in good condition.

~~((b))~~ Guylines for tail/lift and intermediate support trees may be made of synthetic material and must be used according to the manufacturer's recommendations.

(6) Load bearing guyline angles must be no greater than fifty degrees measured horizontally (See Figure 18: Maximum Angle for Load Bearing Guylines and Skyline). If suitable anchors are unavailable or the terrain is so steep that the guyline angle exceeds fifty degrees, an additional guyline must be rigged to oppose the load.

(7) Guylines must be kept securely tightened while the spar, tree, equipment or rigging they support is in use.

(8) Power driven devices must be securely anchored when used to tighten guylines. Holding such devices is prohibited.

(9) All trees that interfere with proper alignment, placement, or tightening of guylines must be fell.

EXCEPTION: It is acceptable to use the base of a tree/stump or ground conditions to change the lead of a guyline for the purpose of keeping the guyline properly positioned.

(10) Guylines must be hung in a manner to prevent an excessive bight or fouling when they are tightened.

(11) The use of loops or molles for attaching guylines is prohibited.

(12) The U part of shackles or sleeves must be around the guyline and the pin passed through the eye of the guyline.

(13) Splicing of guylines is prohibited except to make an eye splice.

(14) All spliced guyline eyes must be tucked at least three times.

(15) Extensions to guylines must be:

(a) Equal in breaking strength to the guyline to which they are attached; and

(b) Connected only by a shackle connecting two spliced eyes, pressed eyes or by double-end hooks. Connections must have at least one and one-half times the strength of the guyline.

(16) When hanging a block or jack on a guyline, only sleeve-type safety pin shackles must be used. The shackle sleeve (~~shaft~~) will have not less than two and one-half times the line diameter bearing on the guyline.

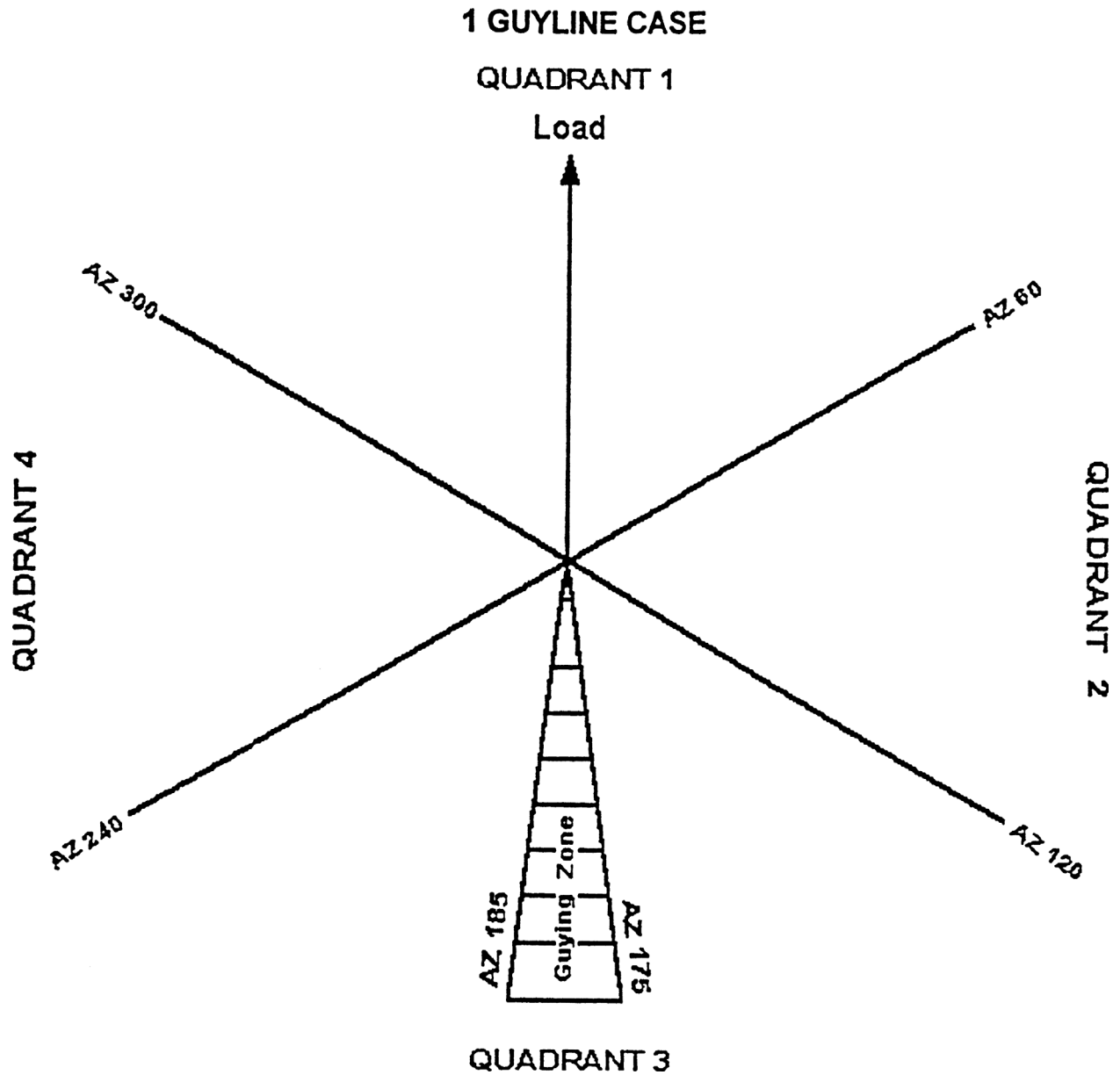


Figure 4: 1 Guyline Case

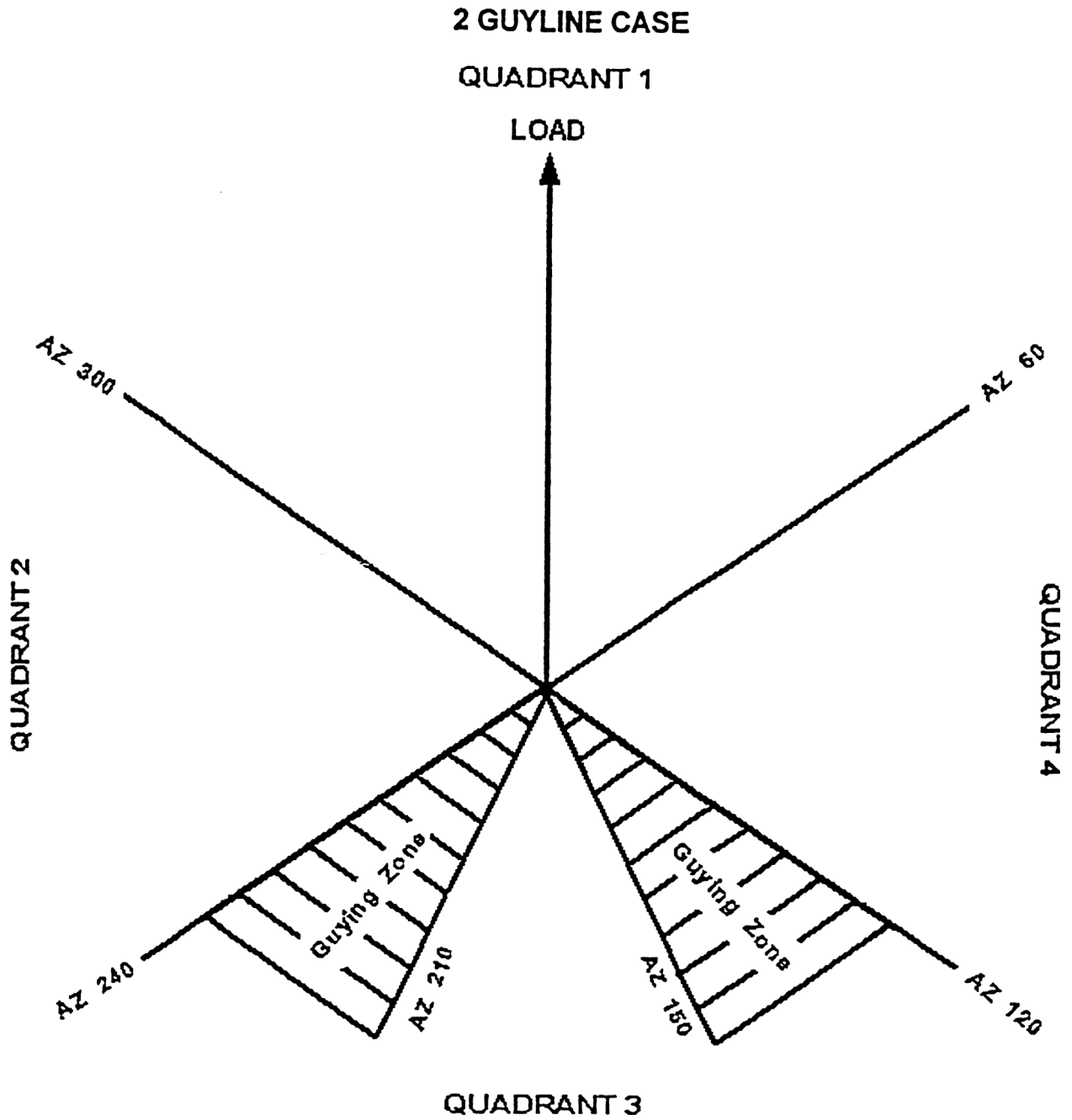


Figure 5: 2 Guyline Case

3 GUYLINE CASE

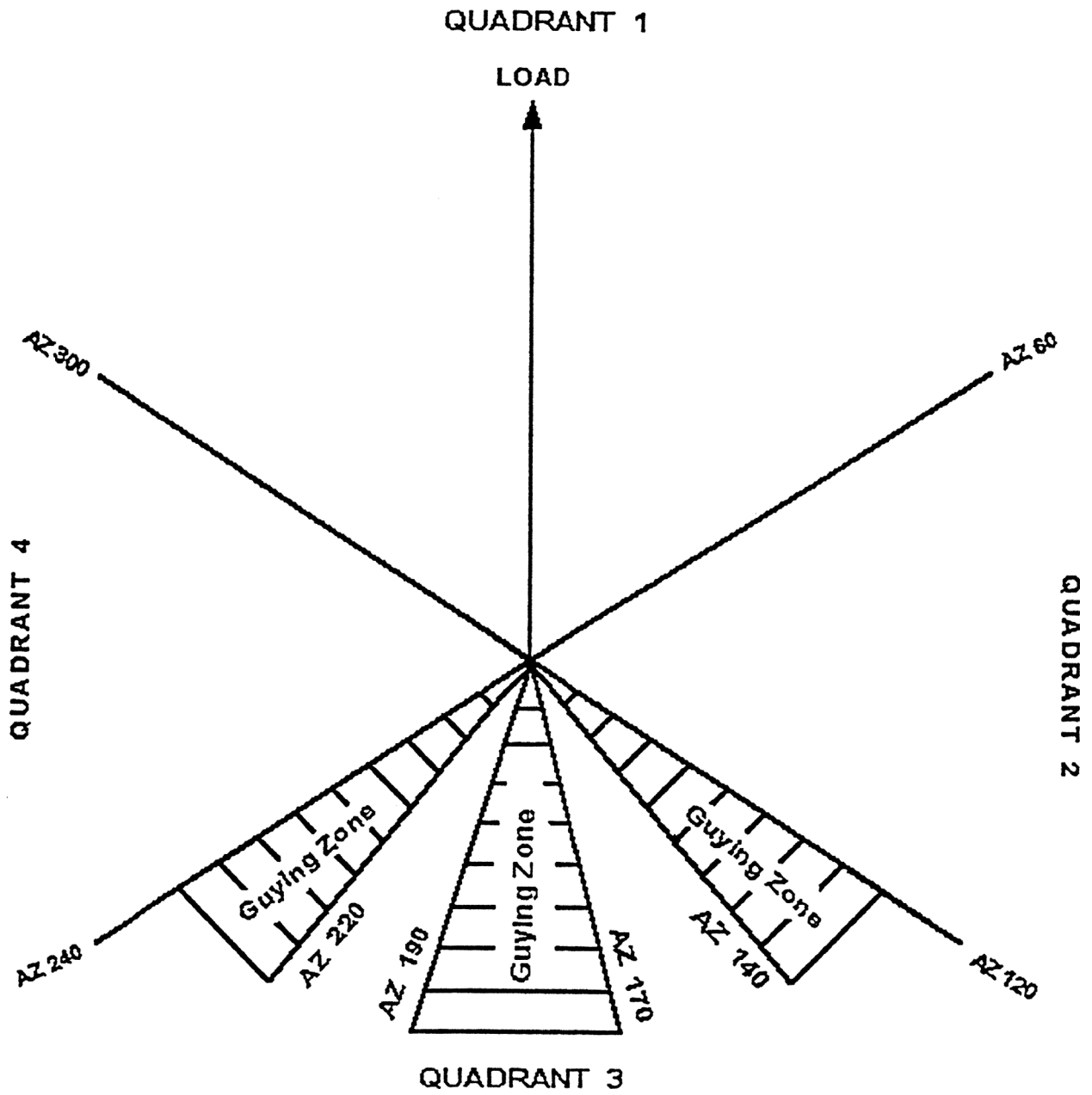


Figure 6: 3 Guyline Case

3 GUYLINE CASE

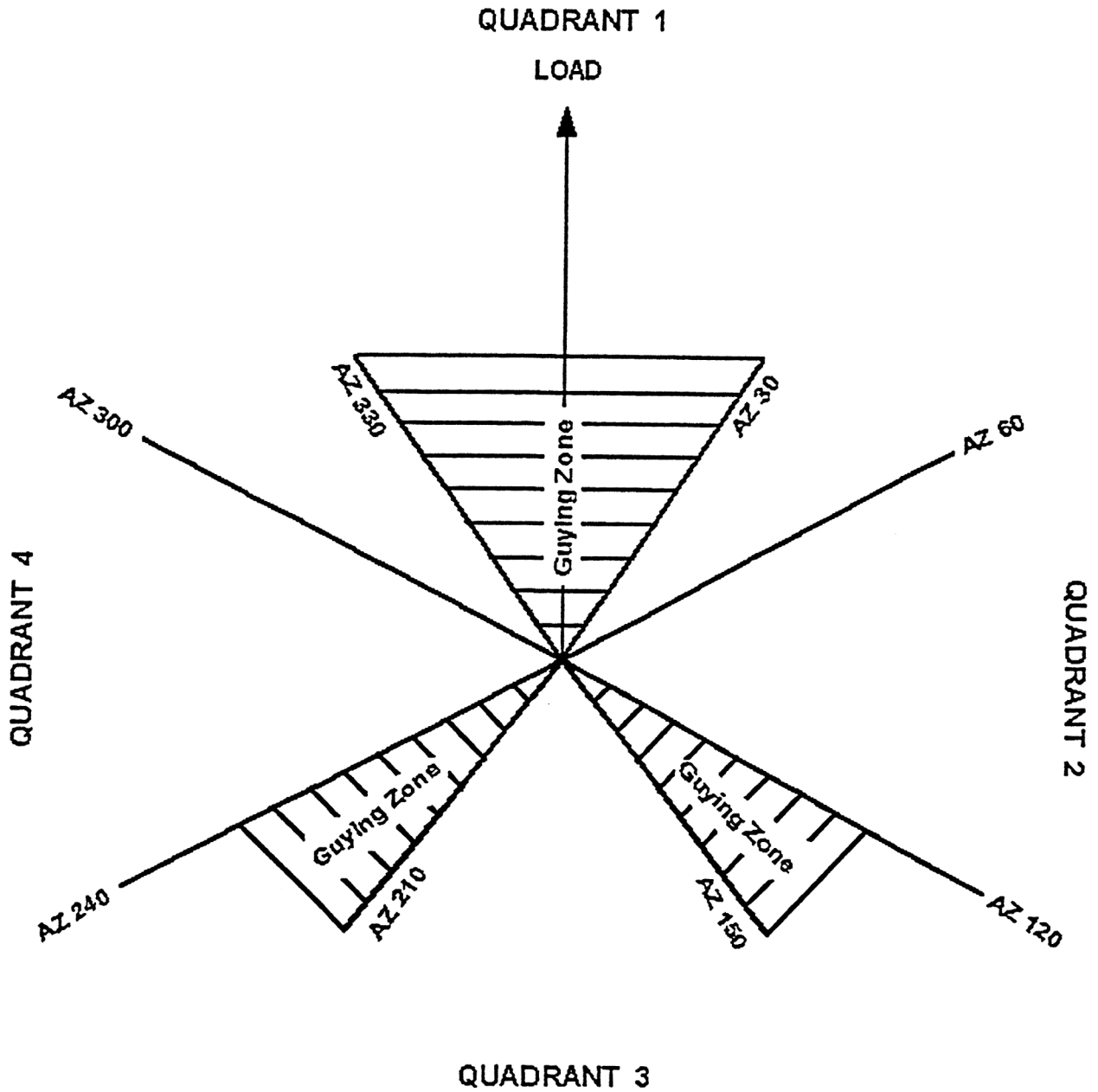


Figure 7: 3 Guyline Case (2)

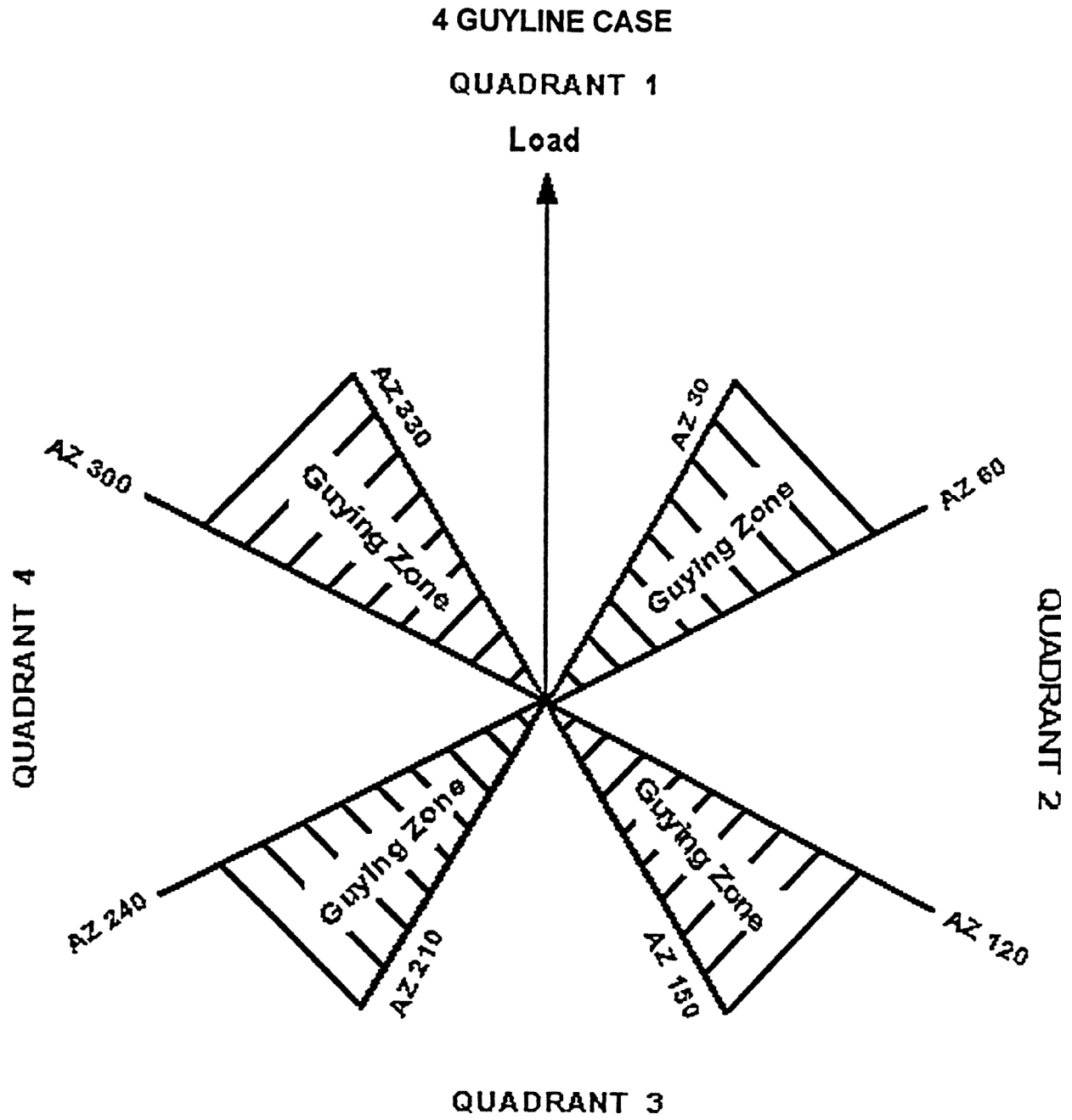


Figure 8: 4 Guyline Case

5 GUYLINE CASE

QUADRANT 1

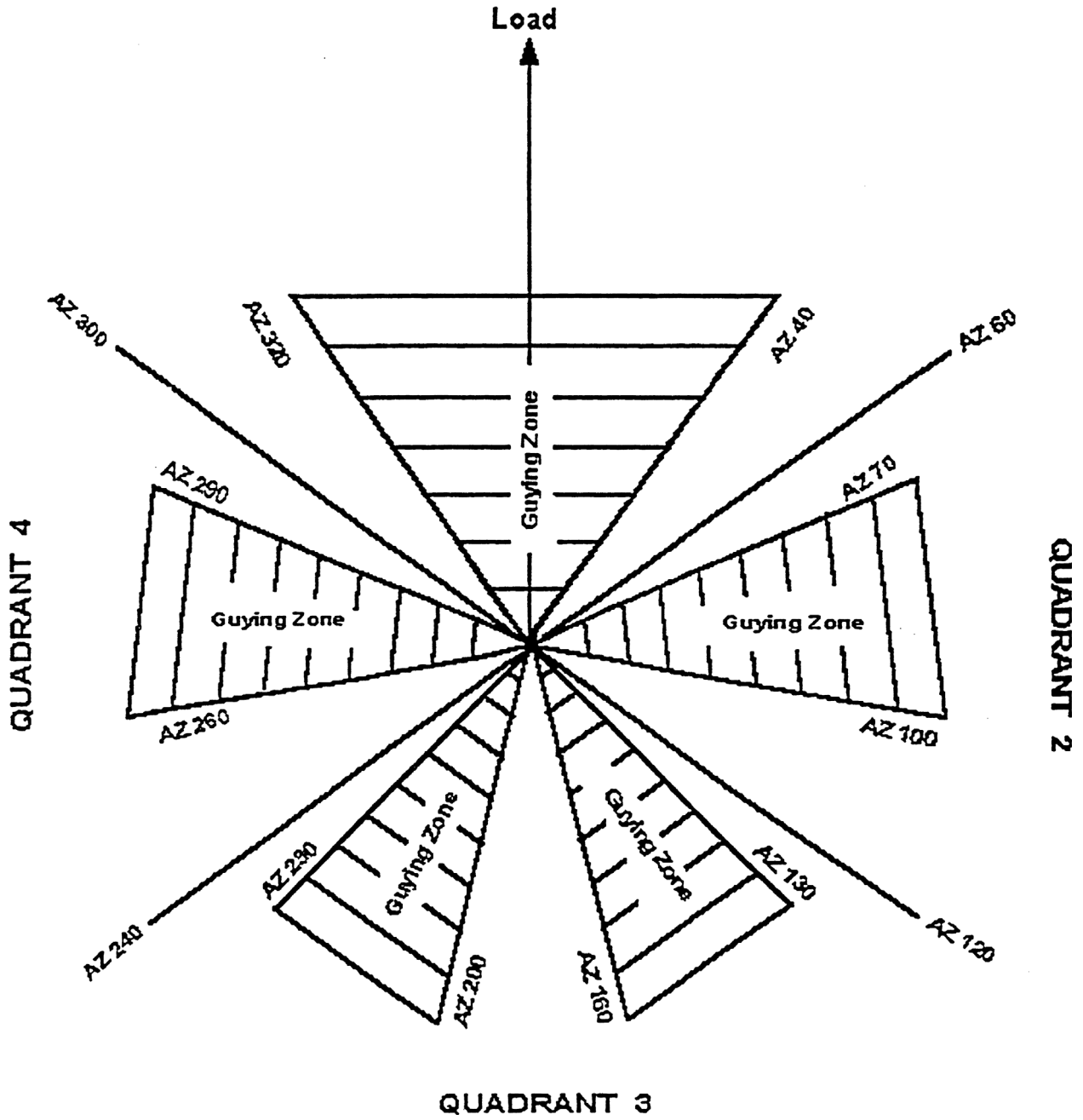


Figure 9: 5 Guyline Case

5 GUYLINE CASE

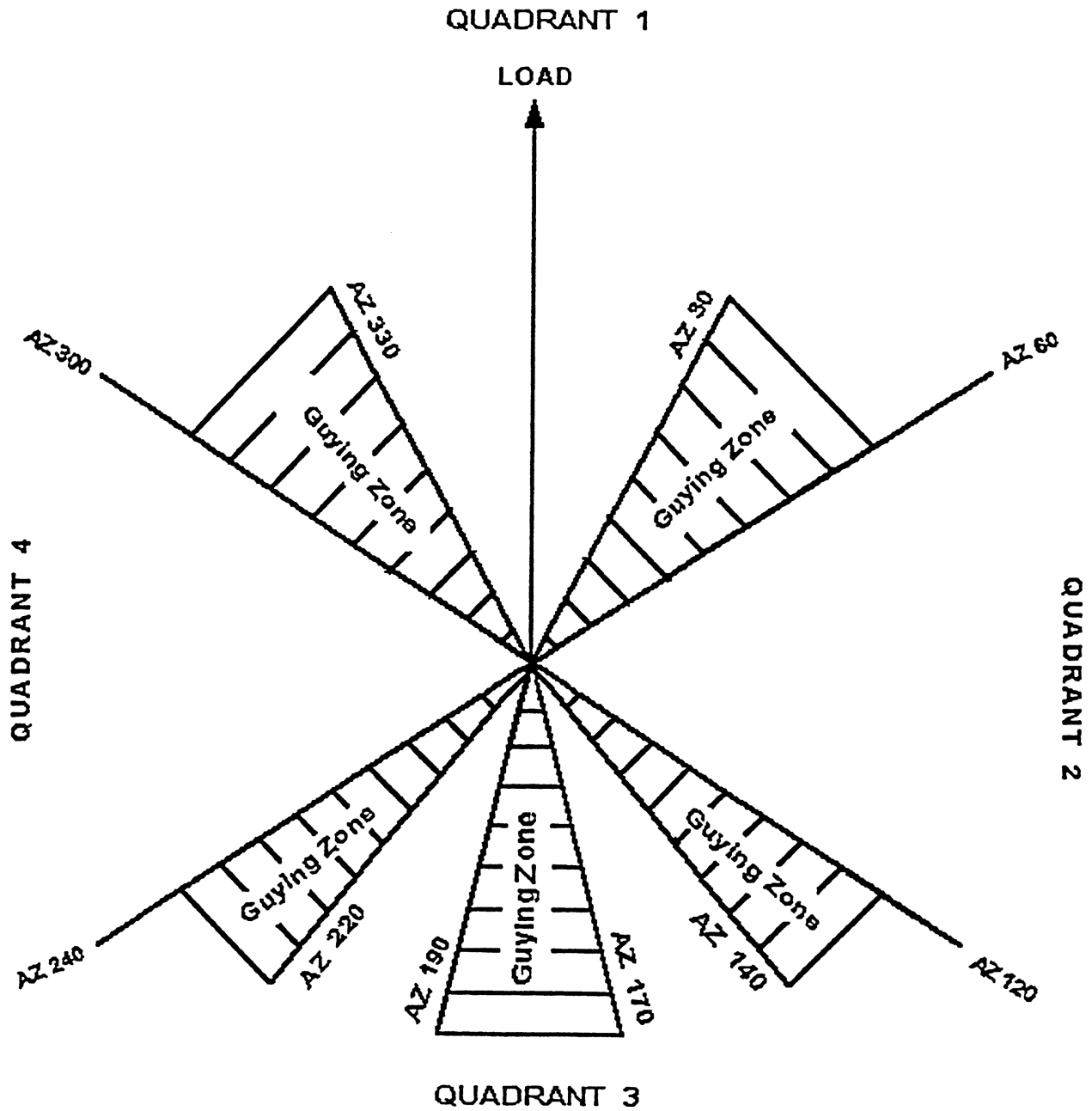


Figure 10: 5 Guyline Case (2)

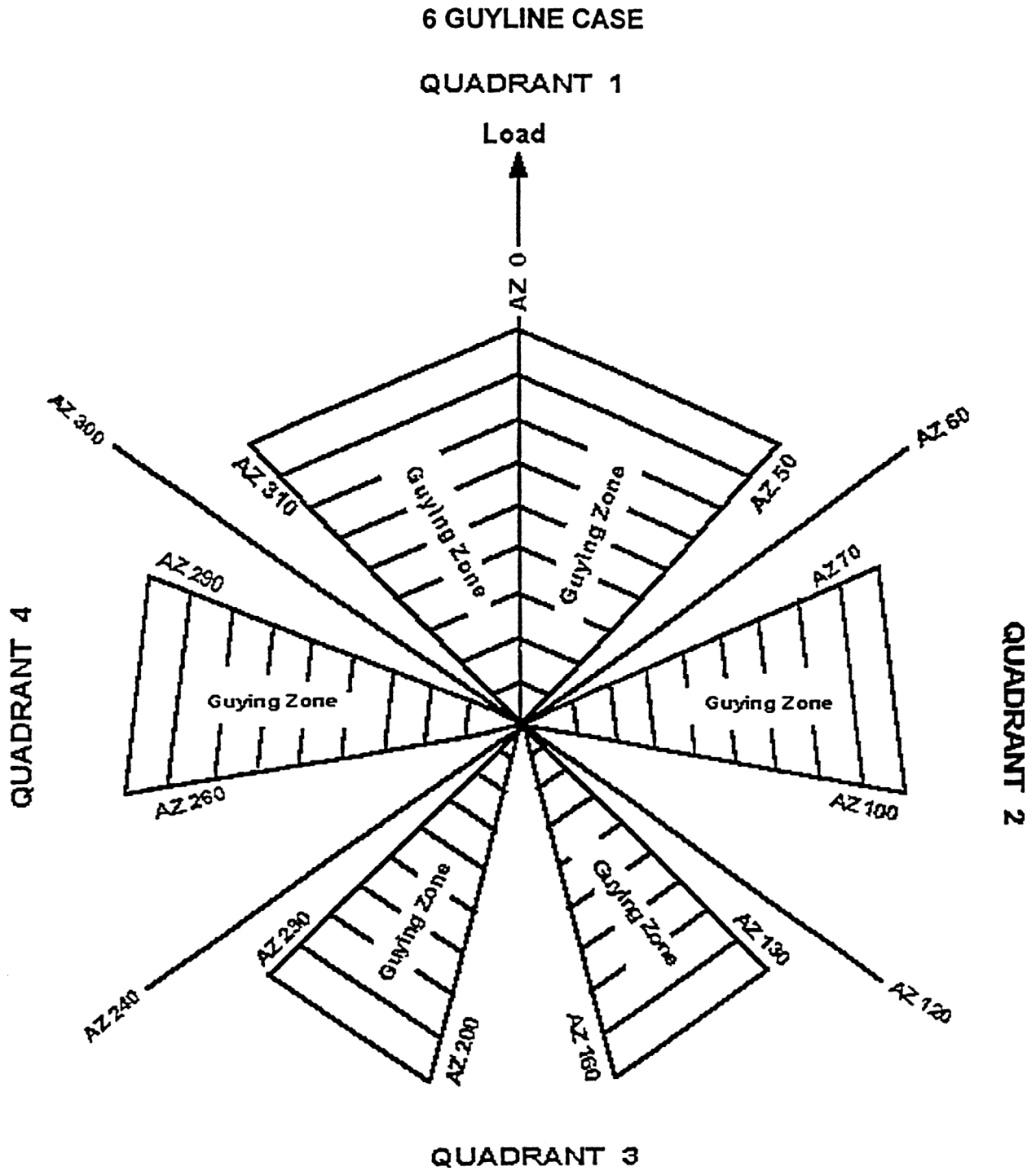


Figure 11: 6 Guyline Case

6 GUYLINE CASE

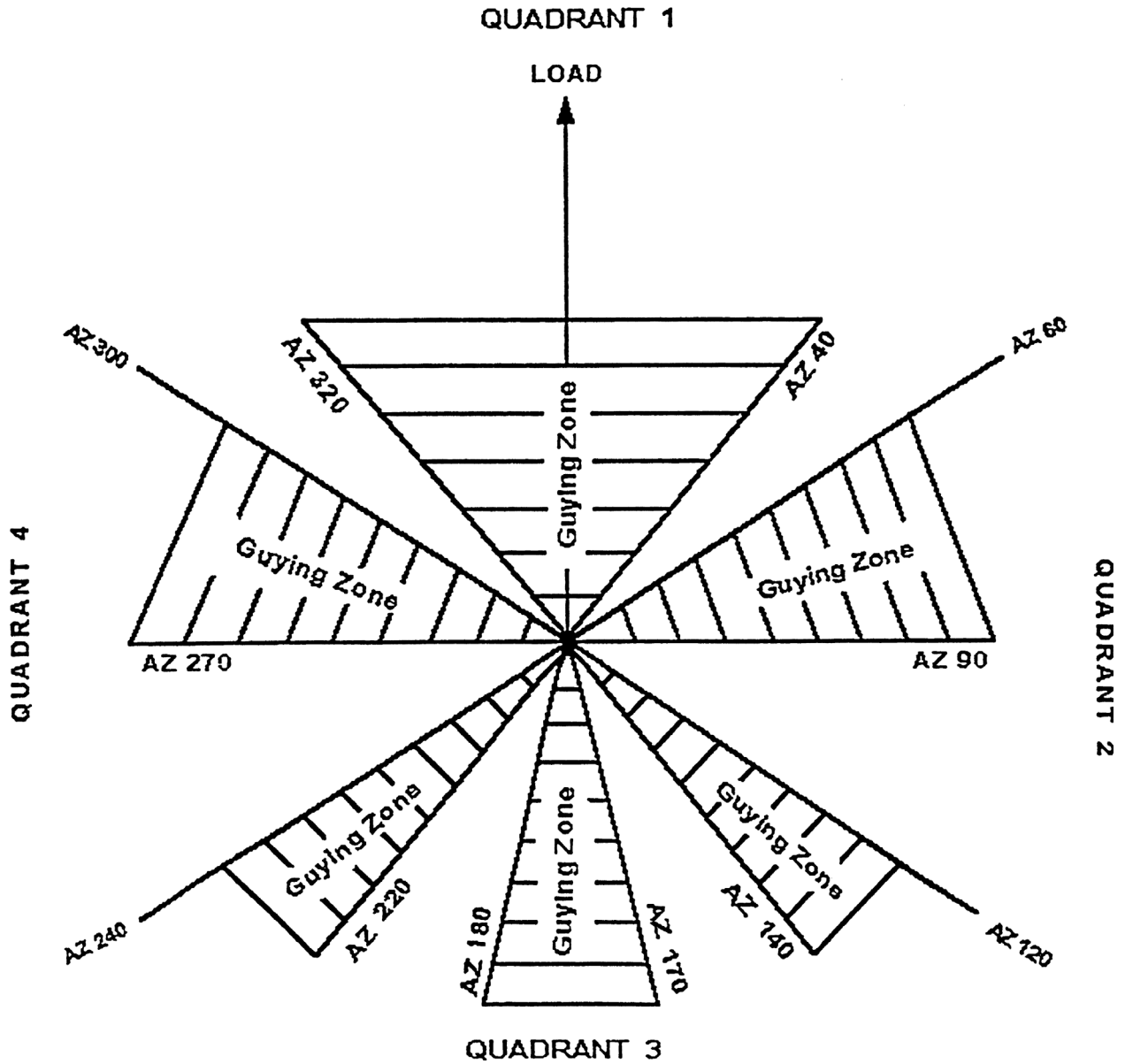


Figure 12: 6 Guyline Case (2)

7 GUYLINE CASE

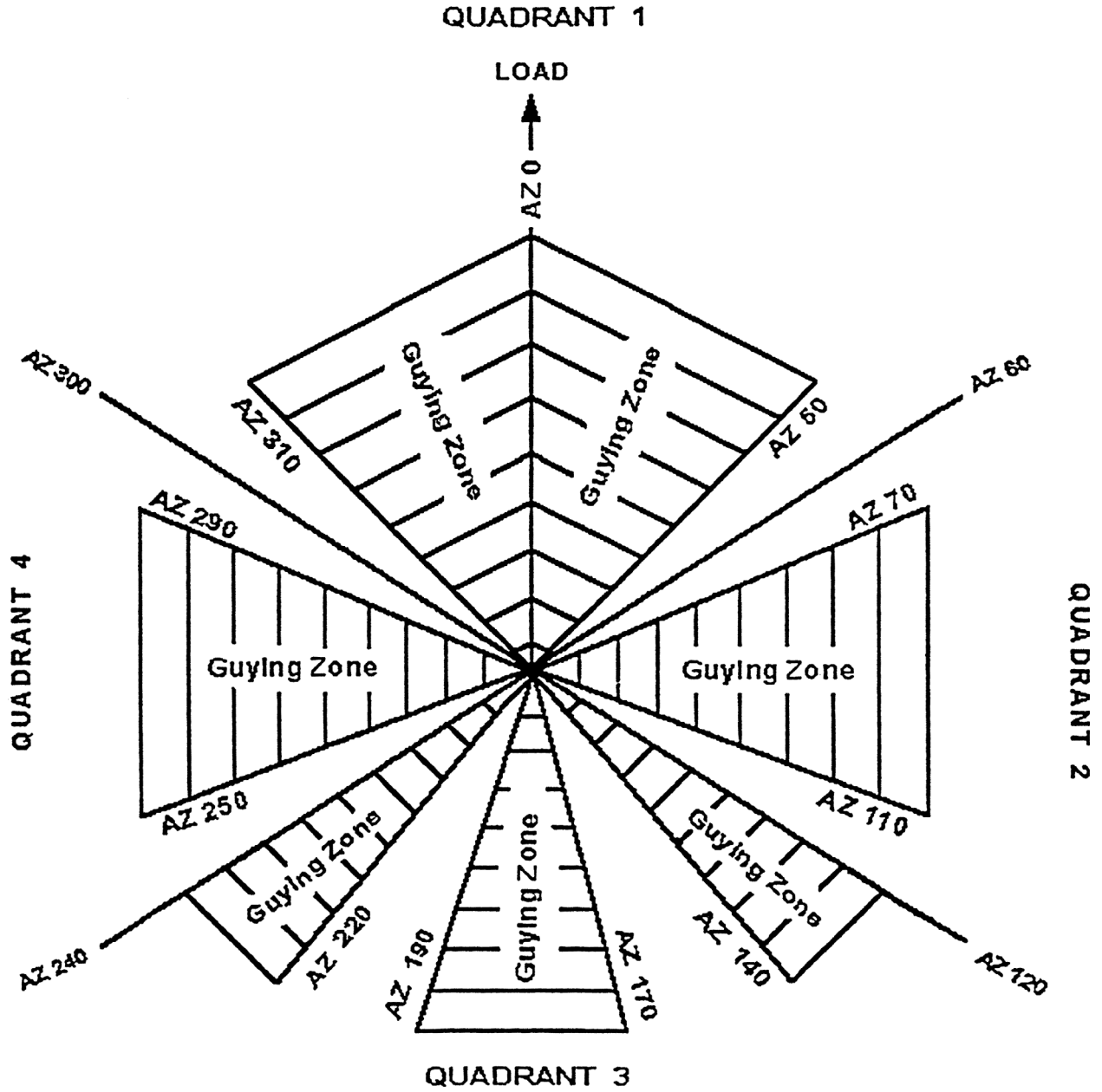


Figure 13: 7 Guyline Case

8 GUYLINE CASE

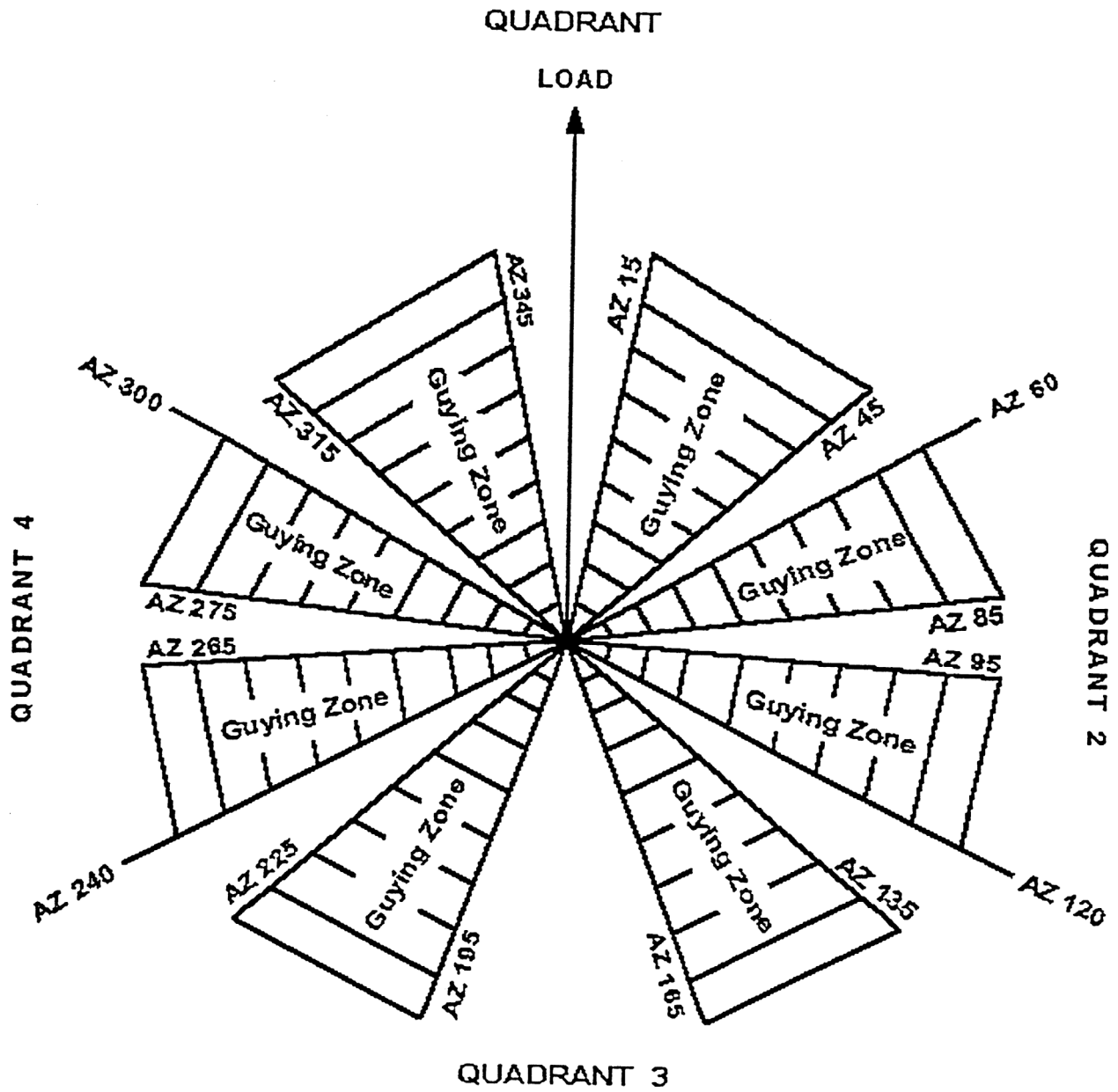


Figure 14: 8 Guyline Case

8 GUYLINE CASE

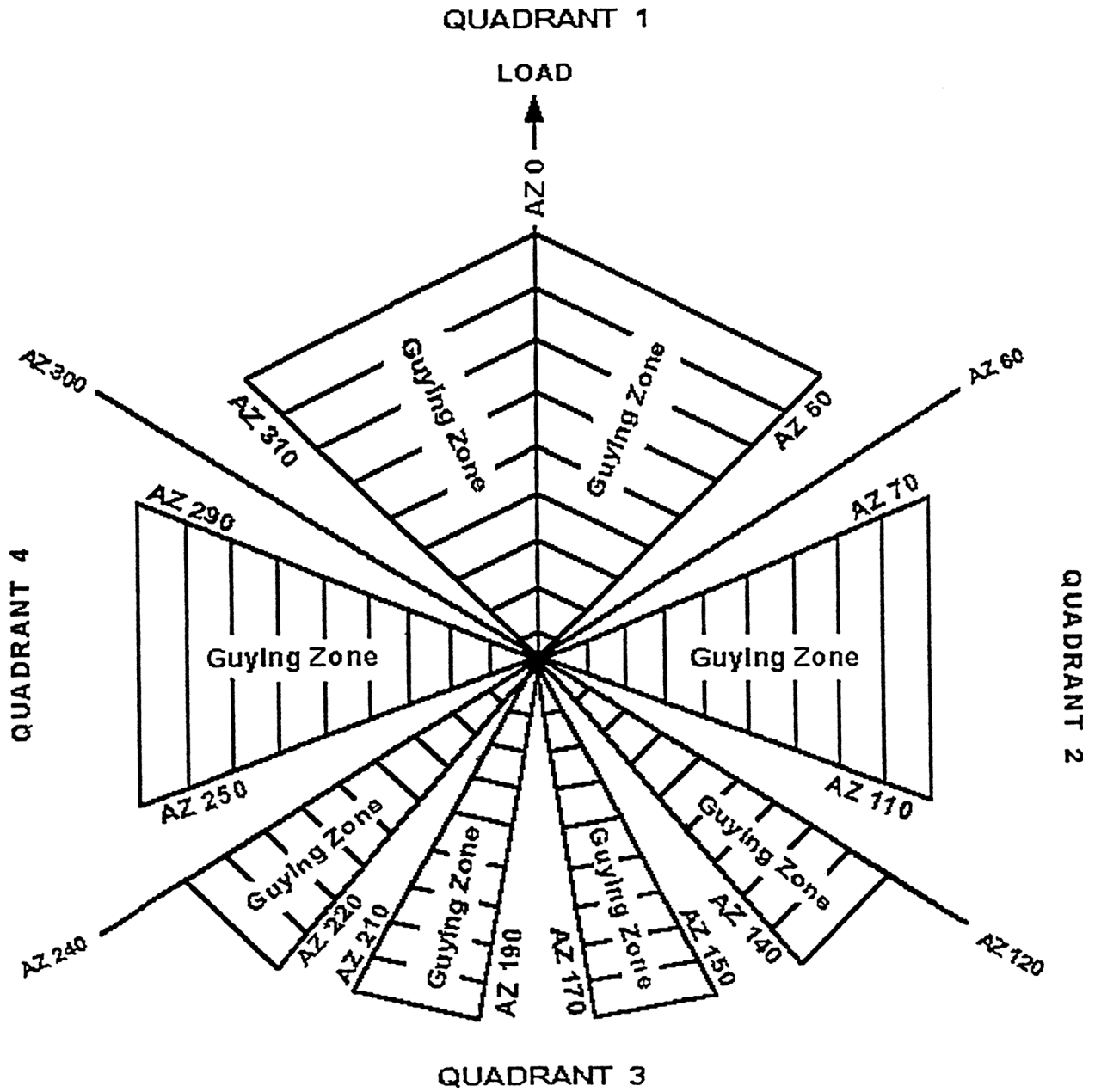


Figure 15: 8 Guyline Case (2)

POSITIONING GUYLINES IN BACK OF TREE

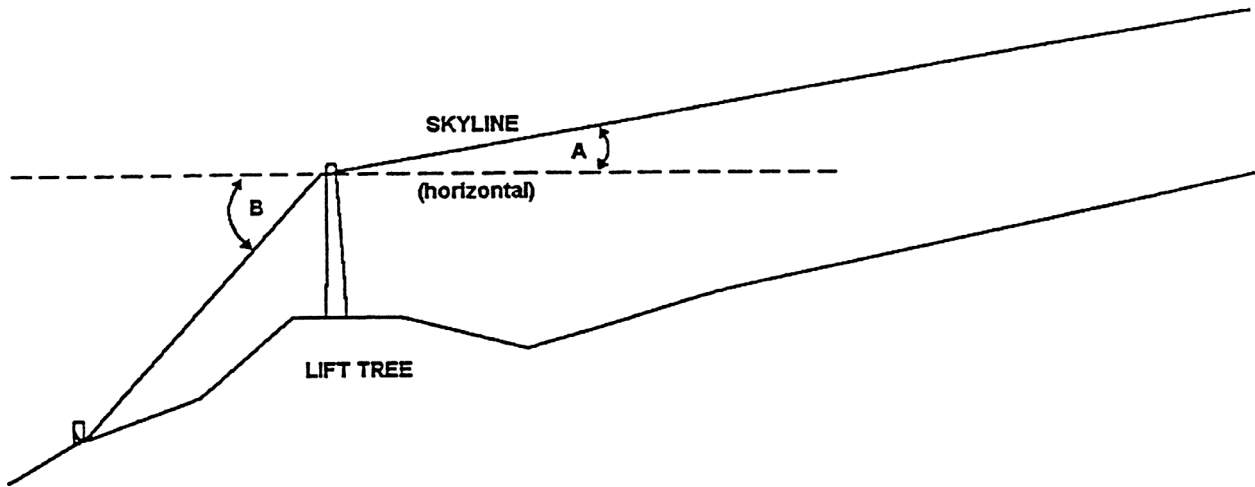


Figure 16: Positioning Guylines in Back of Tree

POSITIONING GUYLINES IN FRONT OF TREE

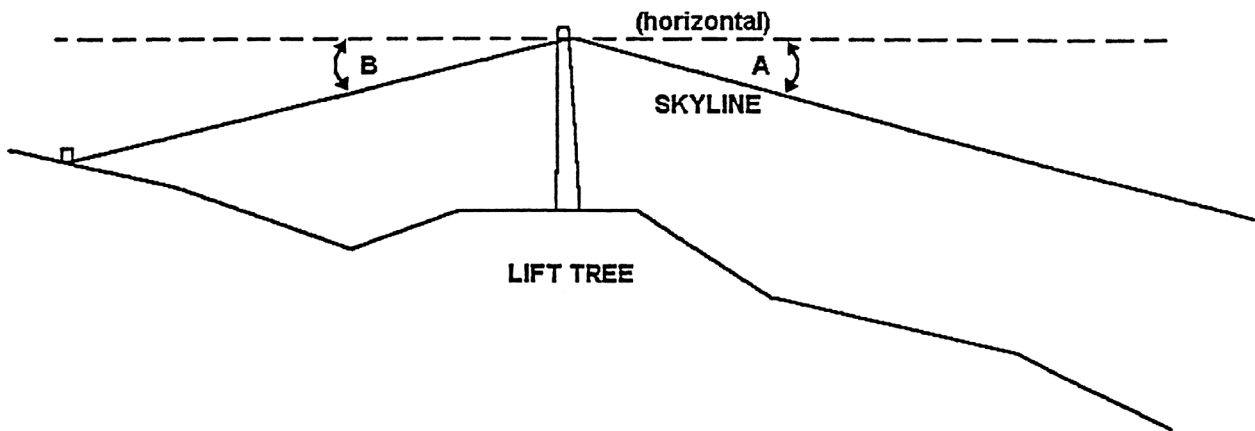


Figure 17: Positioning Guylines in Front of Tree

MAXIMUM ANGLE FOR LOAD BEARING GUYLINES AND SKYLINE

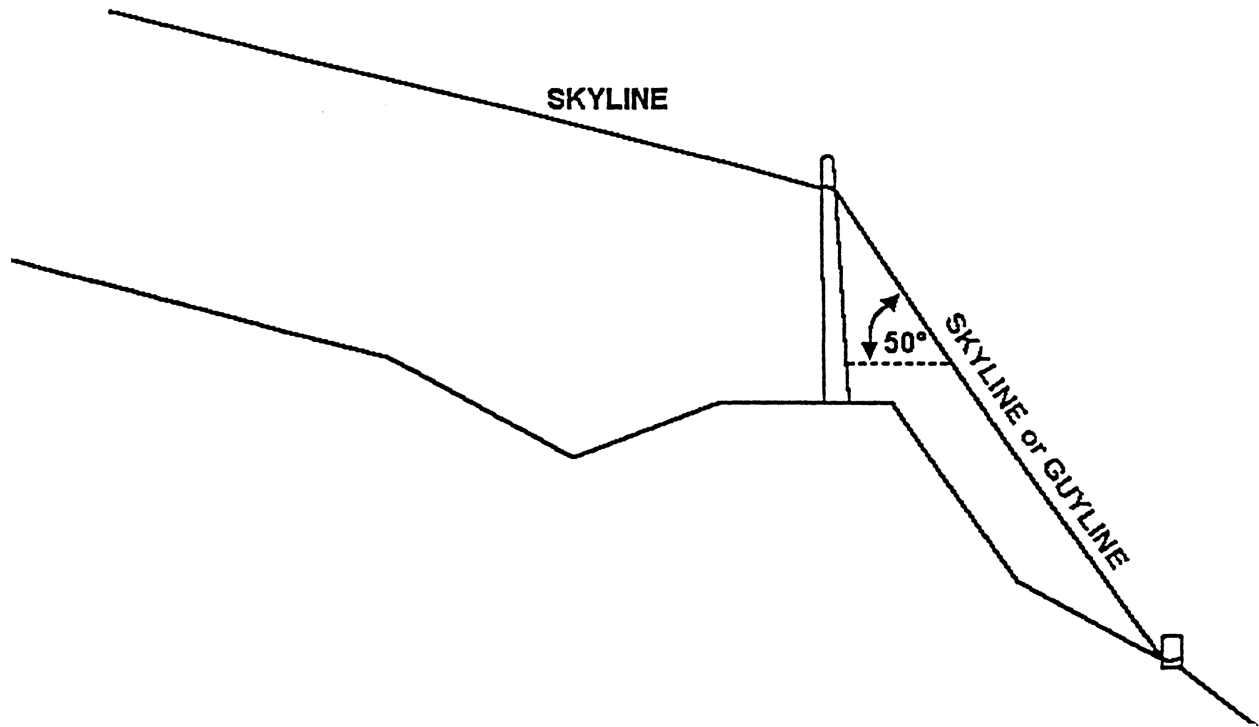


Figure 18: Maximum Angle for Load Bearing Guylines and Skyline

4 GUYLINE CASE – TAIL/LIFT TREE GUYING

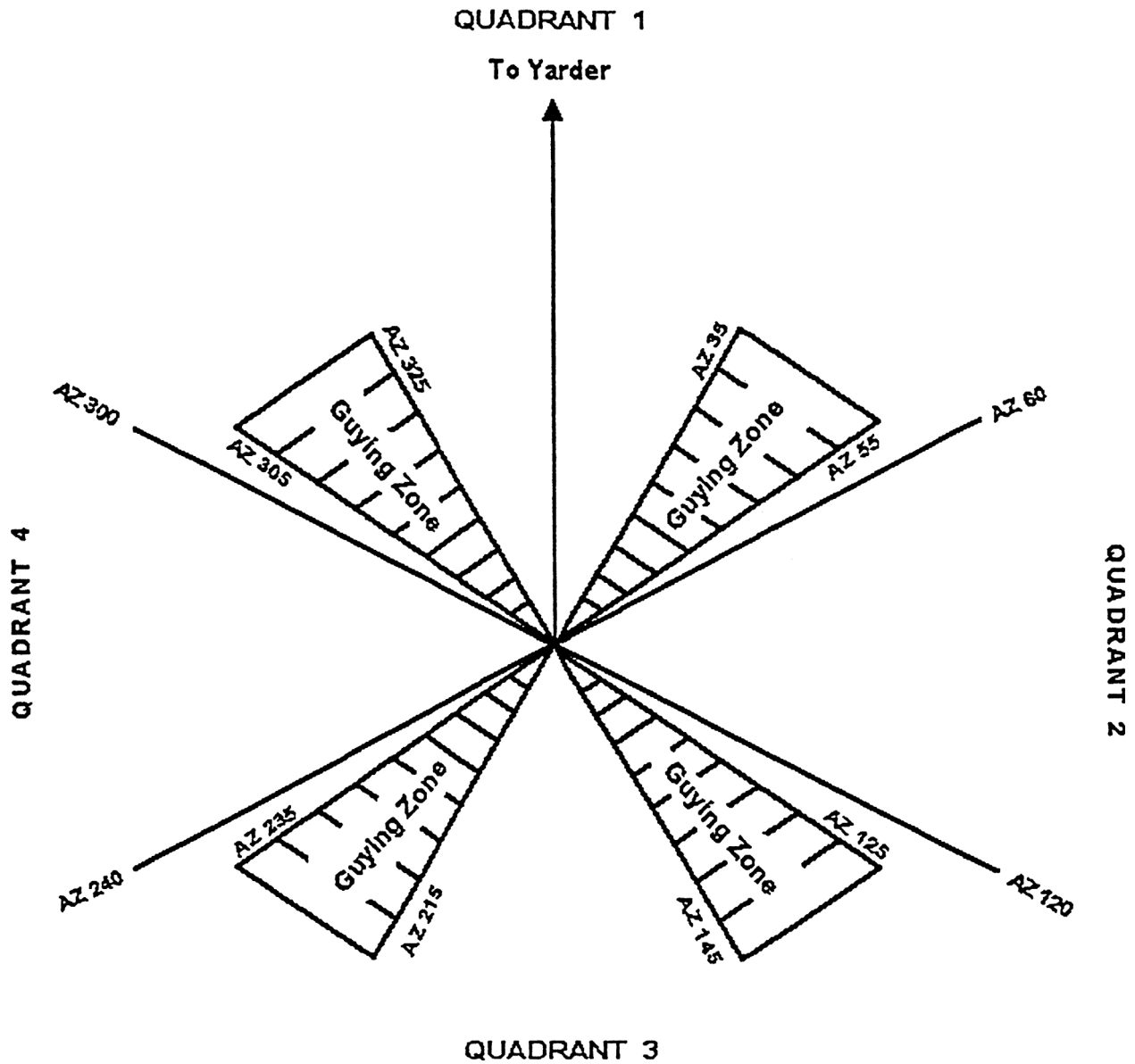


Figure 19: 4 Guyline Case - Tail/Lift Tree Gying

2 GUYLINE CASE TAIL/LIFT TREE GUYING

(gravity outhaul, non-slackpulling carriage)

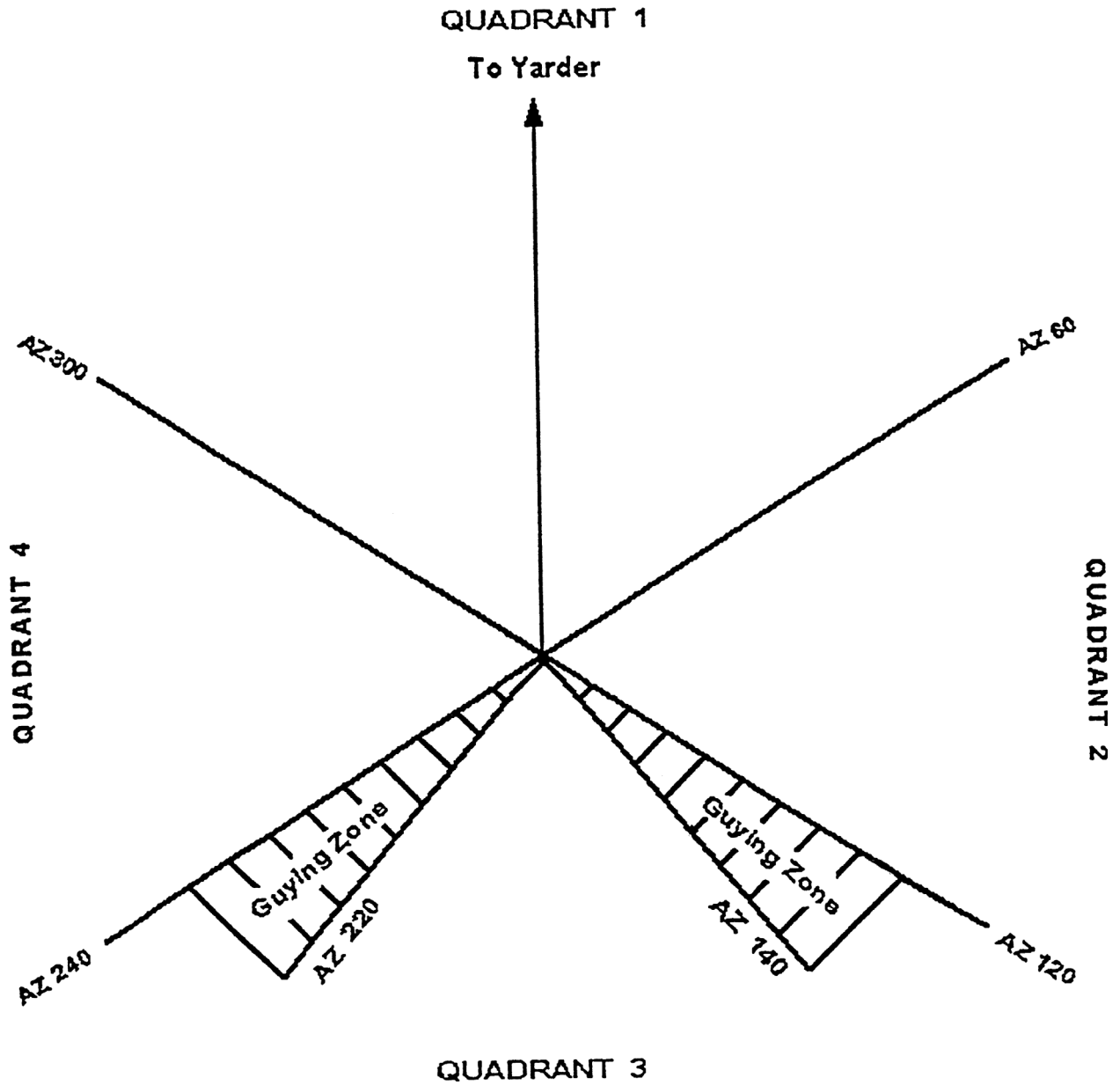


Figure 20: 2 Guyline Case - Tail/Lift Tree Gying
(gravity outhaul, nonslackpulling carriage)

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-563 Guying tail/lift trees. (1) Whenever a tail/lift tree is within reach of the work area and the rigging is placed on the tail/lift tree at a height greater than five times the tree diameter (dbh), at least two guylines must be used unless tree size and strength and rigging position eliminate the need for guylines or employees must be in the clear before the go-ahead signal is given.

(2) Guylines on tail/lift trees must not be anchored to standing trees unless:

(a) There is no danger that the guyline anchor tree will enter the work area;

(b) The guyline anchor tree is properly tied back; or

(c) Employees are in the clear of the guyline anchor tree(s) before the go-ahead signal is given.

(3) When guylines are required, they must be positioned according to Figure 16: Positioning Guylines in Back of Tree and Figure 19: 4 Guyline Case - Tail/Lift Tree Guying as follows:

(a) When the angle between the horizontal and skyline coming into the tree (angle A in Figure 16) is less than the angle between the horizontal and the skyline leaving the tree towards the anchor point (angle B in Figure 16), the guylines must be in back of the tail/lift tree as specified in Figure 19.

(b) If angle A is greater than angle B, then the guys must be placed in front of the tail/lift tree. This situation usually occurs when a tail/lift tree is used during downhill yarding as shown ((below)) above. Placing the guys on the uphill side only helps to pull the tail/lift tree over uphill.

(c) If a suitable anchor is not available within a specified shaded zone, two guylines may be used instead of one guyline, provided a guyline is placed on either side of and as near as possible to the affected shaded zone.

(4) Tail/lift trees must be supported by additional guylines if necessary, to ensure the stability of the tree.

(5) Guylines for tail/lift trees may be made of synthetic material and must be used according to the manufacturer's recommendation.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-567 Rigging skylines. (1) A skyline must not make an angle greater than fifty degrees measured from the horizontal as it leaves the tail/lift tree. (See Figure 18: Maximum Angle for Load Bearing Guylines and Skyline.)

(2) When rigged in a tail/lift tree, the skyline must be anchored no more than eight degrees offline from the rearward projection of the skyline. If a suitable anchor is not available within the specified zone and the tail/lift tree is stable, a more suitable anchor outside the zone may be used. (See Figure 23: Skyline Positioning Limits Tail/Lift Tree.)

(3) A skyline must not be considered a guyline.

(4) Extensions to skylines must be equal in breaking strength to the skyline to which they are attached and must not alter the safe capacity of the tower. In addition, the extension must be attached only by a regular long splice or by a flush pin straight side shackle connecting the two eyes.

Note: See exception in WAC 296-54-553 (4)(e).

(5) Live, running or standing skylines must be anchored by one of the following methods:

(a) Directly to a stump or suitable manufactured anchor;

(b) Directly to the base of a standing tree provided the point of attachment is no more than three feet above the ground and no part of the tree will enter the work area if pulled over;

(i) If the tree will enter a work area, it must be properly tied back; or

(ii) Employee(s) must be in the clear before the go-ahead signal is given.

(c) By passing the skyline through a jack or block hung on a tail/lift tree before being anchored.

(6) Skylines or mainlines must be secured by one of the following methods:

(a) With at least two and one-half wraps, well spiked, or properly clamped (see WAC 296-54-569 (5)(b)); or

(b) Choked by using an approved shackle over the skyline or mainline with the pin through the eye and hung in a manner to prevent excessive bight or fouling when tightened; or

(c) With an approved strap having both eyes hung in a shackle and the knockout pin or safety pin through the eye of the skyline or mainline.

(7) Attaching the end of the skyline or slackline to the base of the rigged tail/lift tree is prohibited.

SKYLINE POSITIONING LIMITS TAIL/LIFT TREE

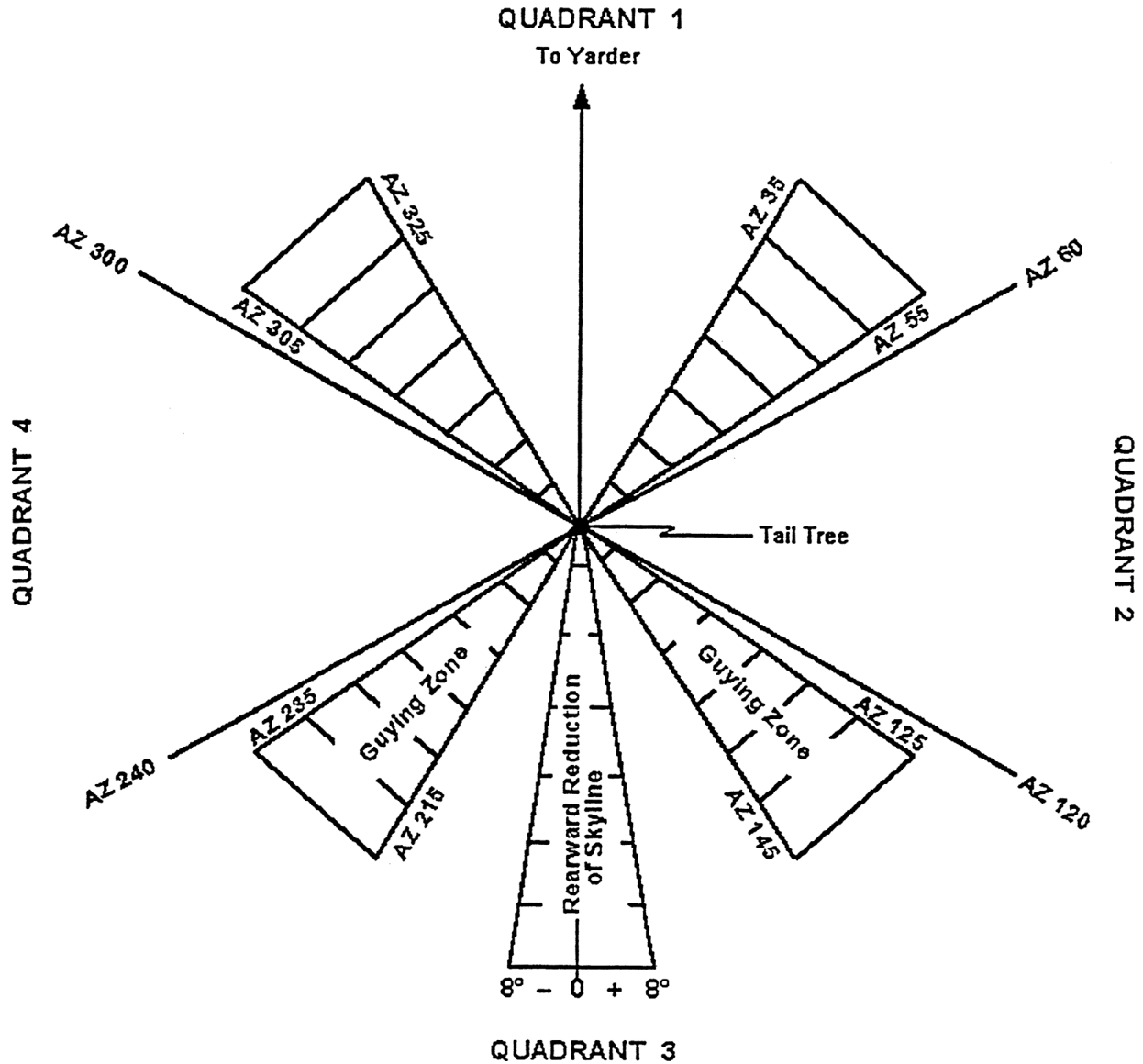


Figure 23: Skyline Positioning Limits Tail/Lift Tree

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-569 Anchoring. (1) Stumps used to anchor guylines and skylines must be carefully chosen for position, height, and strength. When necessary, stump anchors must be tied back to distribute the load.

(2) Stump anchors, when spiked, must be barked where attachments are to be made.

(3) Stump anchors must be adequately notched to keep the line in place and not adversely affect the stump strength.

(4) Employees must not stand close to the stump or tree or in the bight of lines as the guyline or wraps are being tightened.

(5) When spikes or cable clamps are used, guylines or skylines must be anchored with at least two and one-half wraps around the stumps. Wraps must:

(a) Be well secured with at least eight spikes or six staples in sound wood on the first and last wrap; or

(b) Have the end of the line secured with two wire rope clips on lines up to one inch diameter and three wire rope clips on lines one inch diameter and over.

(6) Properly installed deadman anchors are permitted. Guylines must not be directly attached to deadman anchors. Suitable straps or equally effective means must be used.

(7) ~~Guylines of portable spars, wood spars or towers must not be anchored to standing trees if the unit is used as a head tree, except as specified in subsection (8) of this section.~~

~~(8) In special cases such as hanging on foreign ownership or in cable thinning operation where frequent moves make the retrieval of fell guyline trees difficult, the following will apply:~~

~~(a) Standing trees within reach of a work area or haul road may be used provided:~~

- ~~(i) They are solid;~~
- ~~(ii) Have a sound undisturbed root system;~~
- ~~(iii) If fell, would be suitable for a guyline stump or tailhold as required in subsection (1) of this section; and~~
- ~~(iv) Are properly tied back to distribute the load; or~~

~~(b) Guyline and/or tailhold anchor trees, when located so they will not fall into the work area or haul road, need not be tied back if stable.~~

Note: Under no circumstances must an employer accept a requirement, or be required to use standing trees to anchor guylines.

~~(9))~~ When a standing tree is used as an anchor for guylines of portable spars, wood spars or towers:

(a) The tree must be properly tied back if it is within reach of a work area, landing area or haul road;

(b) The tree must be carefully chosen for strength;

(c) The line or strap must be attached to the base of the tree; and

(d) The tree must be adequately notched.

Note: The depth of the notch should not be any deeper than what is necessary to keep the line/strap from sliding up the tree.

(8) Rock bolt anchors must be grouted, installed, tested, and maintained according to the rock bolt manufacturer's recommendations.

~~((10))~~ (9) Anchors must be regularly inspected while the logging operation is in progress. Insecure or hazardous anchors must be corrected immediately.

~~((11))~~ (10) Artificial earth anchors must be installed and used according to their design specifications and manufacturer's recommendations.

~~((12))~~ (11) Mobile equipment may be used to anchor skylines, running lines and guylines, provided the weight of the machine or other methods are used to ensure machine stability for all applied loads.

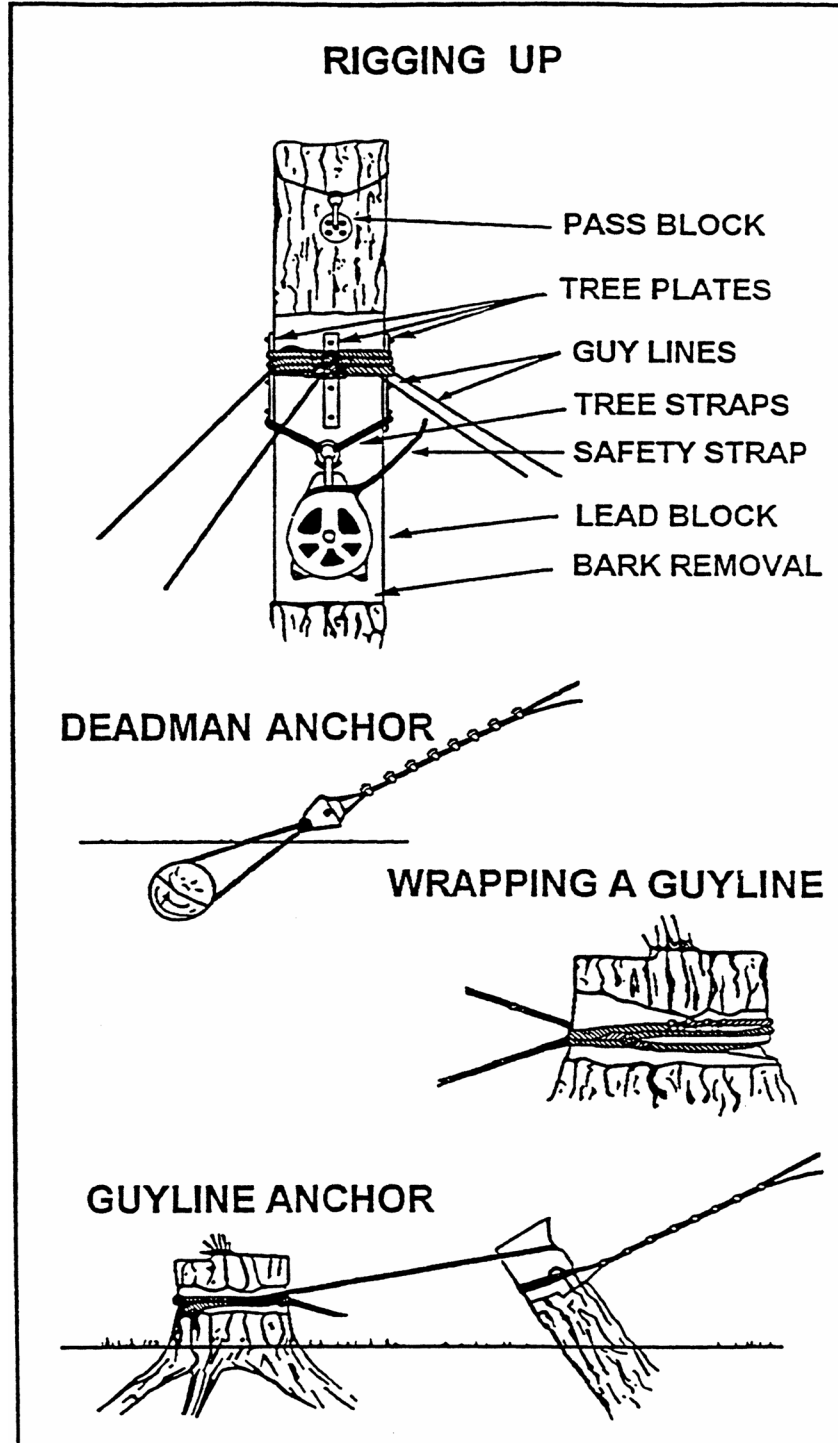


Figure 24: Rigging Illustrations

AMENDATORY SECTION (Amending WSR 06-07-142, filed 3/21/06, effective 5/1/06)

WAC 296-54-573 Logging machines—General. (1) All logging machinery must have speed limiting devices, safety stops, or emergency shut down devices or shut off valves, with the controls located so that in the event of an

emergency, the prime mover may be shut down from a safe place.

(2) The floor and lower portion of cabs must be completely enclosed with solid material, except at entrances, to prevent the operator from being injured by obstacles which otherwise could enter the cab compartment.

(3) Machine operators must be experienced in operating the equipment they use.

EXCEPTION: Inexperienced employees may operate equipment to gain experience while in training but may do so only while working under the immediate supervision of an experienced authorized person.

(4) All machine controls must be marked as to their purpose in the operation of the machine.

(5) The rated capacity of any vehicle transporting a machine must not be exceeded.

(6) Machines must be loaded, secured, and unloaded in a manner that will not create a hazard for any employee.

Note: This requirement includes the loading, securing and unloading of a machine on and off a transport vehicle.

(7) ~~(The employer)~~ You must not make any modifications or additions that affect the capacity or safe operation of the equipment without written approval of the manufacturer or a qualified engineer. If modifications or changes are made, the capacity, operation and maintenance instruction plates, tags, or decals, must be changed accordingly. The original safety factor of the equipment must never be reduced.

(8) Equipment must be classed and used according to the manufacturer's rating. Where low gear ratios or other devices are installed to increase the line pull in accordance with subsection (7) of this section, the size of the rigging must be increased accordingly so that it will safely withstand the increased strains.

(9) Each machine, including any machine provided by an employee, must be maintained in serviceable condition and the following:

(a) Each machine must be inspected before initial use during each workshift. Defects or damage must be repaired or the unserviceable machine is replaced before beginning work.

(b) Operating and maintenance instructions must be available on the machine or in the area where the machine is being operated. Each machine operator and maintenance employee must comply with the operating and maintenance instructions.

(c) Each machine must be operated only from the operator's station or as otherwise recommended by the manufacturer.

(d) Employees must not be allowed to ride on any load.

(10) Horns and travel alarms, which are part of the machine's original equipment, must be maintained in serviceable condition.

(11) The yarding machine or vehicle, including its load, must be operated with safe clearance from all obstructions.

~~((11))~~ (12) While manual/mechanized falling is in progress, all logging machines must be operated at least two tree lengths away from trees being fell.

EXCEPTION: This provision does not apply to logging machines performing tree pulling operations or logging machines called upon by the cutter to ground hazard trees. All cutters must be notified of the logging machine entrance into the area and all falling within two tree lengths of the logging machine must stop.

~~((12))~~ (13) If a hydraulic or pneumatic storage device can move the moving elements such as, but not limited to,

blades, buckets, saws and shears, after the machine is shut down, the pressure or stored energy from the element must be discharged as specified by the manufacturer.

~~((13))~~ (14) Loads must not exceed the rated capacity of the pallet, trailer, or other carrier.

~~((14))~~ (15) Boom-type logging machines must have a boom stop to prevent over-topping of the boom.

~~((15))~~ (16) Boom points of timber booms must be equipped with metal straps, plates, or other devices as needed to properly secure eyebolts and fittings used to support lines, blocks, or other rigging.

~~((16))~~ (17) Logging machine sleds or bases must be strong enough to withstand any stresses imposed upon them.

~~((17))~~ (18) Stationary logging machines must be securely anchored or otherwise stabilized to prevent unintended movement while yarding or skidding.

~~((18))~~ (19) Logging machines and their components must be securely anchored to their bases.

~~((19))~~ (20) Logging machines must be kept free of flammable waste materials and any materials that might contribute to slipping, tripping or falling.

~~((20))~~ (21) A safe and adequate means of access and egress to all parts of logging machinery where persons must go must be provided and maintained in a safe and uncluttered condition. Machine access systems, meeting the specifications of the Society of Automotive Engineers, SAE J185, June 1988, "Recommended Practice for Access Systems for Off-Road Machines," must be provided for each machine where the operator or any other employee must climb onto the machine to enter the cab or to perform maintenance. Walking and working surfaces of each machine and machine work station must have a slip-resistant surface to assure safe footing.

~~((21))~~ (22) Enclosed-type cabs installed on mobile logging machines must have two means of exit. One may be an emergency exit and be available for use at all times regardless of the position of the side arms or other movable parts of the machine. An easily removable window is acceptable as the emergency exit if it is large enough for an employee to readily exit.

EXCEPTION: Cable yarders manufactured before July 1, 1980 are not required to have two means of exit.

~~((22))~~ (23) Before leaving the operator's station of a machine, the operator must ensure the machine is secured as follows:

(a) The parking brake or brake locks must be applied;

(b) The transmission must be placed in the manufacturer's specified park position; and

(c) Each moving element such as, but not limited to, blades, buckets, saws and shears, must be lowered to the ground or otherwise secured.

~~((23))~~ (24) Storing employee property, tools, or other miscellaneous materials on or within three feet of any logging machine is prohibited if retrieving the items would expose an employee to the hazardous pinch point area between the rotating superstructure and the nonrotating undercarriage.

~~((24))~~ (25) Employees must approach the hazardous pinch point area only after informing the operator of that intent and receiving acknowledgment from the operator that

the operator understands the employee's intention. All logging machines must be stopped while any employee is in the hazardous pinch point area.

~~((25))~~ (26) After adjustments or repairs are made, logging machines must not be operated until all guards are reinstalled, safety devices reactivated, and maintenance equipment removed.

~~((26))~~ (27) Fairleads must be properly aligned at all times and designed to prevent line damage.

~~((27))~~ (28) Employee(s) must not ride on any mobile logging machine unless provided with seating, seat belts, and other protection equivalent to that provided for the operator.

EXEMPTION: Mechanics in the course of their job and trainees, operating under circumstances that minimize their exposure to dangerous situations, are exempt from this requirement.

~~((28))~~ (29) Riding on arches, reaches or turn of logs is prohibited.

~~((29))~~ (30) Tractors, skidders, arches, or logs being yarded by them must not run over or rub against anchored lines, tailhold stumps, or other rigging.

~~((30))~~ (31) Ends of lines attached to drums on logging machines must be secured by end attachments that develop the ultimate strength of the line unless three wraps of line are maintained on the drum at all times.

EXCEPTION: This does not apply to tractors or skidders.

~~((31))~~ (32) Wire rope must be wound on drum spools in a manner to prevent excessive wear, kinking, chafing or fouling.

~~((32))~~ (33) Guylines required in rigging spars or towers must be evenly spooled to prevent fouling.

~~((33))~~ (34) A guide pulley, tool, stick, iron bar or other mechanical or manual means must be used when guiding lines onto drums. Guiding lines onto drums with any part of the body in direct contact with the line is prohibited.

~~((34))~~ (35) A limit switch must be installed on electric-powered log loaders to prevent the lift arms from traveling too far in the event the control switch is not released in time.

~~((35))~~ (36) All forklift type log handling machines must be equipped with a grapple system and the arms must be closed whenever logs are being carried.

~~((36))~~ (37) When forklift machines are used to load, unload, or handle trailers, a positive means of holding the lifting attachment on the fork must be installed and used.

~~((37))~~ (38) Loads on forklift type log handling machines must be transported as low as safely operable without obstructing visibility.

~~((38))~~ (39) Guyline drum controls and outrigger controls must be separated and clearly identified in a manner that will prevent the engaging of the wrong control.

~~((39))~~ (40) Each machine must be equipped with guarding to protect employees from exposed moving elements, such as, but not limited to, shafts, belts, pulleys on chains, sprockets and gears in accordance with the requirements of this standard and chapter 296-806 WAC, Machine safety. Guards must be in place at all times when machines are in use.

Note: This does not apply to lifting or yarding components such as, but not limited to, cable nip points, sheaves and blocks.

~~((40))~~ (41) Each machine used for debarking, limbing, and chipping must be guarded to protect employees from flying wood chunks, logs, chips, bark, limbs, and other material in accordance with the requirements of this standard and chapter 296-806 WAC, Machine safety.

~~((41))~~ (42) Grab rails must be provided and maintained in good repair on all walkways of stationary units elevated more than four feet.

~~((42))~~ (43) Towed equipment such as, but not limited to, skid pans, pallets, arches, and trailers, must be attached to each machine or vehicle to allow a full ninety degree turn; to prevent overrunning of the towing machine or vehicles; and to ensure that the operator is always in control of the towed equipment.

~~((43))~~ (44) Timbers used for masts or booms ~~((shall))~~ must be straight-grained, solid, and capable of withstanding the working load.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-57350 Logging machines—Tractors and skidders. (1) Operators must operate and control their machines in a safe manner and avoid operations in areas where machine stability may not be maintained.

(2) Winch lines on logging tractors or skidders must be attached to the drums with a breakaway device.

(3) Arches must be equipped with line guards.

(4) A turnaround, if needed for skidders, must be provided on all skidding roads every 500 feet.

(5) The following safe work procedures must be followed:

(a) Lines must not be allowed to trail behind the tractor or skidder where it may hang up and snap forward.

(b) Each machine must be positioned during winching so the machine and winch are operated within their design limits.

(c) Logs/trees must be ~~((choked))~~ choked near the ends of the logs/trees whenever possible and safely positioned before traveling.

(d) Before climbing or descending grades, the proper gear must be selected to allow the engine to govern the tractor speed.

(e) On side hills, abrupt turns uphill must be avoided. The tractor or skidder must be backed downhill first then turned uphill. The turn may be slacked off as necessary to permit this maneuver.

(f) Tractor or skidder speed must be adjusted to the circumstances prevailing. Excessive or uncontrolled speed must be avoided.

(6) Where tractor and skidder operators or helpers, because of the nature of their work duties, are required to wear calk soled footwear, the decks and operating foot controls must be covered with a suitable nonslip material.

AMENDATORY SECTION (Amending WSR 06-07-142, filed 3/21/06, effective 5/1/06)

WAC 296-54-57355 Logging machines—Protective structures for operators. (1) Each tractor, skidder, log stacker and mechanical felling device, such as tree shears or

faller-buncher, placed into initial service after February 9, 1995, must be equipped with falling object protective structure (FOPS) and/or rollover protective structure (ROPS). The employer must replace FOPS or ROPS which have been removed from any machine.

EXCEPTION: This requirement does not apply to machines which are capable of 360 degree rotation.

(2) ROPS must be installed, tested, and maintained in accordance with the Society of Automotive Engineers SAE J1040, April 1988, "Performance Criteria for Rollover Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines."

(3) The ROPS must be high enough and wide enough so that it will not impair the movements of the operator or prevent his immediate escape from the vehicle in emergencies and must allow as much visibility as possible. Clearance above the deck and the ROPS of the vehicle at exits must be at least fifty-two inches (1.3 meters).

(4) Certified roll-over protective systems must be identified by a metal tag permanently attached to the ROPS in a position where it may be easily read from the ground. The tag must be permanently and clearly stamped, etched or embossed indicating the name and address of the certifying manufacturer or registered professional engineer, the ROPS model number (if any) and the vehicle make, model or serial number the ROPS is designed to fit.

(5) Roll-over protective structure systems must be maintained in a manner that will preserve their original strength. Welding must be performed by qualified welders only. (A qualified welder is defined under "welder qualification" in American Welding Society A.W.S. A3.0-69.)

(6) FOPS structures must be installed, tested and maintained according to:

(a) The society of automotive engineers SAE J231-1971, "minimum performance criteria for falling object protective structures (FOPS) prior to February 9, 1995."

(b) Society of automotive engineers SAE J231, January 1981, "minimum performance criteria for falling object protective structures (FOPS) for each tractor, skidder, log stacker, log loader and mechanical falling device, such as tree shears or faller-buncher, placed into initial service after February 9, 1995."

(7) ~~(The employer)~~ You must replace FOPS that have been removed from any machine.

(8) Vehicles with ROPS or FOPS as required in subsection (1) of this section, must comply with the society of automotive engineers SAE J397a-1972, "deflection limiting volume for laboratory evaluation of roll-over protective structures (ROPS) and falling object protective structures (FOPS) of construction and industrial vehicles." Vehicles placed into initial service after February 9, 1995, must meet the requirements of SAE J397-1988.

(9) The opening in the rear of the ROPS on the crawler or rubber-tired tractors (skidders) must be covered with 1/4-inch diameter woven wire having not less than 1-1/2 inches or more than 2-inch mesh, or material which will afford equivalent protection for the operator.

(a) The covering must be attached to the structural members so that enough clearance is provided between the screen and the back of the operator.

(b) Structural members must be free from projections that would tend to puncture or tear flesh or clothing.

(c) Suitable safeguards or barricades must be installed, in addition to the screen, to protect the operator when there is a possibility of being struck by any material that could enter from the rear.

(10) Crawler and rubber-tired tractors (skidders) working in areas where limbs or brush may endanger the operator must be guarded.

(a) Shear or deflector guards must be installed on each side of the vehicle at an angle leading forward and down from the top front edge of the canopy of the vehicle, which will tend to slide the brush or limbs up and over the top of the canopy.

(b) Open mesh material with openings of a size that will reject the entrance of an object larger than 1-3/4 inches in diameter, must be extended forward as far as possible from the rear corners of the cab sides to give the maximum protection against obstacles, branches, etc., entering the cab area.

(c) Deflectors must also be installed ahead of the operator to deflect whipping saplings and branches.

(d) Deflectors must be located so as not to impede entrance to or exit from the compartment area.

(e) The floor and lower portion of the cab must be completely enclosed with solid material, except at entrances, to prevent the operator from being injured by obstacles which otherwise could enter the cab compartment.

(11) Each machine manufactured after August 1, 1996, must have a cab that is fully enclosed with mesh material with openings no greater than 2 inches (5.08 cm) at its least dimension. The cab may be enclosed with other material(s) where the employer demonstrates such material(s) provides equivalent protection and visibility.

EXCEPTION: Equivalent visibility is not required for the lower portion of the cab where there are control panels or similar obstructions in the cab, or where visibility is not necessary for safe operation of the machine.

Enclosures for agricultural and industrial tractors manufactured after September 1, 1972, must be constructed, designed and installed as detailed in the society of automotive engineers technical report J168.

(12) Overhead protection and other barriers must be installed to protect the operator from lines, limbs, and other moving materials on or over all loading or skidding machines and on all yarding machines where the operator's station is mounted on board. The overhead covering of each cab must be of solid material and extend over the entire canopy. A skylight in a logging machine must be made of safety glass or provide equivalent protection.

Note: This does not apply to self-loaders.

Reference: For requirements relating to overhead protection on forklifts, see chapter 296-863 WAC, Forklifts and other powered industrial trucks.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-575 Landing area. (1) Unless otherwise specified, landing areas must:

(a) Be large enough that if logs are to be heeled and swung, they will not strike standing timber, rigging, or other equipment or objects;

(b) Be large and level enough to land and deck the logs in the turns so that they will not slide or roll in the direction of employees or equipment. This is not intended to restrict the yarding and/or loading of logs for pole piling or an infrequent long break or tree length, provided the log is secured before unhooking the choker;

(c) Be large enough for safe movement of all logs and machinery;

(d) ~~((Landings must))~~ Be free of root wads, limbs, tops, etc., that constitute a safety hazard; and

(e) Not have materials pushed, thrown, or dumped over the edge in a manner or at a time that will endanger employees.

(2) ~~((When))~~ During roadside thinning, logs stacked on the roadside without a landing must be placed in a stable condition.

(3) During uphill yarding, the landing chute must be cleared of logs before the next turn of logs is landed unless:

(a) The logs are fully contained in the landing chute; or

(b) There is no possibility that employees working below the landing may be struck by rolling objects coming off the landing.

(4) Roadside or continuous landings must be large and wide enough to safely operate and maintain the yarding or loading equipment. Outrigger pads, tracks or wheels must be on firm, stable ground.

(5) In logging operations where the yarder is set up in the haul road and logs are landed on the slope below the road, the following must apply:

(a) If the landing chute slope is twenty percent or less, logs may be landed and decked in the chute provided the logs can be left in a stable position;

(b) If the landing chute slope exceeds twenty percent, decking is not permitted in the chute if a chaser is required to unhook the rigging from the logs or if employees are working below the landing chute and are exposed to rolling or sliding logs;

(c) If logs are to be decked below the road, the logs must be effectively secured from rolling or sliding down the hill; or

(d) If the landing process or weather conditions (rain, snow, ice, mud) prevent the required log stability and exposes employees to the hazard of rolling or sliding logs, the logs must be decked at a different location.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-577 Yarding, skidding, landing. (1) Running lines must be arranged so that employees are not required to work in the bight of the line. When employees must work in the bight, employees must move out of the bight of the lines before the signal to move the turn is given, or be in a position where they are protected by standing timber, terrain, or other objects large enough to ensure their safety.

(2) Choker holes must be dug from the uphill side of the log when there is danger of the log rolling or moving.

(3) Chokers must be placed near the end of the log/tree whenever possible.

EXCEPTION: When long logs or tree-length logs are being yarded and a long end is necessary to safely land the logs/trees on the available landing space.

(4) Employees must be in the clear of logs, root wads, chunks, hazardous trees, rolling material and rigging before the go-ahead signal is given and must stay in the clear until all rigging movement has stopped.

(5) Employees must move away from the turn so as to be above or behind the turn and in the clear. They must remain on their feet and face the turn before the go-ahead signal is given.

(6) All employees must remain away from rigging that is stopped at a hangup, until the rigging has been slacked to reduce the hazard.

(7) Chokers must not be hooked or unhooked until all rigging is stopped completely.

(8) Logs must not be landed until all employees, trucks or equipment are in the clear.

(9) Logs must not accumulate in the landing chute to the point where they become a hazard to the landing personnel.

(10) Logs must be stable and secure before being approached by employees and before chokers are unhooked.

(11) An employee must not buck, limb or trim logs from a position that will expose the employee to contact with moving lines.

(12) Logs must not be placed in, moved about, or removed from the bucking area of the landing unless all employees are in the clear.

(13) An unimpaired horizontal clearance of at least three feet must be maintained between the rotating superstructure of any logging machine working on a landing and any adjacent object or surface. If this clearance cannot be maintained, a safety zone barrier must be used to isolate the hazardous area. The safety zone barrier may be a warning line constructed of rope or ribbon, supported on stanchions.

(14) ~~((("DANGER 36 INCH CLEARANCE" must be marked near the rear of the machine.~~

~~((15)))~~ Employees must not approach a machine's working circle until the operator has acknowledged that it is safe to do so.

~~((16)))~~ (15) Whenever possible, chokers must be set from the uphill side of a log. Persons must not be on the lower side of a log which appears to be unstable or likely to roll.

~~((17)))~~ (16) When yarding during the hours of darkness, the area must be lighted enough to allow employees to safely perform their duties. The source of light must be located and directed to create minimum shadows and glare. If using a portable tailhold, lights must be directed on equipment to allow the person to visually determine that the tailhold equipment remains stabilized.

~~((18)))~~ (17) Each yarded tree/log must be placed in a location that does not create a hazard for an employee and in an orderly manner so that the trees/logs are stable before bucking or limbing is commenced.

~~((19)))~~ (18) When using a yarder, loader or skidding machine, the location of the machine or position of the yarder must be such that the operator will not be endangered by incoming logs or debris.

~~((20))~~ (19) Employee(s) must be assigned to flag on roads or provide other equivalent protection where hazardous conditions are created from logging such as, but not limited to:

(a) Running wire rope lines or rigging across road grades, excluding guylines and standing skylines if lines remain a safe distance above the road to allow a vehicle to pass under; or

(b) The movement of logs, chunks, or debris across or suspended over road grades.

EXCEPTION: Where there is no through traffic, such as on a dead end road or where the property owner's permission or proper authority is granted to close a section of road, warning signs and barricades may be used instead of flagger(s).

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-58130 Helicopter logging—Fueling area. (1) Separate areas must be designated for landing logs and for fueling helicopter(s).

(2) Refueling any helicopter with either aviation gasoline or Jet B (turbine) type fuel while the engine is running is prohibited.

(3) Helicopters using Jet A (turbine-kerosene) type fuel may be refueled with engines running provided the following criteria are met:

(a) Unauthorized employees must not be allowed within fifty feet of the refueling operation or fueling equipment; and

(b) Fire extinguishers must be strategically located in the fueling area and must have a combined rating of at least 20A:120BC.

(4) All fueling employees must be thoroughly trained in the refueling operation and in the use of the available fire extinguishing equipment they may be expected to use.

(5) The following are prohibited within fifty feet of the fueling area or fueling equipment:

- (*) (a) Smoking;
- (*) (b) Open flames;
- (*) (c) Exposed flame heaters;
- (*) (d) Flare pots; and
- (*) (e) Open flame lights.

EXCEPTION: Aircraft preheaters are not prohibited. However, no fueling may be performed while the heaters are in operation.

(6) The fueling area must be posted with "no smoking" signs.

(7) Because there are many causes of static electricity, fueling employees must assume that it is present at all times. Before starting refueling operations, the fueling equipment and the helicopter must be bonded and the fueling nozzle must be electrically bonded to the helicopter. Using conductive hose is not an acceptable method of bonding. All grounding and bonding connections must be electrically and mechanically firm to clean unpainted metal parts.

(8) To control spills, fuel must be pumped either by hand or power; pouring or gravity flow is prohibited. Self-closing nozzles or deadman controls must be used and must not be blocked open. Nozzles must not be dragged along the ground.

(9) In case of a spill, the fueling operation must be immediately stopped until the person in charge determines that it is safe to resume.

(10) Helicopters with their engines stopped while being refueled with aviation gasoline or Jet B (turbine) type fuel, must comply with subsection (4) through (9) of this section.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-583 Loading logs. (1) A positive means of communication must be established and used between the truck driver and the employee loading logs to control the movement of the log truck being loaded.

(2) ~~((Employees must not be))~~ No one is permitted alongside or underneath trucks being loaded or on the load until communication has been established with the loading machine operator and the truck driver, and the employee is assured that it is safe to be there.

(3) Logs being moved or loaded must not pass over any employee or an occupied vehicle, equipment or truck cab.

(4) Standing between a truck cab and a log being loaded or unloaded is prohibited.

(5) Logs must not be lowered to the bunk while bunk or block adjustments are being made or until the employee making these adjustments is in the clear.

(6) Standing underneath a suspended trailer or its reach is prohibited.

(7) Loads must be built up or loaded in a manner to be stable without the use of wrappers. Wrappers are considered only as precautionary measures to ensure stability of the load.

(8) Where there is a danger of the grapple slipping off of logs, straps must be used in loading logs that are too large for the grapple or tongs and must be hung in both eyes.

(9) Logs must be loaded in a manner to prevent excessive strain on wrappers, binders, bunk stakes, bunk chains or straps.

(10) Logs in any tier or layer unsecured by stakes or cheese blocks must be well saddled and have their diameter centers inside the diameter centers of the outer logs of the next lower tier or layer.

(11) Bunk and wing logs must extend at least twelve inches beyond the front and rear bunks or stakes. When fixed bunks are used, logs must extend at least six inches beyond the front and rear bunk or stake.

(12) Double-ended logs above the stakes must not be loaded on the side of the load from which the binders or wrappers are intended to be released.

(13) Logs must be loaded so that no more than one-third of the weight of any log extends beyond the end of the logs or bunk supporting it.

(14) Logs must be loaded in a manner that will not impair full and free movement of the truck.

(15) Each log not contained within the stakes must be secured with at least two wrappers before the truck leaves the vicinity of the landing/loading area.

(16) All of the required wrappers must be placed on the load within sight of the landing/loading area so immediate emergency assistance can be given if necessary.

(17) Loads or logs must not be moved or shifted while binders are being applied or adjusted.

(18) The transport vehicle must be positioned to provide working clearance between the vehicle and the deck.

(19) All limbs or knots that would project beyond the stakes or legal height must be removed before the log is loaded on the car or truck.

Note: This does not apply to incidental limbs/knots placed on loads during the normal loading process.

(20) Power saws must not be operated on top of loaded logging trucks.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-589 Log trucks—General. (1) Prior to use, the operator must make a complete daily inspection of the truck and trailer with particular attention to:

- ((★) (a) Steering apparatus;
- ((★) (b) Lights and reflectors;
- ((★) (c) Brake boosters;
- ((★) (d) Brake hoses and connections;
- ((★) (e) Reaches;
- ((★) (f) Hitches (couplings);
- ((★) (g) Bunks;
- ((★) (h) Stakes;
- ((★) (i) Bunk blocks.

The brakes must be tested before and after movement of the vehicle. The operator must submit a written list of necessary repairs to a person designated by the employer.

(2) Any defective parts that would make the vehicle unsafe to operate, must be replaced or repaired before the vehicle is placed in service.

(3) Motor vehicles used on roads not under the control of the state department of transportation, counties, or cities must be equipped with accessories necessary for a safe operation including:

- (a) Operable head lamps;
- (b) At least two tail lamps and brake lamps that emit a red light plainly visible from a distance of one thousand feet to the rear; and
- (c) Two reflectors visible at night from three hundred fifty feet when directly in front of properly adjusted motor vehicle head lamps.

(4) The driver must do everything reasonably possible to keep the truck under control at all times and must not operate in excess of a speed at which the driver can stop the truck in one-half the visible distance.

(5) The area between the truck frame members, extending from the cab rearward as far as necessary to provide a safe work area, must be covered with suitable nonslip type material.

(6) Log trucks that have logs scaled at stations must have a platform on each side extending outward from the frame members at least eighteen inches, and must be eighteen inches long or as near to eighteen inches as the design of the truck permits. The treading surface of the platforms must be of nonslip material and the platform must be able to safely support a five hundred pound load.

(7) To protect the operator of vehicles from loads, there must be a substantial bulkhead behind the cab that extends up to the height of the cab.

(8) When at the dump or reload or where logs are scaled or branded on the truck, the logs must be scaled or branded before the binders are released.

(9) All vehicles, where vision of the operator in the direction of travel is impaired by the load or vehicle, must be moved only on a signal from a worker who has a clear view in the direction in which the vehicle is to be moved.

(10) Where a bridge or other roadway structure is posted with a load limit sign, log truck drivers or operators of other heavy equipment are prohibited from driving a load in excess of the posted limit over such a structure.

(11) All passengers must ride in the cab of the log truck.

(12) All trucks must keep to the right side of the road except where the road is plainly and adequately posted for left side travel.

(13) A method must be provided to ensure that the trailer will remain mounted on the truck while driving on highways or logging roads.

(14) When trucks are towed on any road, the person guiding the vehicle being towed must, by prearranged signals, govern the speed of travel. Vehicles must be towed at a reasonable speed and in a prudent manner. A tow cable or chain over fifteen feet in length must have a white flag attached at the approximate center, however, it is recommended that a rigid tow bar be used for this purpose.

(15) All rubber-tired motor vehicles must be equipped with fenders. Mud flaps may be used instead of fenders whenever the motor vehicle is not designed for fenders.

(16) All trucks must be equipped with doors with operable latches, or a safety bar or strap.

(17) Log trucks must not approach a landing while there is danger from incoming logs.

(18) While en route, the operator must check and tighten the wrappers/binders whenever there is reason to believe that the wrappers/binders have loosened or the load has shifted.

(19) Persons must not enter the area below a suspended load of logs.

(20) All trucks must be equipped with a means to protect the operator from inclement weather.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-58950 Log trucks—Wrappers and binders. (1) On log trucks equipped with stakes, the following requirements must apply:

(a) In the hauling of a one log load, one wrapper chain or cable must be required and secured to the rear bunk. The log must be properly blocked or secured in a manner which will prevent it from rolling or shifting. An additional wrapper secured to the front bunk is optional.

(b) In the hauling of two log loads, not less than two wrapper chains or cables must be used to secure the load. The logs must be properly blocked to prevent them from rolling or shifting.

(c) On loads consisting of three or four logs not over forty-four feet in length, the load must be secured by not less

than two properly spaced wrapper chains or cables. Ends of short logs not secured by such wrappers must be secured with extra wrappers. If any log is over forty-four feet in length, the load must be secured by not less than three properly spaced wrappers.

(d) Loads consisting of five or more logs(=);

(i) When the logs are all seventeen feet or less in length, the load must be secured by not less than two properly spaced wrappers. ((Loads consisting of five or more logs, when any log is over seventeen feet in length, must be secured by not less than three properly spaced wrappers.))

(ii) When any log is over seventeen feet in length, the load must be secured by not less than three properly spaced wrappers. Log(s) loaded on top or in outside saddles of a load must not be transported unless secured by at least two wrapper chains or cables, one of which must be placed near each end of such log.

(2) On log trucks equipped with chock blocks the following requirements must apply:

(a) In the hauling of a one log load, one wrapper chain or cable shall be required and secured to the rear bunk and the log must be properly blocked in a manner to prevent it from rolling or shifting.

(b) One additional wrapper chain or cable shall be required on log trucks using chock blocks over and above the requirements in subsection (1)(c) and (d) of this section.

(3) In the case of short logs loaded crosswise, the following method of securing the load must be used if the truck or trailer is not provided with solid ends of a height sufficient to prevent any log in the load from rolling off:

Not less than two chock blocks must be used at each open end of the vehicle and the load must be held with at least two wrapper chains or cables. The wrappers must be firmly attached to the end of the truck or trailer. Rigid standards or stakes may be used in lieu of chock blocks but each such standard or stake must be either rigidly connected to the bed of the truck or trailer or must be placed in a tight-fitting socket at least 12 inches in depth. Other means furnishing equivalent security may be acceptable.

(4) When two wrappers are required, they must be applied within six feet of the front and rear bunks. When more than two wrappers are required, the front and back binder must be applied within six feet of the front and rear bunks.

(5) To properly secure short logs, binders must be placed near the end, not less than twelve inches from the end of the log.

(6) Log(s) loaded on top or in outside saddles of a load must not be transported unless secured by at least two wrapper chains or cables, one of which must be placed near each end of such log.

(7) All wrappers and binders must be fastened in place prior to tightening to prevent the displacement of logs on the top of the load.

(8) All wrapper chains or cables, except in the case of one log load, must entirely surround the load. This does not apply to gut-wrappers.

(9) Gut-wrappers, when used, must be adjusted so as to be tightened by, but not carry the weight of the logs above them.

~~(10) ((A warning must be given before throwing wrappers over the load and care must be taken to avoid striking other persons with the wrapper.))~~ Wrappers must not be thrown over the load until personnel are in the clear.

(11) Each log not contained within the stakes must be secured with at least two wrappers before the truck leaves the vicinity of the landing/loading area.

(12) While moving logs, poles, or log chunks within sorting or mill yards, that could roll or slide off the truck due to snow or ice conditions, or the logs or log chunks do not extend beyond the stakes, at least two wrappers and binders must be used regardless of the height of the load.

(13) Wrapper chains or cables, binders, fasteners, or attachments thereof, used for any purpose as required by these standards must have a minimum breaking strength of not less than fifteen thousand pounds and must be rigged so that it can be safely released.

Note: 3/8-inch hi-test steel chain, 7/16-inch improved plow steel wire rope of 6 x 19 or 6 x 37 construction, or materials having equivalent strength, when in compliance with the requirements herein contained, will be acceptable. (The diameter of the wire rope is immaterial as long as it meets the minimum breaking strength requirements.)

Note: Nylon straps and ratchet binders having an equivalent breaking strength may be used when securing loads on (hay rack) log hauling systems.

(14) A loaded logging truck required to have wrappers by this section, may be moved within the loading area without wrappers only if such movement does not present a hazard to workers.

(15) For the purposes of this standard, applied bundle straps or banding are not acceptable as wrappers and binders.

(16) All loose ends of wrapper chains or cables must be securely fastened so as to prevent their swinging free in a manner that will create a hazard.

(17) Binders for securing wrappers on logging trucks must be fitted with hooks of proper size and design for the wrapper chain being used.

(18) Wrappers must be removed from service when any of the following conditions exist:

- (a) Excessively worn links on chains;
- (b) Deformed or stretched chain links;
- (c) Cracked chain links; or
- (d) Frayed, stranded, knotted, or otherwise defective wire rope.

(19) Pipe extension handles (swedes) for tightening or securing binders must be no longer than thirty-six inches. Care must be taken that a sufficient amount of the pipe extends over the binder handle.

(20) Defective binders must be immediately removed from service.

Note: See Figures 25 through 35 for illustrations of placement and number of wrappers.

**Placement and Number of Wrappers
One Log Load**

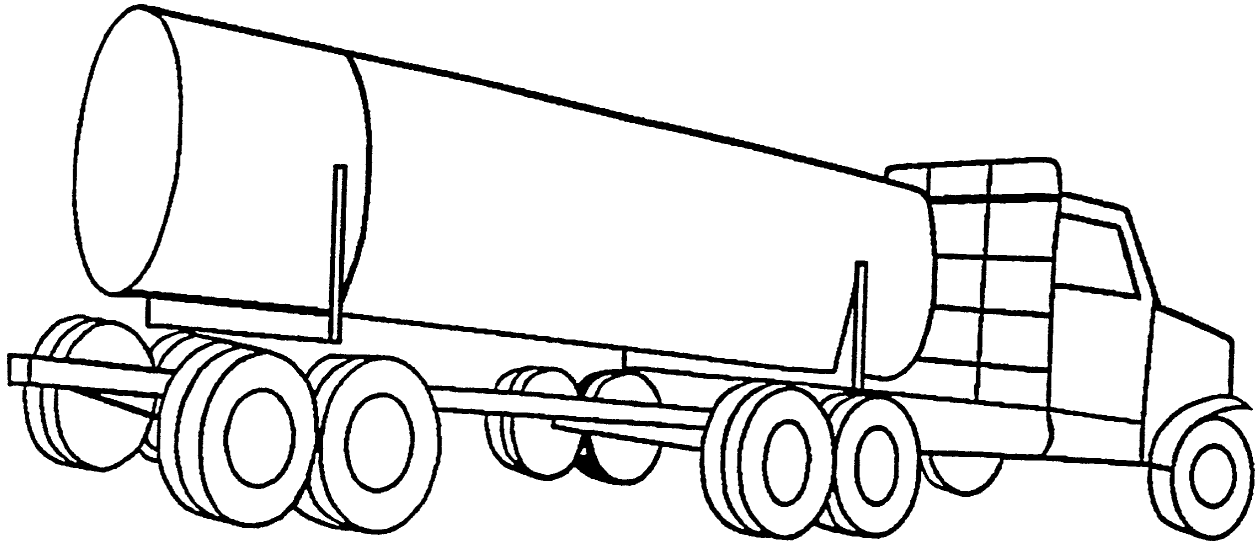


Figure 25: One Log Load

Two Log Load

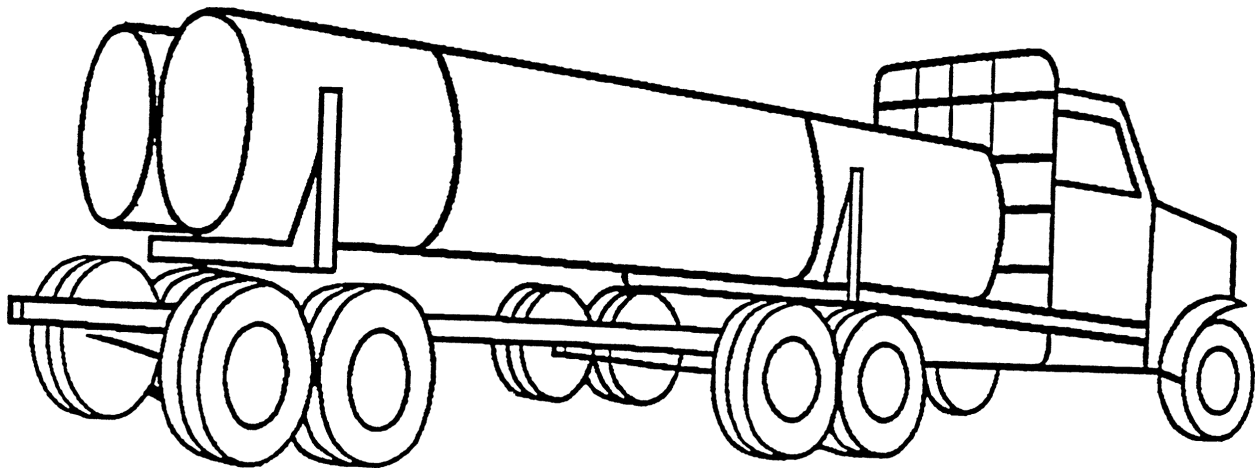


Figure 26: Two Log Load

Three or Four Log Load 44 Ft. or Less

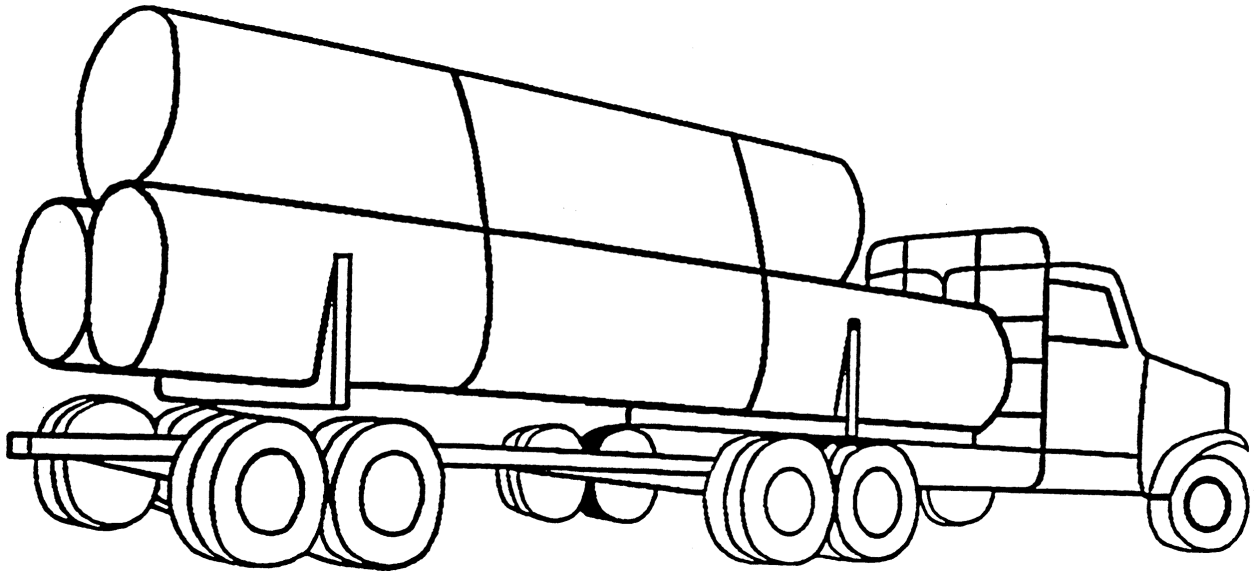


Figure 27: Three or Four Log Load 44 feet or less

Three or Four Log Loads More Than 44 Feet

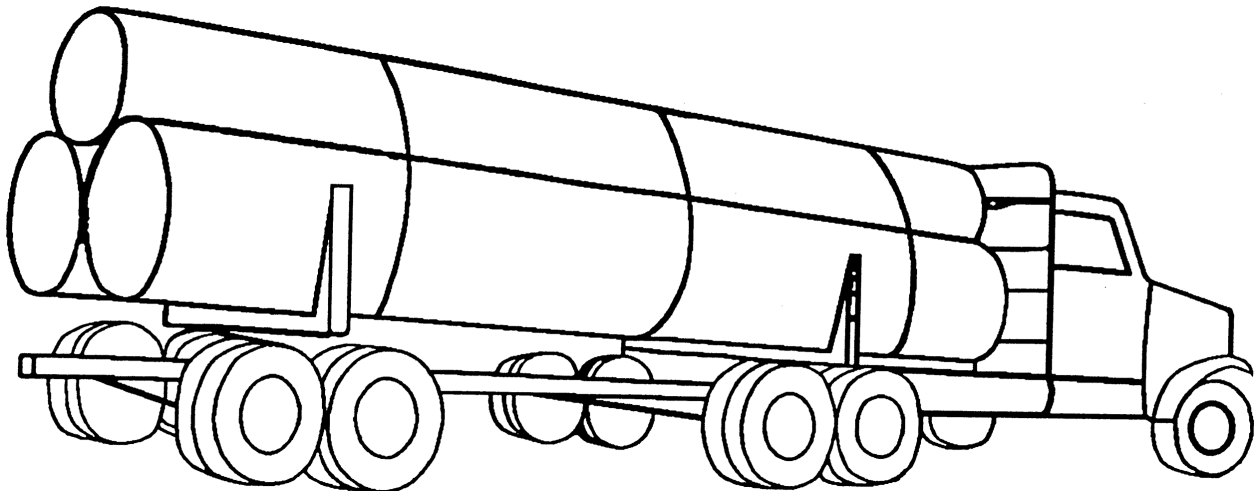


Figure 28: Three or Four Log Loads more than 44 feet

Five or Six Log Load All Logs 17 Feet or Less

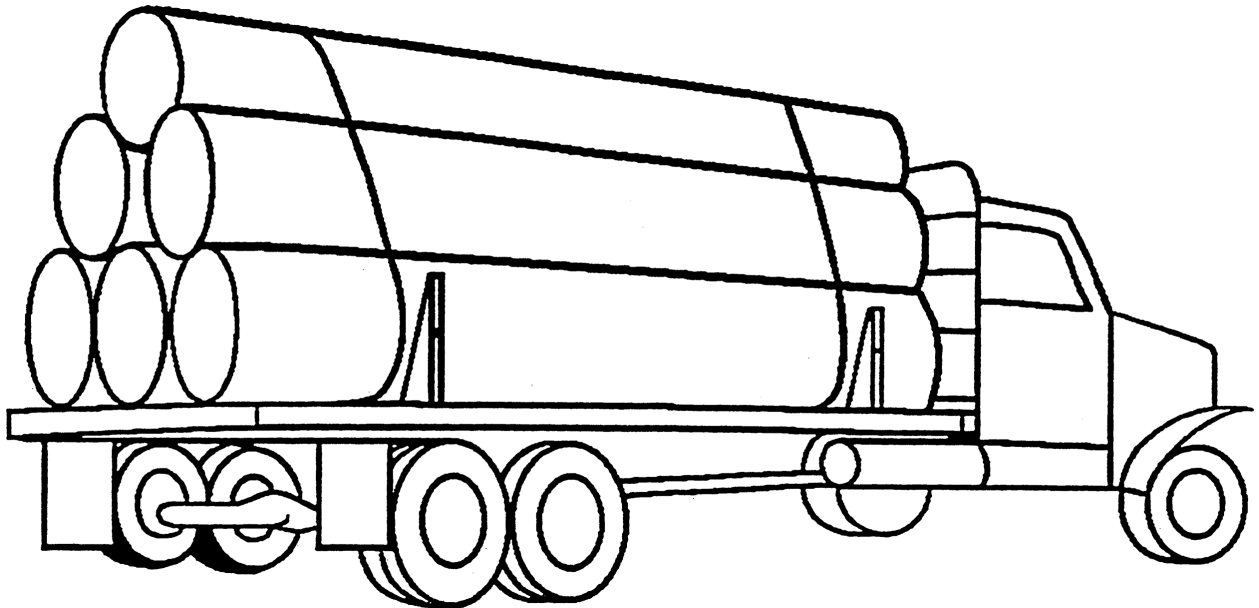


Figure 29: Five or Six Log Load All Logs 17 feet or less

Seven or More Log Load All Logs 17 Feet or Less

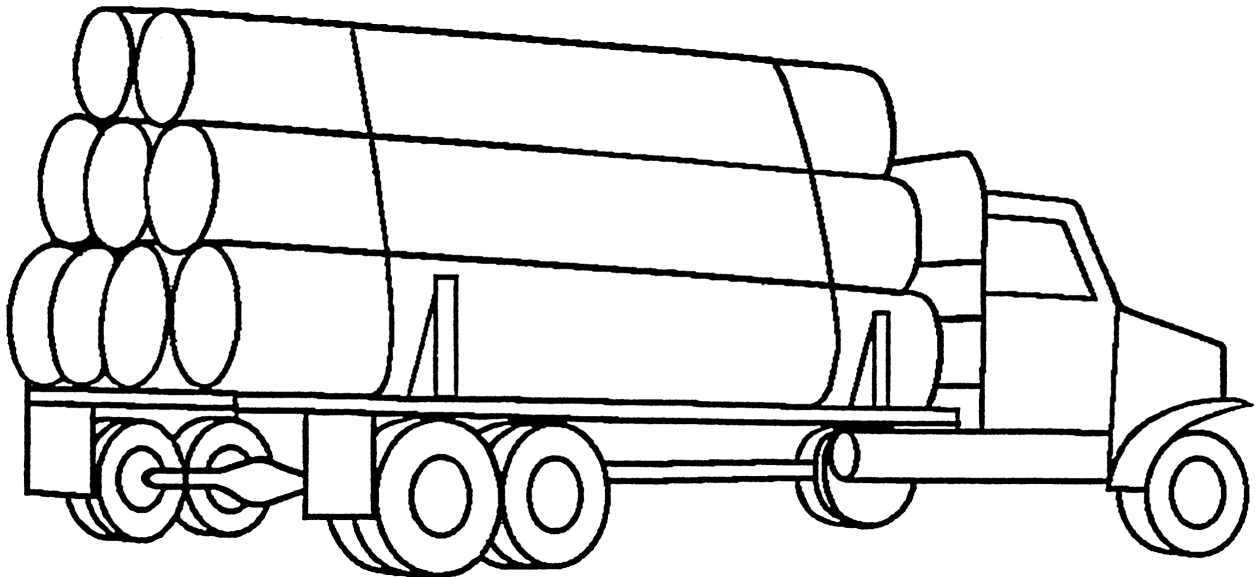


Figure 30: Seven or More Log Load all Logs 17 feet or less

Five or More Log Load If Any Logs Are More Than 17 Feet

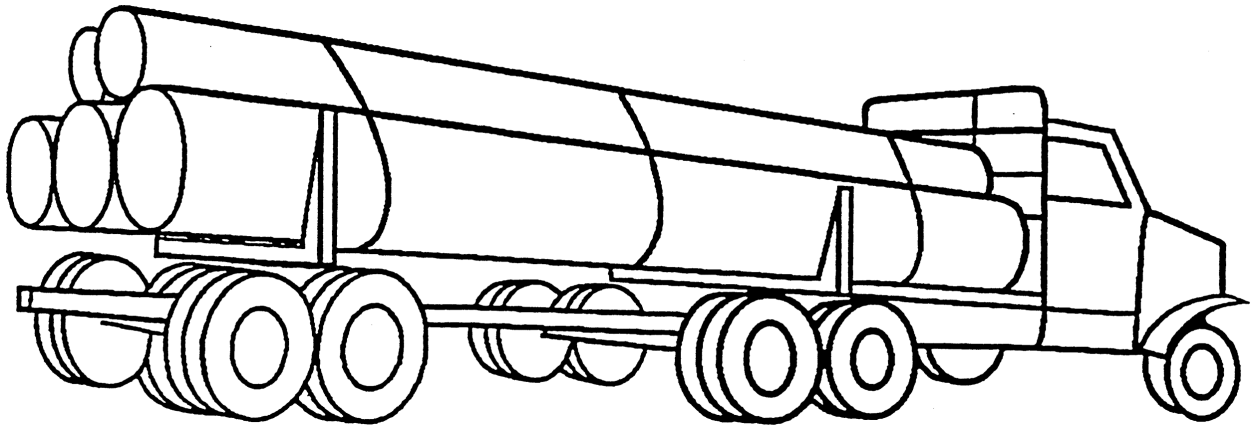


Figure 31: Five or More Log Load if any Logs are more than 17 feet

Proper Support for Logs

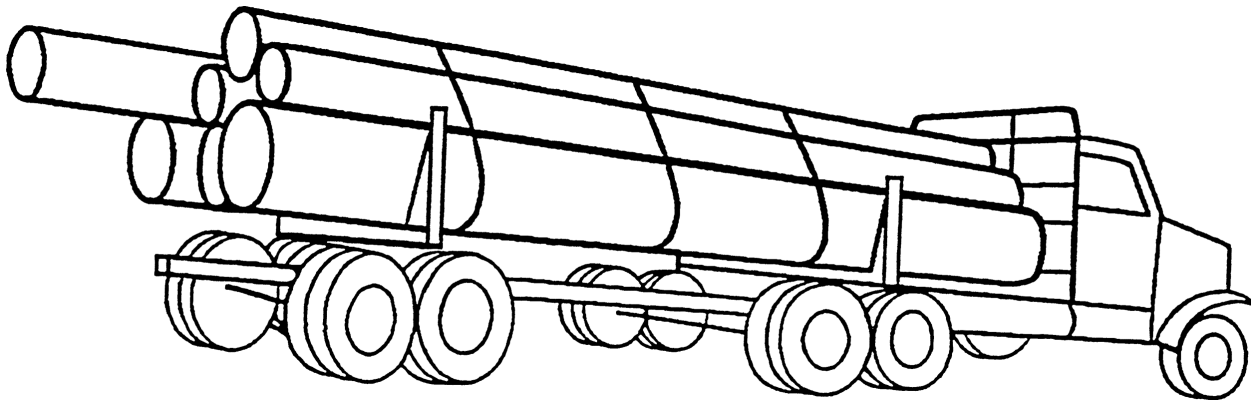


Figure 32: Proper Support for Logs

Outside Logs or Top Logs

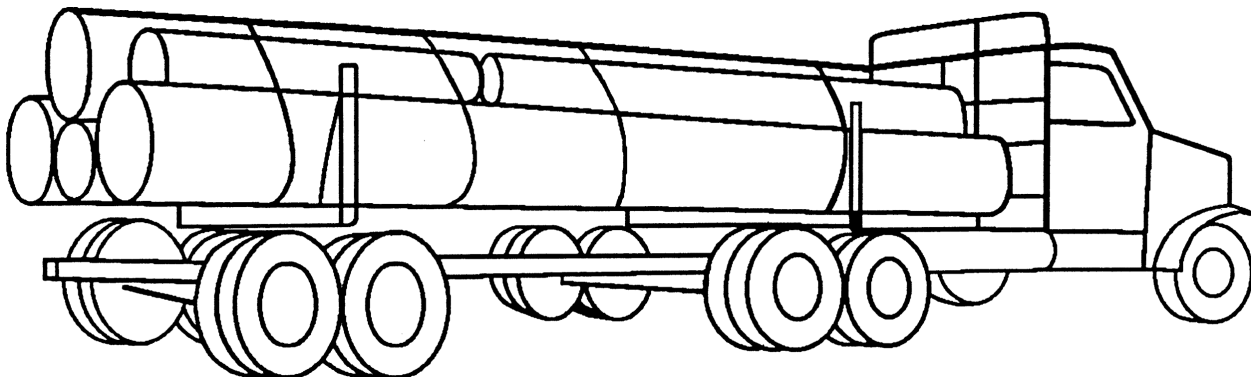


Figure 33: Outside Logs or Top Logs

A Wrapper Must Be Near Each Bunk

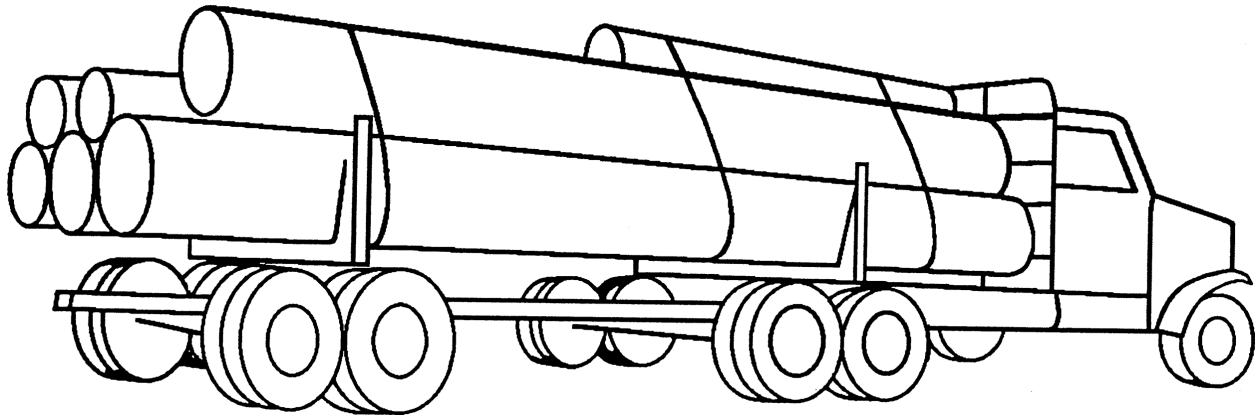


Figure 34: A Wrapper must be near each bunk

Short Logs Loaded Crosswise

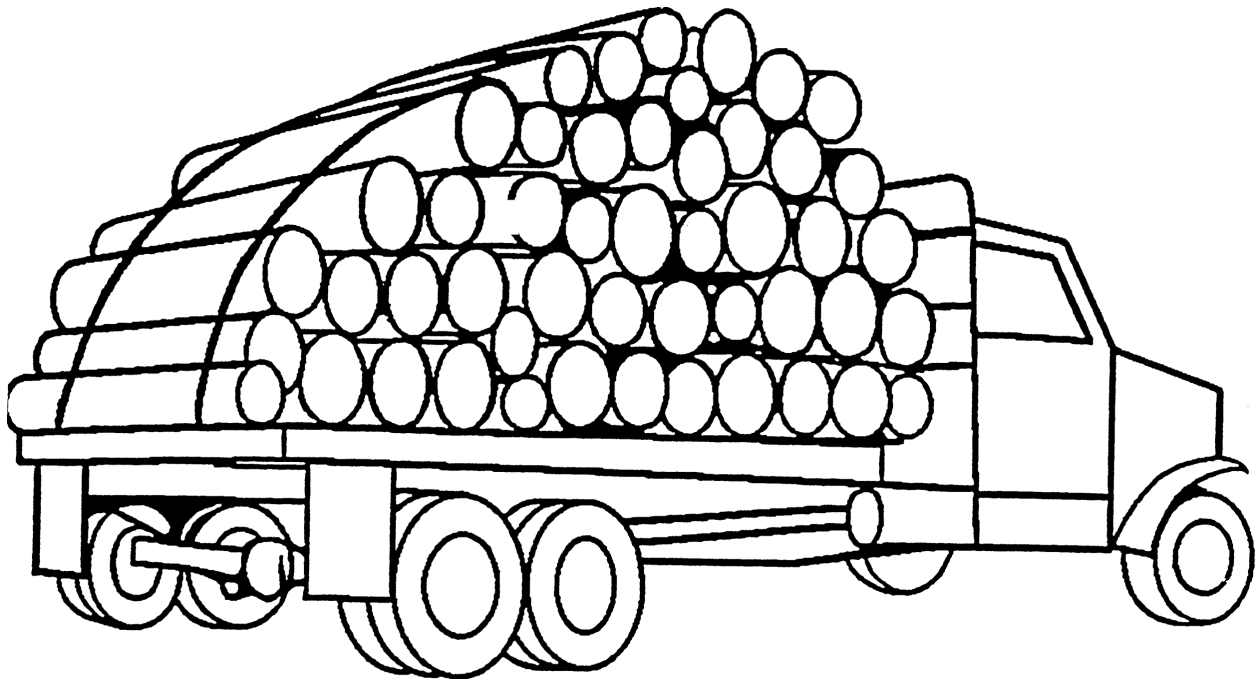


Figure 35: Short Logs Loaded Crosswise

Note: All loads of logs on logging trucks equipped with chock blocks instead of stakes, must have at least one additional wrapper over and above the requirements for trucks equipped with stakes, except on one and two log loads and trucks with short logs loaded crosswise.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-591 Stationary log truck trailer loading. (1) All loading devices must be designed, constructed and maintained so as to have a five to one safety factor for the rated load capacity.

(2) Loaders must be high and wide enough so they can safely load the maximum-sized trailers they are expected to handle without hanging up or striking the equipment.

(3) Electric-powered trailer loading devices must be equipped with a switch or device that will safely limit the upper direction of travel of the load line.

(4) Electric motors used for hoisting must be equipped with approved overload switches or breakers.

(5) Electrical switch controls must not exceed twenty-four volts. All control switches must be the momentary-contact type that require continuous manual pressure for the hoist to operate.

(6) Pendant control switches must be suspended by a chain or other suitable device that will prevent placing a strain on the electrical cable.

(7) Pendants must be installed so that the control switch does not touch the ground when retracted.

(8) All electrical equipment must be weatherproof-type or adequately protected from the weather, and must meet or exceed the requirements of the National Electrical Code as promulgated by the director of the department of labor and industries pursuant to RCW 19.28.060.

(9) Trailer loaders, except A-frames or bridge crane, must be equipped with reach guides or devices that will keep the reach in proper alignment. A tag rope or other safe guidance device must be used to guide trailers being loaded by an A-frame loader.

(10) Access roads and the area around the trailer loading devices must be kept free of standing water and debris and maintained in good repair.

(11) The maximum capacity load to be lifted must be posted in a conspicuous location where it can be easily seen by any person operating the hoist.

(12) Trailer loading equipment must be periodically inspected at least every thirty days and must be maintained in good repair. A written report must be made and signed by the person making the inspection and kept on file by the company for twelve months.

(13) ~~((The employer))~~ You must conduct an annual lifting test on each loading device and maintain a written record of the test.

(a) The written record must contain:

(*) (i) The date of the test;

(*) (ii) The name of person conducting the test;

(*) (iii) The amount of weight lifted; and

(*) (iv) The results kept in the office of the employer or at the site.

(b) The test weight must be at least one hundred twenty-five percent of the maximum rated load and a maximum of one hundred thirty percent of the maximum rated load.

(14) Each drum must be designed and arranged in such a manner that the line will maintain lead and spool evenly without chafing, crossing, or kinking.

(15) A braking system must be installed that has the ability to safely brake and hold one and one-half times weight of the full rated load.

(16) When trailers are to be loaded after dark, sufficient lights must be provided for a safe operation.

AMENDATORY SECTION (Amending WSR 06-07-142, filed 3/21/06, effective 5/1/06)

WAC 296-54-593 Log unloading, booms, and rafting grounds—Storage and sorting areas—General. (1) At least two persons must be present for all storing, sorting, or boom work, except for boomboat operations.

(2) Employees working on, over, or along water, where there is a danger of drowning, must be provided with and wear approved personal flotation devices.

(a) Employees are not considered exposed to the danger of drowning when:

(i) Employees work behind standard height and strength guardrails;

(ii) Employees work inside operating cabs or stations that will prevent accidentally falling into the water; or

(iii) Employees wear approved safety belts with lifeline attached to prevent falling into the water.

(b) Before and after each use, personal flotation devices must be inspected for defects that would reduce their designed effectiveness. Using a defective personal flotation device is prohibited.

(c) An approved personal flotation device must be approved by the United States Coast Guard as a Type I PFD, Type II PFD, Type III PFD, or Type V PFD, or their equivalent, as required in 46 C.F.R. 160 (Coast Guard Lifesaving Equipment Specifications) and 33 C.F.R. 175.23 (Coast Guard table of devices equivalent to personal flotation devices). Ski belt or inflatable personal flotation devices are prohibited.

(3) In operations where regular logging machinery, rigging, etc., is used, the applicable rules apply.

(4) ~~((The employer))~~ You must provide and ensure the use of artificial lights where employees work between the hours of sunset and sunrise. The lights must be located in a manner that will:

(*) (a) Be reasonably free of glare;

(*) (b) Provide uniform distribution of illumination; and

(*) (c) Avoid sharply defined shadows.

(5) On all log dumps, adequate power for the unloading method used must be provided. All machines used for hoisting, reloading, or lowering must be of an approved design and have enough power to control or hold the maximum load imposed in mid-air.

(6) Methods of unloading logs must be arranged and used in a manner to provide full protection to all employees.

(7) Binders must not be released from any load until an effective safeguard is provided.

(8) All mobile log handling machines must be equipped with a means to prevent the logs from accidentally leaving the forks, and it must be used.

(9) The operator of the unloading machine must have an unobstructed view of the unloading area or must make certain no one is in the area where the logs are to be unloaded. Rear-view mirrors must be installed on mobile log handling equipment to assist the operator in determining that the area behind the machine is clear before backing up.

(10) Unloading lines must be arranged so that it is not necessary for an employee to attach them on the pond or dump side of the load.

(11) Life rings with a minimum of ninety feet of 1/4-inch line with a minimum breaking strength of five hundred pounds attached, must be provided at convenient points adjacent to water that is five feet or more in depth. Life rings must be a minimum of thirty inches outside diameter and seventeen inches inside diameter and be maintained so as to retain a thirty-two pound positive buoyancy.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-54-59340 Log unloading, booms, and rafting grounds—Dry land sorting and storage. (1) Unauthorized foot and vehicle traffic is prohibited in the sorting or storage area.

(2) Logs must be stored in a safe and orderly manner. Roadways and traffic lanes must be kept clear of protruding ends of logs and debris.

(3) Dry deck log storage areas must be kept orderly and maintained in a condition conducive to safe operation of mobile equipment. Roadways and walkways must have a smooth hard-packed surface wide enough to permit a safe operation. Bark, mud, and other debris must not be allowed to accumulate to the extent they constitute a hazard to the operation.

(4) ~~((The employer))~~ You must implement an effective method to control dust at log dumps and in sorting and storage areas.

(5) Only an authorized person ~~((shall))~~ will operate or ride any lift truck, log stacker, or log unloader.

(6) Signaling log unloader operators at dry deck areas by throwing bark or chips in the air is prohibited. Hand, horn signals or other safe, effective means must be used at all times.

(7) Unnecessary talking to the operator while operating controls of a log stacker or log unloader is prohibited.

(8) Lift forks and arms of unloading machines must be lowered to their lowest position, and all equipment brakes set before the operator leaves the machine unattended.

(9) Log unloaders or stackers must not be moved about the premises for distances greater than absolutely necessary with the lift extended above the driver's head or with loads lifted higher than is necessary for vision.

(10) When truck drivers are out of the cab, they must be in the clear, and in view of the log unloader before the lift forks are moved under the load and the lift is made.

(11) Where logs are offloaded onto a dry deck by unloading lines, a self-releasing mechanism must be used. Employees are prohibited from climbing dry decks to release unloading lines.

(12) Employees must not enter the hazardous area near or under loads of logs being lifted, moved, or suspended.

(13) When log unloaders and log stackers are designed so that logs being handled may jeopardize the safety of the operator, ~~((the employer))~~ you must provide overhead protection and any other necessary safeguards.

(14) Log unloaders and log stackers must be equipped with a horn or other audible warning device. If vision is impaired or restricted to the rear, the warning device must be sounded before operating the vehicle in reverse gear and periodically while backing. The warning device must be operative at all times.

(15) A limit stop, which will prevent the lift arms from over-traveling, must be installed on electric powered log unloaders.

(16) Shear guards must be installed on unloading machines and similar equipment on which the arms pivot and move alongside the operator creating a pinch point at that location.

(17) All forklift log handling machines must be equipped with a grapple arms and the arms must be used whenever logs are being carried.

(18) When log trucks are loaded by a log stacker and the lay of any log is higher than the stakes, the log stacker must remain against the completed load, or other suitable protection provided, to prevent the logs from falling until at least two wrappers and binders have been applied.

(19) All binders and wrappers must remain on the load until an approved safeguard has been provided to prevent logs from rolling off the side of the truck or trailer when binders are released. A shear log, or equivalent means, must be provided to ensure the log truck will be stationed close enough to the wrapper rack so that a log cannot fall between the log truck and the wrapper rack when removing binders and wrappers. At least one binder must remain secured while relocating or tightening other binders. Crotch lines, forklifts, log stackers, log unloaders, or other effective means must be used for this purpose.

(20) An extra wrapper or metal band of equal strength must be placed to hold the logs when it is necessary to remove a wrapper to prevent it from being fouled by the unloading machine.

(21) Machines with arms that block the regular exit when in the up position must have an emergency exit installed.

(22) Riding on any part of a log handling machine except under the canopy guard is prohibited.

(23) Identification tags must not be applied or pulled unless logs are resting in a stationary place, such as bunks, cradles, skids, or sorting tables.

(24) Employees must not approach the immediate vicinity of a forklift-type log handling machine without first notifying the operator of the person's intention and receiving an acknowledgement from the operator.

(25) When dry land log dumps use unloading methods similar to those of water dumps, the safety standards for water dumps apply.

(26) When logs are handled between sunset and sunrise or other periods of poor visibility, ~~((the employer))~~ you must provide illumination that meets the requirements of WAC 296-800-210 relating to illumination.

(27) Air operated stake releases must meet the following requirements:

(a) The air supply must be taken from the "wet" air reservoir or from the accessory air line to a spring loaded, normally closed control valve;

(b) The control valve must be located in the cab, positioned so that it is accessible only from the operator's position;

(c) The control valve must be fitted with a spring-loaded cover or otherwise guarded against inadvertent operation; and

(d) A separate air line must extend from the control valve to the tractor and trailer stake release chambers. The air line must be clearly identified or installed so that it cannot be mistaken for the service or emergency air line.

(28) Each deck must be constructed and located so it is stable and provides each employee with enough room to safely move and work in the area.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-601 Signals and signal systems. (1) Standard hand or whistle signals as described in this chapter must be used for the movement of rigging, logs, or equipment when using a high lead, slackline, or cable skidder system for yarding. For hand signal illustrations, see appendix 1.

(2) Voice communication may be used to move rigging and control movement of logs, provided a standard audible whistle signal is sounded before any line is moved.

Note: Subsections (1) and (2) of this section do not apply to grapple or other special yarding systems where employees are not exposed to the movement of logs or rigging.

(3) Voice communications may be used for grapple yarding under the following conditions:

(a) Voice communications by use of radio frequencies may be used to transmit instructions and directions to the yarder operator when using a grapple type logging system, if no employee is in a hazardous area near live rigging.

(b) Voice communication may be used to instruct the yarder operator when picking up an occasional log with the use of a choker on a grapple system, if the grapple is on the ground before the setting of the choker and no lines are moved by the operator until the person setting the choker has returned to a safe location away from any running lines. When a number of logs must be yarded by using chokers instead of the grapple, the requirements for high lead logging apply.

(4) Voice communication on the same radio frequencies used to transmit skyline, high-lead, slackline or skidder whistle signals (154.57 and 154.60 MHz channels), must be limited to reporting injuries, fire, and emergency situations where special tools or precautions are needed to prevent or alleviate a hazardous situation. In addition:

(a) The rigging crew must call the yarder engineer by name to ensure that proper contact is established;

(b) The yarder engineer must acknowledge the call with a whistle "stop" signal before the caller starts transmitting the voice message;

(c) Voice transmission must be kept as brief and to the point as possible; and

(d) After receiving the voice message, the yarder engineer must again acknowledge with a whistle "stop" signal that the message has been received and is clearly understood.

(5) If a standard signal is not listed for an unusual or new situation, a hand or whistle signal other than any listed for the type of yarding being done may be used for the specific situation only. Any special signals developed must be understood by all persons working in the area who may be affected by their use.

(6) A copy of the standard hand and whistle signals must be ~~((posted on the yarder and at places where crews congregate. For tractor logging operations, hand signals must be posted at places frequented by the crew members such as in crew buses, etc))~~ available at the worksite.

(7) Only one person in any crew ~~((shall))~~ must give signals at the point where chokers are being set. Any person is authorized to give a stop signal when someone is in danger or another emergency condition is apparent.

(8) Hand signals are permitted only when the signal person is in plain sight of the machine operator and when visibility allows signals to be seen. Hand signals may be used at any time as an emergency stop signal.

(9) Throwing of any type of material or relying on engine noise, such as from a chain saw, as a signal is prohibited.

(10) All persons must be in the clear before any signal is given to move the rigging, logs, or turns. Rigging, logs, or turns must not be moved until after the proper signals have been given.

(11) Machine operators must not move any line unless the signal received is clear and distinct. If in doubt, the operator must repeat the signal as understood and wait for confirmation.

(12) A horn or whistle that is automatically activated by the radio or electric signaling system must be used on each yarder used for skyline, high lead, skidder or slackline system of yarding, except where hand signals or voice communication as described in subsection (2) of this section is permitted. The horn or whistle must emit a sound that is clearly audible to all persons in the affected area and must be sounded before any line is moved. Such a horn or whistle is also required on combination yarding and loading machines and tree pullers. Audible signals are not necessary on grapple or other yarding systems where persons are not exposed to the movement of logs or rigging.

(13) All radio-controlled motorized carriages and sky-cars must have a warning horn which must be sounded before any lines or loads are moved or an audible whistle must be sounded from the yarder.

(14) Each unit of the signal or control system in use must be tested daily before logging operations begin. Audible signals used for test purposes must not include signals used for the movement of lines or materials.

(15) Citizen band (CB) radios must not be used to activate any signal, machine, or process, either automatically or by voice. CB radios may be used for communication between sides, vehicles, work units, or for emergency situations.

(16) When audible whistle signals are being used simultaneously by yarding and loading machines at a landing, signal whistle or horn tones used in connection with machine movements must be so differentiated as to distinctively identify any intended work movement of either machine.

(17) When the normal rigging crew configuration consists of two or more persons at the point where chokers are being set, ~~((they must each carry an operable transmitter on their person))~~ at least two members of the rigging crew must carry transmitters for each signal and control system being operated where chokers are being set. Only one transmitter for each signal and control system is required if:

(a) The signal person has no other duties and remains in an area where there are no hazards created by the moving rigging or logs; or

(b) The rigging crew is comprised of only one employee.

(18) The use of a jerk wire whistle system for any type of yarding operation is prohibited.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-604 Radio signaling permits. To apply for a new radio signaling permit, to request a change in a permit, or to request a change in the use area for any permitted system, write to:

WISHA Services Division—Permits
Department of Labor & Industries
P.O. Box ((44650)) 44655
Olympia, WA ((98504-4650)) 98504-4655

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-605 Radio systems used for voice communication, activation of audible signals, or control of equipment. (1) A valid operating permit must be obtained by the owner from the department of labor and industries, prior to putting into use any radio signaling or control system intended to be used in conjunction with any type of cable logging operations.

(a) Permits will be issued only for systems licensed for such use and using those carrier frequencies as authorized by the Federal Communications Commission.

(b) Permits will be granted only when tone or function frequencies are compatible with other radio systems in use and when in compliance with all other applicable requirements of this chapter.

(2) The department of labor and industries reserves the right to designate the use of radio frequencies for specific purposes or functions. For example: Frequencies may be specified for voice transmission of instruction, others for tone-coded functions, or activation of signaling devices.

(a) Single tone coded functions must not be used on radio equipment designed to initiate whistle signals, or to activate or control any machine, material-handling device, or other equipment hazardous to employees.

(b) The department may also designate which tone frequencies may be used for the activation of a signaling device or for control of equipment on certain federal communication assigned carrier frequencies.

(3) A list of tone frequencies that may be used with any Federal Communications Commission assigned carrier frequencies will be made available from the department upon request.

(4) The department will assign the area or areas in which a radio signaling system may be used and mark those areas on the permit. Radio signaling systems must not be used in any area other than the ones indicated on the permit. (See Figure 36: Areas for Use of Radio Signaling Systems for Logging Operations.)

(5) The person or firm name on the permit must be the same as the person or firm operating the radio signaling system except for loaner or rental sets. A person or firm using a loaner or rental set is responsible for the radio signal system as if they were the owner of the set.

(6) The application for a permit to use a radio signaling system must contain the following information (see Figure

37: Application for permit to operate radio signal system in designated area):

(a) Name and address of applicant.

(b) The radio frequencies of the radio signaling device in MHz.

(c) The tone frequencies of the radio signaling system used to activate a horn, whistle, or control equipment in Hz. The security gate, or pulse tone, must be shown first.

(d) The name of the manufacturer of the radio signaling system.

(e) The serial number of the receiving unit.

(f) The state assigned area or location in which the unit will operate.

(g) The type of signaling used.

(h) From whom the system was purchased or acquired, and the date of acquisition of the system.

(i) Intended use and function of the system.

(7) All radio equipment must meet all applicable FCC standards. FCC identifier numbers and required information must be visible when possible.

(8) Radio equipment must not be used without displaying a permit as required by this standard. The permit must be prominently displayed on the outside case of the receiver of the unit or, for radio-controlled carriages, on the transmitter in the yarder.

(9) Each radio receiver must have its radio carrier frequency in MHz and tone frequency(s) in Hz indicated on the outside case of the receiver (see Figure 38: Radio permit):

(a) The manufacturer's name and serial number must be permanently indicated on the outside of the case;

(b) When the duration or width of the tone frequencies performs a function, the one duration/width must also be permanently indicated on the outside of the receiver case;

(c) Each transmitter must be identified with its receiver; and

(d) Two or more receivers in operation simultaneously on the same tone frequencies are prohibited unless one is used for monitoring only.

(10) It ((~~shall~~)) will be the responsibility of the owner of any radio signaling system to notify the department of labor and industries, immediately, if the signal system is:

(a) Permanently retired (in what manner and date retired);

(b) Sold (submit name and address of purchaser and date sold);

(c) Removed from the state (name of state to which moved and date moved); or

(d) Stolen (date).

(11) All radio signaling systems put into use for the first time after the effective date of these safety standards, ((~~shall~~)) must meet or exceed the minimum performance specifications contained in WAC 296-54-607 of these safety standards, and, when altered or repaired, ((~~shall~~)) must continue to meet such specifications.

(12) Adjustments, repairs, or alterations of radio signaling and control devices must be done only by or under the immediate supervision and responsibility of a qualified and certified radio technician with factory training or equivalent certified experience. Anyone without the technical ability or the proper equipment to cause the signaling systems to func-

tion within required tolerances must not attempt to repair, alter, or adjust the systems.

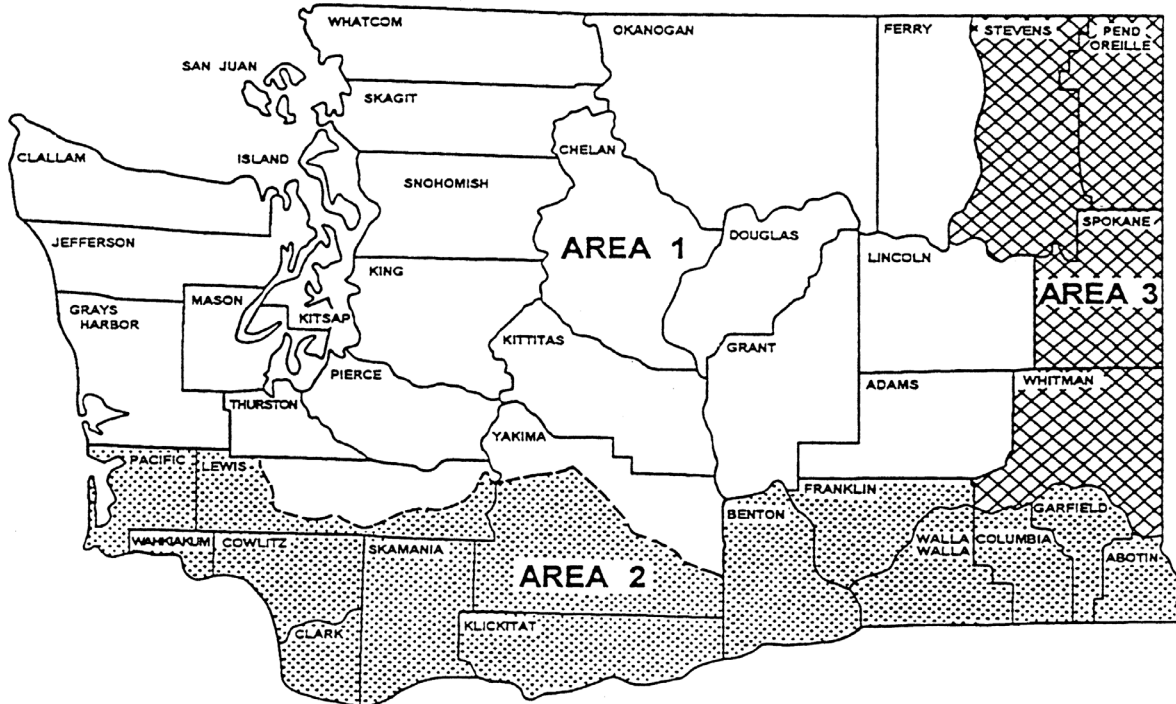
(13) When interference, overlap, fadeout, or blackout of radio signals is encountered, the use of the device must be discontinued immediately. Use may not be resumed until the source of trouble has been detected and corrected.

(14) Radio frequencies assigned to systems for which voice communications may be used to give signals to the yarder operator must not be the same frequencies as those assigned for whistle signals or machine control signals used in skyline, highlead, slackline, or cable skidder systems.

(15) When hazardous interference is created by moving a voice communication system into an area where a system is already in use on the same frequency, use of the (~~newly moved~~) newly moved system must be immediately discontinued until the problem of interference has been corrected.

(16) Before moving any unit from one assigned geographical area to another (see area map, Figure 36: Areas for Use of Radio Signaling Systems for Logging Operations), the owner must apply for and receive a new permit from the department.

AREAS FOR USE OF RADIO SIGNALING SYSTEMS FOR LOGGING OPERATIONS



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL SAFETY AND HEALTH

Figure 36: Areas for Use of Radio Signaling Systems for Logging Operations

Form No. 157.

STATE OF WASHINGTON

5-71

DEPARTMENT OF LABOR AND INDUSTRIES

DIVISION OF SAFETY

APPLICATION FOR PERMIT TO OPERATE RADIO SIGNAL SYSTEM IN DESIGNATED AREA

Radio Carrier Frequency Serial No.
Tone Coding Frequency Hz Name of Manufacturer of Signal System
Firm Name Address By
Intended Function of Unit: Voice communication [] Whistle signal [] Control Equipment []
Area in which Unit will be Operated: 1 [] 2 [] 3 []
Type of Tone: Sequential [] Simultaneous [] If other specify type
System to be Used For: Grapple [] Skyline, Highlead, Slackline, Skidder [] Balloon []
Date System Purchased or Acquired: Day Month Year
Date Application Mailed to Division of Safety/...../.....
Date Permit Issued/...../.....
DIV. OF SAFETY USE ONLY

Figure 37: Application for Permit to Operate Radio Signal System in Designated Area

((

Dept. of Labor & Industries
Div. of Consultation & Compliance
P.O. Box 44650
Olympia, WA. 98504-4650



RADIO PERMIT

TO OPERATE MULTI-TONE RADIO SIGNAL SYSTEM IN DESIGNATED AREA.

MODEL SERIAL
CARRIER FREQUENCY MHz
TONES Hz
AREA
FIRM NAME
ISSUED BY

F416-086-000 RADIO PERMIT 10-88

))

Department of Labor and Industries
Division of Occupational Safety and Health
PO Box 44655
Olympia, WA 98504-4655
Radio Permit
Serial No. Carrier Frequency MHZ
Area Tones HZ
Firm Name
Issued by:
DEPARTMENT OF LABOR AND INDUSTRIES

Figure 38: Radio Permit

A permit issued by the department of labor and industries shall be attached to the outside of the receiver which shall indicate the area in which the radio signaling equipment may be used.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-607 Radio signal systems—Specifications and test procedures. All radio-signaling systems put into use must meet or exceed the requirements of this section. When systems are altered or repaired they must continue to meet these requirements.

(1) Radio equipment in use at cable logging sites, which is primarily used for voice communication, must be on a separately assigned frequency from radio equipment primarily used to initiate whistles or other audible signaling devices or to control any machine, material handling device or other equipment hazardous to employees.

(2) Radio-signaling systems used to transmit whistle signals or control functions of equipment associated with skyline, highlead, slackline, or cable skidder systems of logging must transmit and decode only by the use of authorized multitone frequencies. Only sequential tones may be used to transmit signals or control equipment when using carrier frequencies of 154.57 or 154.60 MHz.

(3) All radio systems receiver sensitivity must be able to attain 0.4 microvolt, or greater, for 12 dB SINAD ratio for VHF frequencies and 0.5 microvolt, or greater, for UHF frequencies. When interference is a factor, the receiver may be desensitized in the furtherance of safety by a person qualified according to WAC 296-54-605(12).

(4) All radio signal systems must have receiver spurious attenuation of at least 70 dB when measured by the 20 db quieting method and image response attenuation of 60 db when measured by the 20 db quieting method. (~~"Spurious response attenuation" is a measure of the receiver's ability to discriminate between a desired signal to which it is resonant and an undesired signal at any other frequency to which it is also responsive.~~)

(5) All radio signal systems must have receiver selectivity of at least 80 db plus or minus 30 KHz, when measured by the E.*I.A. SINAD method.

(6) The receiver-decoder tone frequency stability must not exceed 0.006 (0.6%) above or below the assigned tone frequency.

(7) The drift of a transmitter-encoder tone must not exceed 0.006 (0.6%) above or below the assigned tone frequency.

(8) Parts of the radio-signaling system affected by moisture, which may be subjected to the entrance of moisture during use, must be weatherproofed. Transmitters must be tested within fifteen minutes after being subjected to the following conditions and must have the ability to continue functioning properly. The transmitter and receiver must be placed in a humidity chamber for eight hours where the humidity has been maintained at not less than ninety percent and where a 40 degrees C. temperature has been maintained.

(9) Radio-signaling system units must operate within tolerances specified at any temperature within the range of -30 degrees C. to +60 degrees C.

(10) Switches of transmitters used to send whistle signals or activate equipment associated with high lead, slackline, or cable skidder systems of logging must be designed so that two buttons, motions or a combination of these are required simultaneously to cause activation of the system. Arrange-

ment of the activating switches must allow the operator to transmit signals easily but not easily activate a control or command function accidentally.

(11) All receivers intended to be mounted on or in the yarder or similar equipment, and all portable transmitters, must continue to maintain specified mechanical and electrical performance during and after being subjected to vibration of the magnitude and amplitude as follows:

(a) The equipment must be vibrated with simple harmonic motion having an amplitude of 0.015" (total excursion 0.03") with the frequency varied uniformly between 10 and 30 Hz and an amplitude of 0.0075" (total excursion 0.015") with the frequency varied uniformly between 30 and 60 Hz.

(b) The entire cycle of frequencies for each group (i.e., 10 to 30 cycles and 30 to 60 cycles) must be accomplished in five minutes and repeated three times.

(c) The above motion must be applied for a total of thirty minutes in each direction, that is, the directions parallel to both axes of the base and perpendicular to the plane of the base.

(12) All portable transmitters must be able to maintain specified mechanical and electrical performance after being subjected to a shock test as follows: The transmitter (~~shall~~) must be dropped five times from a height of four feet onto a smooth concrete floor. Each drop must impact a different surface of the transmitter.

(13) Transmitters operating on carrier frequencies of 154.57 MHz and on 154.60 MHz must be limited on maximum power output of 500 mW measured at the antenna terminals.

(14) To minimize the possibility of interference with other signaling systems, the input power of transmitters operating in the 450 MHz range should be limited to only the amount needed to transmit to the receiver of the system effectively.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-701 Wood spar trees. (1) Wood spar trees must be of sound material of sufficient size and strength to withstand any stresses which may be imposed by any equipment used for that specific logging operation.

(2) The top of the tree must not extend (~~not~~) more than:

(a) Sixteen feet above the top guylines on spar trees over fifty feet tall; and

(b) Eight feet above the top guylines on spar trees less than fifty feet tall.

(3) School marms used as spar trees must be topped at the forks. Spar trees, except cedar, must be barked where guylines, straps, bull blocks, and tree plates are placed.

(4) Spar trees must be topped and limbs must be cut off close so that running lines will not foul or saw on protruding knots.

(5) At least four tree plates must be placed under top guylines on spar trees over fifty feet tall. At least three tree plates must be used on spar trees less than fifty feet tall.

(6) Tree plates must be equipped with lugs or other suitable means to hold them in place.

(7) Before raising spar trees, dummy trees must be topped and guyed with three guylines equivalent in breaking strength to the mainline.

(8) When spar trees are raised, stumps used for snubbing must be properly notched. Guylines must be held by a mechanical means. Snubbing by hand is prohibited.

(9) All rub trees must be limbed and topped.

(10) Loose material such as bark, spikes, straps or chains not in use and slabs caused by bumping logs or chafing straps must be removed from the spar trees. Heavy bark must be removed from trees used for a permanent installation.

(11) A person must ride only the passline to thread lines, to lubricate blocks, or to inspect rigging.

(12) When the friction lever and passline drum are on the opposite side of the machine from the operator, an experienced person (~~must~~) operates the friction lever while the engineer operates the throttle. While being used, the passline drum must be properly attended by another person to guide the passline onto the passline drum with a tool suitable for the purpose.

(13) Using a gypsy drum to handle employees in the tree is prohibited.

(14) A climber's rope must encircle the tree before the climber leaves the ground, except when the climber is riding the passline.

(15) Spikes, used by the climber as a temporary aid in hanging rigging, must be removed before the tree is used for logging.

(16) Topping trees in windy weather is prohibited.

(17) Topping, rigging-up, or stripping is prohibited when visibility is impaired.

(18) When heel tackle is fastened near the machine, a safety line must be placed in such manner that in case of breakage, lines do not strike the power unit and endanger the operator.

(19) Yarding with more than one unit on any one head spar is prohibited.

(20) The angle between the power unit, the high lead block, and the mainline road must not exceed a square lead on rigged spars. When using portable spars or towers, the location of the machine or position of the operator must ensure that the operator is not endangered by incoming logs.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-70110 Wood spar trees—Guylines. (1) Wood spar trees using a line greater than 7/8-inch and used as loading and yarding trees must have at least six top guys and four buckle guys, if a sail guy is used.

(2) Wood spar trees using a mainline greater than 7/8-inch and used only as yarding trees must have at least six top guys and must use at least three buckle guys.

(3) Wood spar trees using a mainline of 7/8-inch or less must be supported by at least five top guylines or other positive means of supporting the spar.

(4) Wood spar trees used for yarding with light equipment (7/8-inch or smaller mainline) must be guyed so that strains will be imposed on at least two guylines. If less than

five top guys are used, guylines must be at least 1/4-inch larger than the mainline.

(5) Wood spar trees used for loading only with crotch line, spreader bar, or swinging boom must have at least four top guys and must use at least three buckle guys.

(6) More guylines must be added if there is any doubt about the stability of a spar tree, raised tree, tail tree, lift tree, or other equipment or rigging they support.

(7) Wood spar trees used for transfer must have at least five top guys and must use at least three buckle guys.

(8) Guylines must be alternately (~~be~~) passed around the wood spar in opposite directions to prevent twisting of the spar.

(9) Guylines must be attached to the upper portion of the wood spar by shackles.

(10) When a high lead block is hung below buckle guys, at least three top guys of equal strength to the mainline must be used to keep the top from swaying.

(11) When buckle guys are required, they must be installed on the tree where they will provide the maximum effectiveness.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-705 Truck and equipment maintenance shops. It is recognized that the usual hazards encountered in maintenance shops performing work on logging and related equipment would be very similar to those found in general repair, machine or welding shops; therefore, the rules contained in chapter 296-24 WAC, General safety and health standards and other applicable safety standards promulgated and administered by the department of labor and industries (~~shall~~) must apply to such places of work.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-99003 Appendix 2—Sample minimum lockout/tagout procedure. (Company Name) has established this lockout/tagout program to provide protection for employees performing maintenance or servicing of (~~logging~~) equipment.

Before any employee begins maintenance or servicing of equipment where the unexpected energizing, start up, or release of stored energy could cause injury, the equipment must be shut down, isolated from all potentially hazardous energy and locked or tagged out.

Employees must not start, attempt to start, energize or use equipment that has been locked or tagged out. Tags and/or padlocks will be provided for tagging and/or locking out (~~logging~~) machinery and will be durable enough to withstand the environment. Tags will contain a legend such as: "Do Not Start" or "Do Not Operate." When tagout is used, tags must be located in a position that will be obvious to anyone attempting to operate the machinery. In lockout, padlocks are commonly used to prevent access to ignition/master switches or battery disconnects.

Employees performing maintenance or servicing must determine which sources of hazardous energy must be dis-

abled for a particular job. The following are examples of hazardous stored energy found on ((logging)) equipment:

- ((★)) 1. Equipment
- ((★)) 2. Hydraulic or pneumatic pressure
- ((★)) 3. Mechanical (rotating saws, springs, shafts, gears, etc.)
- ((★)) 4. Gravity (elevated blades, booms, grapples, saw heads, etc.)

Sample lockout/tagout procedures

The following steps must be followed for lockout/tagout:

- ((★)) 1. Ensure that the brakes, swing locks, etc. are applied.
- ((★)) 2. Place the transmission in the manufacturer's specified park position.

- ((★)) 3. Lower or secure each moving element such as, but not limited to, blades, booms, grapples, buckets, saws, and shears to prevent a release of stored energy.
- ((★)) 4. Shut down machinery, and ensure that a responsible person removes and keeps the ignition/master key.
- ((★)) 5. Engage hydraulic safety locks when applicable.
- ((★)) 6. Before working on hydraulic or air systems, relieve pressure by bleeding tanks or lines and operate controls to dissipate residual stored energy (pressure).
- ((★)) 7. Place lockout and/or tagout device.

Before lockout or tagout devices are removed and machinery is started, inspect the work area to ensure all tools have been removed, guards are replaced, and employees are in the clear.

We will provide training to ensure that the purpose and function of the lockout/tagout program are understood by employees performing maintenance or repair of equipment.

NEW SECTION

WAC 296-54-99015 Appendix 6—Sample chain shot training program.

"Chain Shot" Awareness and Prevention Training

Employee _____ Trainer _____ Date _____

All employees who operate or work around or perform maintenance and/or repair of any kind of machinery equipped with a hydraulic powered bar saw must receive "chain shot" awareness training appropriate to their job.

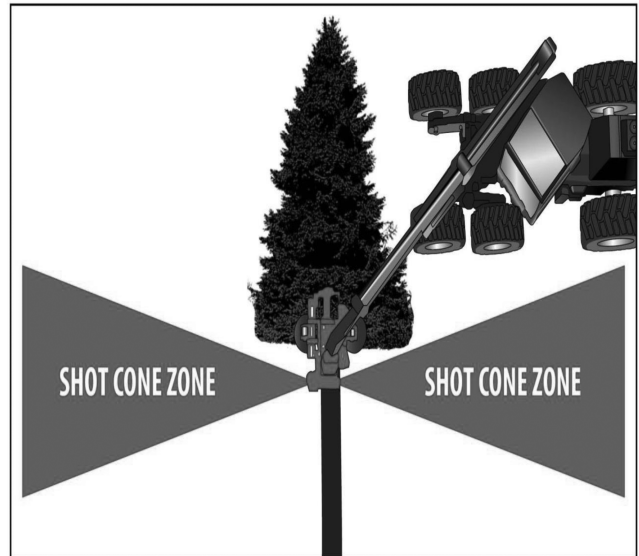
Note: Employers who have employees who are potentially exposed to the chain shot but do not operate, inspect, or maintain the equipment can limit training to the information in Section 1.

Indicates that the employee has received training.

Section 1 General information

- Chain shot is the high velocity separation and ejection of a piece or pieces of cutting chain from the end of a broken chain in mechanized timber harvesting/processing. Chain shot exposes both machine operators and bystanders to a risk of serious injury or death. Chain shot typically occurs near the drive end of the cutting system but can also come from the bar tip area.
- A chain shot consists of two breaks in a chain. First, the loop of chain breaks and forms two ends. One end moves past the drive sprocket or bar nose and is rapidly accelerated due to a whip-like motion of the chain end. The "whip action" causes the second break releasing small parts at extremely high speed.
- The "shot cone zone" is the area along the plane of the guide bar where pieces of a broken chain usually travel unless pieces are deflected. The SCZ angles out approximately at a 15 degree angle on both sides of the guide bar and a distance that possibly exceeds 250 feet.

- Employees should stay clear of the shot cone zone.



Section 2 Cutting system inspection

The cutting system must be inspected before initial use during each work shift. Defective parts that would make the cutting system unsafe to operate, must be replaced or repaired before the cutting system is placed in service. Report unsafe conditions to your supervisor.

Inspections must include:

- The lubrication system for leaks or damage.
- The chain for cracks or worn/damaged parts.
- The bar for wear and straightness and ensure the tip is properly secured.

- The sprocket.
- The chain catcher if equipped.
- The chain shot guard if equipped.

□ **Section 3 Cutting system maintenance**

- Sharpen, assemble and repair chains in accordance with the manufacturer's specifications.
- Maintain proper bar and chain lubrication, making sure to use the right type and amount of lubricant.
- Replace the drive sprocket when it has excessivewear.
- Clean guide bar grooves and oil port holes regularly.
- Guidebars should be flipped regularly to ensure even wear.

□ **Section 4 Cutting system operation**

- The operator and other persons should be kept clear of the shot cone zone.
- Follow chain manufacturer's recommendations for chain speed. "Boosting" or exceeding the recommended chain speed is prohibited.
- Maintain proper chain tension.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-54-595	Transporting crews.
WAC 296-54-59510	Speeders used to transport crews.
WAC 296-54-59520	Trailers used to transport crews.
WAC 296-54-597	Railroads.
WAC 296-54-59710	Railroad construction and maintenance.
WAC 296-54-59720	Railroad operations.
WAC 296-54-59730	Railroad maintenance—Loading or unloading.

**WSR 17-17-135
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed August 22, 2017, 10:30 a.m., effective September 22, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends WAC 181-82-130 to correct [a] drafting error. Provides additional time for candidates to meet requirements [requirements] by changed [changing] "application" to "hire" date.

Citation of Rules Affected by this Order: Amending WAC 181-82-130.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 17-10-040 on April 27, 2017.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Room 400, Olympia,

WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12kwa.us, web site WWW.PESB.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 22, 2017.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 16-04-128, filed 2/3/16, effective 3/5/16)

WAC 181-82-130 Assignment of persons providing instruction of Braille to students. (1) No certificated school district employee shall be assigned to provide instruction of Braille to students who has not demonstrated competency with the standards for Unified English Braille code by:

(a) Successful completion of the National Literary Braille Competency Test; or

(b) Successful completion of the Braille competency test developed at Washington State School for the Blind; or

(c) Successful completion of any other test approved for use by the professional educator standards board.

(2) No classified school district employee working under the supervision of a certificated school district employee, which certificated employee meets the requirement of subsection (1) of this section, may produce Braille material or provide instruction in the Braille code unless the employee has demonstrated competency with the standards for Unified English Braille code as provided under subsection (1) of this section.

(3)(a) Each school district is responsible for monitoring the appropriate assignment of personnel under subsections (1) and (2) of this section.

(b) Any person under subsections (1) and (2) of this section shall have one year from the date of ((application)) hire to successfully pass the testing requirement under subsection (1) of this section.

(c) The Washington Ogden Resource Center shall forward to the professional educator standards board the names of individuals who have passed the testing requirement under subsection (1) of this section and the date of passage. The center also shall forward to the professional educator standards board the names of individuals who have not passed the testing requirement within one year and the name of the employing school district of the individual.

(4) The professional educator standards board shall establish a test review committee which shall be responsible for developing criteria to evaluate a test under subsection (1)(c) of this section. No test shall be considered for approval by the professional educator standards board under subsection (1)(c) of this section unless it has been evaluated by the test review committee and a recommendation for approval or disapproval has been submitted to the board. At a minimum, the membership of the committee shall include persons representing:

- (a) National Federation of the Blind of Washington;
- (b) Washington council of the blind;
- (c) Association of education and rehabilitation of the blind and visually impaired of Washington;
- (d) Washington instructional resource center for the visually impaired;
- (e) Washington state school for the blind; and
- (f) Office of the superintendent of public instruction.

(5) A person who has met the requirement of subsection (1) of this section shall maintain their facility with the current Unified English Braille code by:

(a) Passing a recertification exam of completing learning modules every five years, or completing ten hours of Braille specific clock hours: Provided the option of clock hours is available only until January 2017.

(b) Individuals who seek through subsection (5)(a) of this section to remain eligible to work with visually impaired students are responsible for documenting completion of continuing education. Such individuals are strongly encouraged to provide a copy of their documentation to their employing school district. The documentation shall not be collected by the professional educator standards board. However, the documentation could be audited for purposes of compliance with basic education appropriation requirements under WAC 180-16-195.

WSR 17-17-149

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed August 22, 2017, 5:41 p.m., effective September 22, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-296-090 Public water system eligibility requirements, this rule making aligns the state rule with the federal rule concerning eligibility requirements for tribal public water systems to receive a drinking water state revolving fund loan.

Citation of Rules Affected by this Order: Amending WAC 246-296-090.

Statutory Authority for Adoption: RCW 70.119A.170.

Other Authority: 40 C.F.R. 35.3520.

Adopted under notice filed as WSR 17-14-022 on June 23, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 18, 2017.

Clark Halvorson
Assistant Secretary

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-090 Public water system eligibility requirements. (1) Public water systems eligible for a DWSRF loan include:

(a) Publicly and privately owned community public water systems, except those public water systems not eligible for a DWSRF loan under WAC 246-296-100; and

(b) Noncommunity public water systems owned by a nonprofit organization.

(2) Public water systems not eligible for a DWSRF loan include:

(a) Noncommunity public water systems owned by a for-profit organization;

(b) State-owned public water systems;

(c) Federally owned (~~(or-regulated)~~) public water systems;

(d) Group B public water systems, unless restructuring; and

(e) Public water systems lacking the system capacity to comply with all applicable federal, state, and local drinking water requirements, unless:

(i) The project will bring the public water system into compliance; and

(ii) The owner of the public water system agrees to reasonable and appropriate changes in operation and management to stay in compliance.

WSR 17-17-158

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed August 23, 2017, 10:04 a.m., effective September 23, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The director has established, by rule, a method to fund administrative staff support given by the department to all commodity boards and commissions. The board or commission's annual contribution to the department for administrative support is formulated based on the previous year's assessments received by those boards or commissions. In order to distribute administrative costs fairly, the department is including the net proceeds collected by the beer com-

mission from beer festivals to the base formula to determine a board or commission's contribution.

Citation of Rules Affected by this Order: Amending WAC 16-501-005.

Statutory Authority for Adoption: RCW 43.23.025 and 15.89.150.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-13-011 on June 9, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 23, 2017.

Kirk Robinson
Deputy Director

AMENDATORY SECTION (Amending WSR 02-16-045, filed 8/1/02, effective 9/1/02)

WAC 16-501-005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout the chapter:

"**Assessment level**" means the total annual assessment collected by an agricultural commodity board or commission under the provisions of its marketing order or authorizing statute. For the Washington beer commission, "assessment level" includes net proceeds collected from commission-sponsored beer festivals in addition to the total annual assessment collected by the commission.

"**Department**" means the Washington state department of agriculture (WSDA).

"**Total financial contribution**" means the contributions from all agricultural commodity boards and commissions to cover one-half the annual salary and benefits of the department's commodity commission coordinator for commodity boards and commissions plus the annual costs for goods and services, travel, training and equipment necessary to support the commodity commission coordinator.

WSR 17-17-159

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed August 23, 2017, 10:10 a.m., effective October 1, 2017]

Effective Date of Rule: October 1, 2017.

Purpose: To clarify the intent, within the International Mechanical Code, that the occupancies previously classified as Group R but changed to Group I-1, Condition 2 under the 2015 edition, should still be treated as residential occupancies rather than institutional occupancies.

Citation of Rules Affected by this Order: Amending WAC 51-52-0101.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Other Authority: Chapters 19.27 and 34.05 RCW.

Adopted under notice filed as WSR 17-13-056 on June 15, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 23, 2017.

Steve K. Simpson
Council Chair

AMENDATORY SECTION (Amending WSR 16-01-148, filed 12/21/15, effective 7/1/16)

WAC 51-52-0101 Section 101—General.

101.2 Scope. This code shall regulate the design, installation, maintenance, alteration and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings. This code shall also regulate those mechanical systems, system components, equipment and appliances specifically addressed herein. The installation of fuel gas distribution piping and equipment, fuel gas-fired appliances and fuel gas-fired appliance venting systems shall be regulated by the *International Fuel Gas Code*. References in this code to Group R shall include Group I-1, Condition 2 assisted living facilities licensed by Washington state under chapter 388-78A WAC and Group I-1, Condition 2 residential treatment facilities licensed by Washington state under chapter 246-337 WAC.

- EXCEPTIONS:
1. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures shall comply with the *International Residential Code*.
 2. The standards for liquefied petroleum gas installations shall be the 2014 Edition of NFPA 58 (Liquefied Petroleum Gas Code) and the 2015 Edition of ANSI Z223.1/NFPA 54 (National Fuel Gas Code).

WSR 17-17-160
PERMANENT RULES
BUILDING CODE COUNCIL

[Filed August 23, 2017, 10:11 a.m., effective October 1, 2017]

Effective Date of Rule: October 1, 2017.

Purpose: To clarify the intent, within the Residential section of the Washington State Energy Code, that the occupancies previously classified as Group R but changed to Group I-1, Condition 2 under the 2015 edition, should still be treated as residential occupancies rather than institutional occupancies.

Citation of Rules Affected by this Order: Amending WAC 51-11R-10100.

Statutory Authority for Adoption: RCW 19.27A.025, 19.27A.045.

Other Authority: Chapters 19.27, 19.27A, and 34.05 RCW.

Adopted under notice filed as WSR 17-13-055 on June 15, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 23, 2017.

Steve K. Simpson
 Council Chair

AMENDATORY SECTION (Amending WSR 16-02-127, filed 1/6/16, effective 7/1/16)

WAC 51-11R-10100 Section R101—Scope and general requirements.

R101.1 Title. This code shall be known as the *Washington State Energy Code*, and shall be cited as such. It is referred to herein as "this code."

R101.2 Scope. This code applies to *residential buildings* and the buildings sites and associated systems and equipment. This code shall be the maximum and minimum energy code for residential construction in each town, city and county. Residential *sleeping units*, Group I-1, Condition 2 assisted living facilities licensed by Washington state under chapter 388-78A WAC and Group I-1, Condition 2 residential treatment facilities licensed by Washington state under chapter 246-337 WAC shall utilize the commercial building sections of the energy code regardless of the number of stories of height above grade plane.

R101.3 Intent. This code shall regulate the design and construction of buildings for the effective use and conservation of energy over the useful life of each building. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective. This code is not intended to abridge safety, health or environmental requirements contained in other applicable codes or ordinances.

R101.4 Applicability. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern.

R101.4.1 Mixed occupancy. Where a building includes both *residential* and *commercial* occupancies, each occupancy shall be separately considered and meet the applicable provisions of the WSEC - Commercial and Residential Provisions.

R101.5 Compliance. *Residential buildings* shall meet the provisions of WSEC - Residential Provisions. *Commercial buildings* shall meet the provisions of WSEC - Commercial Provisions.

R101.5.1 Compliance materials. The *code official* shall be permitted to approve specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of this code.

WSR 17-17-162
PERMANENT RULES
BUILDING CODE COUNCIL

[Filed August 23, 2017, 10:12 a.m., effective October 1, 2017]

Effective Date of Rule: October 1, 2017.

Purpose: To clarify the intent, within the Commercial section of the Washington State Energy Code, that the occupancies previously classified as Group R but changed to Group I-1, Condition 2 under the 2015 edition, should still be treated as residential occupancies rather than institutional occupancies.

Citation of Rules Affected by this Order: Amending WAC 51-11C-10100.

Statutory Authority for Adoption: RCW 19.27A.025, 19.27A.045.

Other Authority: Chapters 19.27, 19.27A, and 34.05 RCW.

Adopted under notice filed as WSR 17-13-054 on June 15, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 23, 2017.

Steve K. Simpson
Council Chair

AMENDATORY SECTION (Amending WSR 16-03-072, filed 1/19/16, effective 7/1/16)

WAC 51-11C-10100 Section C101—Scope and general requirements.

C101.1 Title. This code shall be known as the *Washington State Energy Code*, and shall be cited as such. It is referred to herein as "this code."

C101.2 Scope. This code applies to *commercial buildings* and the buildings sites and associated systems and equipment. References in this code to Group R shall include Group I-1, Condition 2 assisted living facilities licensed by Washington state under chapter 388-78A WAC and Group I-1, Condition 2 residential treatment facilities licensed by Washington state under chapter 246-337 WAC.

EXCEPTION: The provisions of this code do not apply to temporary growing structures used solely for the commercial production of horticultural plants including ornamental plants, flowers, vegetables, and fruits. A temporary growing structure is not considered a building for the purposes of this code. However, the installation of other than listed, portable mechanical equipment or listed, portable lighting fixtures is not allowed.

C101.3 Intent. This code shall regulate the design and construction of buildings for the use and conservation of energy over the life of each building. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective. This code is not intended to abridge safety, health or environmental requirements contained in other applicable codes or ordinances.

WSR 17-17-165

PERMANENT RULES

**SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed August 23, 2017, 10:14 a.m., effective September 23, 2017]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 392-343-515 Modernization or new-in-lieu of modernization priority elements, 392-343-535 Existing building condition—Evaluation, 392-344-085 Construction and other documents—Submittal, and 392-347-023 State funding assistance in post 1993 buildings.

This permanent rule will eliminate references to the building condition evaluation form (BCEF) in the office of superintendent of public instruction's (OSPI) school con-

struction assistance program WAC. In their place, WAC will use the term building condition assessment (BCA). BCA was adopted in 2009-2010 as the BCA tool for the purposes of completing study and surveys and complying with asset preservation program requirements. Historically, BCEF has been used for the sole purpose of assessing the condition of school facilities as part of the required prioritization for state funding. This rule amendment adopts the BCA condition assessment tool as the only tool used whenever a BCA is required to comply with any OSPI requirement, such as prioritization.

Citation of Rules Affected by this Order: Amending chapters 392-343, 392-344, and 392-347 WAC.

Statutory Authority for Adoption: RCW 28A.525.020.

Adopted under notice filed as WSR 17-14-076 on June 29, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 23, 2017.

Chris P. S. Reykdal
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-343-515 Modernization or new-in-lieu of modernization priority elements. School district projects with secured funding assistance as of July 2018.

The ~~((three))~~ two priority elements that are related to modernization or new-in-lieu projects are as follows:

(1) Health & safety - Twenty possible points. A maximum of ~~((sixteen))~~ twenty points are awarded based on the ~~((evaluation))~~ assessment contained in the ~~((Building Condition Evaluation Form (BCEF) (WAC 392-343-535) and are awarded as follows:~~

~~15–19 percent = 16 points, 20–24 percent = 15 points, 25–29 percent = 14 points, etc., until 95 percent at which no points are awarded.~~

~~The health and safety condition points are combined with an additional:~~

~~Two points if school does not meet seismic code requirements:~~

~~Two points if school is not asbestos free)) Health and Safety Assessment form (WAC 392-343-535). In cases~~

where projects affect multiple buildings, the health and safety score is weighted by the proportion of gross square feet (GSF) affected.

(2) Condition of building - Thirty possible points. The ~~((score is))~~ total points are based on the building condition ~~((Evaluation Form (WAC 392-343-535) analysis for all categories other than access for persons with developmental disabilities))~~ assessment (BCA) as recorded in the superintendent of public instruction's information and condition of schools (ICOS) system (WAC 392-343-535). If the building condition score is thirty-one or less, ~~((then))~~ the maximum thirty points are awarded to the project. If the condition score is ninety-one or more, ~~((then))~~ no points are awarded. If the condition score is from thirty-two to ninety, the condition score is subtracted from ninety-one and multiplied by fifty percent to determine the points. In cases where projects affect multiple buildings, the ~~((BCEF))~~ BCA score is weighted by the proportion of gross square feet (GSF) affected.

~~((3))~~ Cost/benefit factor - Ten minus points possible. If the proposed project is a modernization and the BCEF score is less than forty, one point is deducted for each point the BCEF score is less than forty up to a total possible deduction of ten points.

~~If the proposed project is a new in lieu of modernization and the BCEF score is greater than sixty, one point is deducted for each point the BCEF score is higher than sixty to a total possible deduction of ten points.)~~

The scores shall be determined at the time of project approval per WAC 392-341-045. These scores shall be carried until the district requests a redetermination.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-343-535 Existing building condition—~~((Evaluation))~~ Assessment. School district projects with secured funding assistance as of July 2018. Building condition assessment (BCA) and health and safety ~~((evaluations))~~ assessments for purposes of determining priority scores and completing building inventories shall be conducted and reported to the superintendent of public instruction ~~((utilizing an evaluation model))~~. Assessment scores shall be recorded in the superintendent of public instruction's information and condition of schools (ICOS) system and on reporting forms for building type, history, equipage, condition, and health and safety factors, (and portables on site) that shall be adopted and subject to revision from time to time by the superintendent of public instruction. The information provided by the district on these forms shall be subject to review by the staff or agents of the superintendent of public instruction, or to audit by the state auditor. Compliance with this requirement for all schools in a district is a requirement for the receipt of any state construction funding assistance for projects approved after January 26, 1991.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-344-085 Construction and other documents—Submittal. School district projects with secured funding assistance as of July 2018. (1) For the purpose of

determining that the provisions set forth in chapters 392-341 through 392-344 WAC have been complied with prior to the opening of bids of any project to be financed with state funding assistance, the school district shall have on file with the superintendent of public instruction the following:

(a) One copy of the construction documents forwarded by others;

(b) Cost estimate of construction on a form approved by the superintendent of public instruction, completed and signed by the architect-engineer;

(c) Signed copy or photocopy of letters of approval by other governmental agencies in accordance with WAC 392-344-090;

(d) Area analysis on a form approved by the superintendent of public instruction in accordance with chapter 392-343 WAC;

(e) Complete listing of construction special inspections and/or testing to be performed by independent sources that are included in the project pursuant to WAC 392-343-100;

(f) School district board acceptance of a value engineering report and its implementation.

The report shall include the following:

(i) A brief description of the original design;

(ii) A brief description of the value engineering methodology used;

(iii) The areas analyzed;

(iv) The design alternatives proposed;

(v) The cost changes proposed;

(vi) The alternates accepted; and

(vii) A brief statement explaining why each alternate not accepted was rejected;

(g) Certification by the school district that a constructability review report was completed.

The report shall include:

(i) A brief description of the constructability review methodology used;

(ii) The area analyzed;

(iii) The recommendations accepted; and

(iv) A brief statement explaining why each recommendation not accepted was rejected;

(h) Completed building condition ~~((Evaluation Forms (BCEF)))~~ assessment (BCA) as required by WAC 392-343-535 for every school facility in the district.

(i) Completed health and safety assessment as required by WAC 392-343-535, on buildings for which state funding assistance is being requested.

(2) If the above documents reflect an increase in square foot size from the application approved by the superintendent of public instruction as per WAC 392-344-025 which will result in an increase in state funding assistance, a new application must be submitted to the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-347-023 State funding assistance in post 1993 facilities. As a condition precedent to receiving state funding assistance for modernization under WAC 392-347-015 or new-in-lieu of modernization under WAC 392-347-

042, school districts that received state funding assistance for new and new-in-lieu school buildings and whose buildings were accepted as complete by school board of directors as of January 1, 1994, and later, shall adopt by board resolution and implement an asset preservation program (APP).

(1) Definitions: For purposes of this chapter:

(a) An asset preservation program is a systematic approach to ensure performance accountability; promote student health and safety by maintaining and operating building systems to their design capacity; maintain an encouraging learning environment; and extend building life, thus minimizing future capital needs.

(b) An asset preservation system is a system of tasks or projects that are active, reactive, or proactive in maintaining the day to day health, safety, and instructional quality of the school facility and tasks or projects that are proactive, predictive or preventative in maintaining the school facility over its thirty-year expected life cycle.

(c) A building condition ~~((evaluation))~~ assessment (BCA) is an ~~((evaluation))~~ assessment of the condition of building components and systems using a standardized scoring matrix, an element of the office of the superintendent of public instruction's information and condition of schools (ICOS) system.

(d) A building condition standard is a numeric scoring table with a scale identifying the expected condition score for each year of the building's expected life cycle.

(2) The office of the superintendent of public instruction shall establish and adopt a uniform program of specifications, standards, and requirements for implementing and maintaining the asset preservation program.

(3) School districts with affected buildings under this chapter are required to:

(a) Adopt or implement an asset preservation system;

(b) Annually perform a building condition ~~((evaluation and report the condition of such building))~~ assessment (BCA) which shall include recording assessments in the ICOS system and reporting the assessment scores to the school district's board of directors no later than April 1st of each year;

(c) Thereafter in six year intervals during the thirty-year expected life span of the building, have a certified evaluator, as approved by the office of the superintendent of public instruction, perform a building condition evaluation and report the condition to the school district's board of directors and to the office of the superintendent of public instruction no later than April 1st.

(4) A school district building affected under this chapter and that does not meet the minimum building condition standard score of ~~((forty))~~ sixty-two points at the end of the thirty years from the accepted date shall:

(a) Have its allowable cost per square foot used to determine the amount of state funding assistance in any modernization project reduced at a rate of two percent for each point below ~~((forty))~~ sixty-two points, not to exceed a total twenty percent reduction; or

(b) Be ineligible for state funding assistance when the building condition score is less than ~~((thirty))~~ forty points.

~~((5) The following schedule shall apply to school districts with buildings affected under this chapter, and the~~

~~requirements set forth shall replace the former requirements of this section:~~

~~(a) Buildings accepted by the school board in 1994 must begin an asset preservation program in 2009, and shall fully implement the program within no more than one and one-half years;~~

~~(b) Buildings accepted by the school board in 1995 must begin an asset preservation program in 2010, and shall fully implement the program within no more than one year;~~

~~(c) Buildings accepted by the school board in 1996 through 2010 must begin an asset preservation program in 2011, and shall fully implement the program within no more than six months;~~

~~(d) Buildings accepted by the school board after December 31, 2010, must implement an asset preservation program within six months of facility acceptance.))~~