WSR 05-22-005
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed October 20, 2005, 1:50 p.m., effective October 20, 2005]

Effective Date of Rule: Immediately.

Purpose: WAC 458-20-257, explains the business and occupation (B&O), retail sales, and use tax reporting responsibilities of persons selling warranties or maintenance agreements. Chapter 514, Laws of 2005, changed the tax consequences for extended warranties by classifying the sale of an extended warranty as a retail sale. This change in law is effective July 1, 2005. The result is that on and after July 1, 2005, sellers are required to collect and remit retail sales tax when selling extended warranties to consumers.

The department is adopting revisions to Rule 257 on an emergency basis to recognize this legislative change. This emergency rule is the same as the emergency rule filed on June 30, 2005.

The department has scheduled a CR-101 public meeting for permanent revisions to this rule (WSR 05-21-081), which the department anticipates will be a complete updating and reorganization of the information provided in the rule. This public meeting is scheduled for 1:00 p.m. on November 29, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-257 Warranties and maintenance agreements.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency adoption of Rule 257 is necessary because a permanent rule cannot be adopted until completion of the rule-making process. This rule action will provide needed tax information to taxpayers and department staff about the law changes.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.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: October 20, 2005.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-10-081, filed 5/2/90, effective 6/2/90)

WAC 458-20-257 Warranties and maintenance agreements. (1) **Introduction.** This section explains the business and occupation (B&O), retail sales, and use tax reporting responsibilities of persons selling warranties or maintenance agreements. Chapter 514, Laws of 2005, sections 101 through 112, changed the tax consequences for extended warranties by classifying the sale of an extended warranty as a retail sale. This change in law is effective July 1, 2005 and did not affect the taxability of maintenance agreements and warranties included in the selling price (for example manufacturers' warranties).

(2) **Definitions.** For the purposes of this section, the following terms will apply:

(a) Warranties. Warranties, sometimes referred to as guarantees, are agreements which call for the replacement or repair of tangible personal property with no additional charge or a reduced charge for parts or labor, or both, or to provide indemnification for the replacement or repair of the tangible personal property, based upon the happening of some unforeseen occurrence or specified events, e.g., the property needs repair within the warranty period.

(b) Warrantor. The warrantor is the person obligated, as specified in the warranty agreement, to perform labor and/or provide materials to the owner of the personal property to which the warranty agreement relates.

(c) Extended warranty. An extended warranty is a warranty for a specific duration for which a separate charge is made.

(d) Maintenance agreements. Maintenance agreements sometimes referred to as service contracts, are agreements which require the specific performance of repairing, cleaning, altering, or improving of tangible personal property on a regular or irregular basis to ensure its continued satisfactory operation.

((~~(2)~~)) (3) **B&O Tax.**

(a) ((~~Manufacturer's w~~)) Warranties included in the retail selling price of the article being sold.

(i) When a ((~~manufacturer's~~)) warranty is included in the retail selling price of the property sold and no additional charge is made, the value of the warranty is a part of the selling price. The value of the warranty is included in the "gross proceeds of sale" of the article sold and reported under the appropriate classification, e.g. retailing, wholesaling, etc.

(ii) When a repair is made by the ((~~manufacturer-~~))warrantor under the warranty, the value of the labor and or parts provided are not subject to B&O tax.

(iii) When a person other than the ((~~manufacturer-~~))warrantor makes a repair for the ((~~manufacturer-~~))warrantor, the person making the repair is making a wholesale sale of the repair service to the ((~~manufacturer-~~))warrantor. The person doing the repair is B&O taxable under the wholesaling classification on the value of the parts and labor provided.

(b) Extended warranties on or after July 1, 2005.

(i) When an extended warranty is sold for resale, the seller must receive a resale certificate from the buyer to document the wholesale nature of the transaction. The gross proceeds are reported under the wholesaling classification.

(ii) When an extended warranty is sold to a consumer, the sale is at retail and retailing B&O tax applies.

(iii) When the warrantor under an extended warranty makes a repair under an extended warranty, there is no B&O tax due except as provided in subsection 6 of this section.

(iv) When a person other than the warrantor makes a repair for the warrantor on or after July 1, 2005, the person making the repair is making a wholesale sale of the repair service to the warrantor. The person making the repair is B&O taxable under the wholesaling classification and must receive a resale certificate from the buyer to document the wholesale nature of the transaction.

(c) Extended warranties on or before June 30, 2005. Extended warranties were previously referred to as nonmanufacturer's ((~~Nonmanufacturer's~~)) warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When an extended warranty is sold on or before June 30, 2005 for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the charge is reported in the service and other activities classification of the B&O tax.

(ii) When a repair is made by the warrantor under a separately stated warranty, the value of the labor and or parts provided are not subject to B&O tax.

(iii) When a person other than the warrantor makes a repair on or before June 30, 2005 for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. The person making the repair is B&O taxable under the retailing classification.

(((~~(c)~~))) (d) Maintenance agreements.

(i) Maintenance agreements (service contracts) require the periodic specific performance of inspecting, cleaning, physical servicing, altering, and/or improving of tangible personal property. Charges for maintenance agreements are retail sales, subject to retailing B&O tax and retail sales tax under all circumstances.

(((~~(d)~~))) (e) Amounts received as a commission or other consideration for selling a warranty, extended warranty, or maintenance agreement of a third-party warrantor or provider are generally subject to B&O tax under the service and other activities classification. However, if the seller of the warranty or extended warranty is licensed under chapter 48.17 RCW with respect to this selling activity, the commission is subject to B&O tax under the insurance agent classification.

(((~~(e)~~))) (f) In the event a warrantor purchases an insurance policy to cover the warranty, amounts received by the warrantor under the insurance policy are insurance claim reimbursements not subject to B&O tax.

(((~~(3)~~))) (4) **Retail sales tax.**

(a) ((~~Manufacturer's warranties~~)) Warranties included in the retail selling price of the article being sold.

(i) When a ((~~manufacturer's~~)) warranty is included in the retail selling price of the property sold and no additional or separate charge is made, the value of the warranty is a part of the selling price and retail sales tax applies to the entire selling price of the article being sold.

(ii) Except as provided in subsection 6 of this section, when ((~~When~~)) a repair is made by the ((~~manufacturer~~))warrantor under the warranty, the repair performed is not a retail sale and no retail sales tax is collected.

(iii) When a person other than the ((~~manufacturer~~))warrantor makes a repair for the ((~~manufacturer~~))warrantor, the person making the repair is making a wholesale sale of the repair service to the ((~~manufacturer~~))warrantor. No retail sales tax is collected from the ((~~manufacturer~~))warrantor.

(b) Extended warranties on or after July 1, 2005.

(i) Extended warranties sold to a consumer on or after July 1, 2005 are retail sales and retail sales tax must be collected. It is irrelevant if the sale of the tangible personal property that is the covered by the extended warranty is exempt from retail sales tax. For example, retail sales tax applies to a sale of an extended warranty on equipment exempt from the retail sales tax per RCW 82.08.02565 (commonly referred to as the "M&E exemption.

(ii) For the purposes of determining the appropriate local retail sales tax rate and taxing jurisdiction:

(A) The sale of an extended warranty is deemed to occur at the business location of the seller if the extended warranty is received by the purchaser at that location.

(B) If the extended warranty is not received by the purchaser at the business location of the seller, the sale is deemed to occur at the location where receipt by the purchaser occurs.

(iii) Except as provided for in subsection 6 of this rule, retail sales tax does not apply to parts or contracted services to fulfill an extended warranty after June 30, 2005 regardless of when the extended warranty was purchased.

(c) Extended warranties on or before June 30, 2005. Extended warranties were previously referred to as nonmanufacturer's ((~~Nonmanufacturer's~~)) warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When an extended warranty is sold on or before June 30, 2005 for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the sale is not a retail sale and no retail sales tax is collected on the amount charged.

(ii) Except as provided in subsection 6, below, when ((~~When~~)) a repair is made by the warrantor under its own separately stated warranty, the value of the labor and/or parts provided is not a retail sale and no retail sales tax is collected.

(iii) On or before June 30, 2005, when ((~~When~~)) a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. Retail sales tax is collected from the warrantor measured by the labor and materials provided.

(((~~(e)~~))) (d) Maintenance agreements are sales at retail and subject to retail sales tax under all circumstances.

(i) Parties subcontracting to the party selling the maintenance agreement are making sales at wholesale, and are required to take from their customer (maintenance seller) a resale certificate as provided in WAC 458-20-102.

(((~~(4)~~))) (5) **Use tax.**

(a) ((~~Manufacturer's warranties~~)) Warranties included in the retail selling price of the article being sold.

(i) When a ((~~Nonmanufacturer~~))warrantor makes repairs required under its warranty, the value of the parts used in making the repairs is not subject to use tax.

(ii) Where a third party makes repairs for a ((~~manufacturer~~))warrantor, the transaction is a wholesale sale and the parts used in the repair are not subject to use tax.

(b) Extended warranties on or after July 1, 2005.

(i) When a repair is made by the warrantor under an extended warranty, the warrantor does not owe use tax on the parts or labor provided. This applies when repair is made on or after July 1, 2005 regardless of when the extended warranty was sold.

(ii) When a person other than the warrantor makes a repair for the warrantor after June 30, 2005, the person is making a wholesale sale to the warrantor and use tax is not due.

(iii) The owner of the tangible personal property being repaired under an extended warranty on or after July 1, 2005 is subject to use tax on the charge for the parts and labor supplied. However, the measure of the use tax is limited to the amount of any additional charge or deductible as discussed in section 6 of this rule. Further, if the owner paid retail sales tax on the additional charge or deductible, then use tax will not be due.

(c) Extended warranties on or before June 30, 2005. Extended warranties were previously referred to as nonmanufacturer's ((~~Nonmanufacturer's~~)) warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When a repair is made by the warrantor on or before June 30, 2005 under a separately stated warranty, the warrantor is the consumer of the parts and the parts are subject to use tax measured by the warrantor's cost.

(ii) When a person other than the warrantor makes a repair on or before June 30, 2005 for the warrantor, the person making the repair is making a retail sale to the warrantor. Retail sales tax, not use tax, is collected.

(((~~c~~))) (d) Maintenance agreements.

(i) Persons performing services under the requirements of maintenance agreements sold by them, are not subject to use tax or retail sales tax on materials which become a part of the required repairs or services.

(((~~5~~))) (6) **Additional service - Deductible.** In the event services are provided in addition to any warranty or maintenance agreement, such services are separately taxable as retail sales, subject to retail sales tax and retailing B&O tax, unless otherwise exempt from the retail sales tax. This includes so-called "deductible" amounts not covered by a warranty, an extended warranty, or maintenance agreement. For example, an additional charge for repairs of equipment that qualifies for the M&E exemption would not be subject to retail sales tax, but retailing B&O tax would apply.

(((~~6~~))7) MIXED AGREEMENTS. If an agreement contains warranty provisions but also requires the actual specific performance of inspection, cleaning, servicing, altering, or improving the property on a regular or irregular basis, without regard to the operating condition of the property, such agreements are fully taxable as maintenance agreements, not warranties.

(((~~7~~))) (8) **Examples:**

(a) An automobile dealer sells a vehicle to a customer for selling price of $15,000 cash and the selling price includes a manufacturer's limited warranty for 5 years or 50,000 miles. The owner of the vehicle has $600 ($200 parts and $400 labor) warranty work, paying no deductible, performed by the dealer who is not the manufacturer-warrantor. The tax liability of the dealer is as follows:

(i) Retail sales tax is collected on the $15,000 selling price.

(ii) The $15,000 selling price is reported under the retailing B&O tax classification. The $600 repair is reported under the wholesaling B&O tax classification.

(iii) The $200 of parts used in the repair are not subject to use tax.

(b) The automobile dealer in example (a) also sells its own extended warranty to the customer for $200. The dealer insures itself with an insurance carrier and under the policy, claims are paid on the retail value of the repairs. In addition to the repairs in example (a), the customer has the dealer complete $500 of repairs under the dealer's extended warranty. The customer paid the $100 deductible and the dealer received $400 from his insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of $150 and subcontracted part of the repair to an electrical shop which charged the dealer $200.

(i) If all of the above listed activities occurred on or before June 30, 2005, then the ((~~The~~)) tax liability to the dealer and the subcontractor are as follows:

(((~~i~~))A) The dealer reports the $200 sale of the extended warranty under the service and other activities classification of B&O tax. No retail sales tax is collected on the sale of the extended warranty.

(((~~ii~~))B) The $100 deductible received by the dealer is a retail sale subject to retail sales tax and retailing B&O tax.

(((~~iii~~))C) The $400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

(((~~iv~~))D) The dealer is the consumer of the parts removed from its inventory and used in the repair. The $150 dealer cost of the parts taken from inventory is subject to use tax.

(((~~v~~))E) The subcontractor is making a retail sale to the dealer subject to retail sales tax and retailing B&O.

(ii) If the extended warranty was sold on or before June 30, 2005 and the repairs were performed on or after July 1, 2005, then the tax liability of the parties is as follows:

(A) The dealer reports the $200 sale of the warranty under the service and other activities classification of B&O tax. No retail sales tax is collected on the sale of the extended warranty.

(B) The $100 deductible received by the dealer is a retail sale subject to retailing B&O tax and the dealer should collect retail sales tax from the customer.

(C) The $400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

(D) The dealer does not owe use tax on the parts removed from inventory.

(E) The subcontractor is making a wholesale sale to the dealer and should take a resale certificate documenting the wholesale nature of the transaction.

(iii) If the extended warranty was sold on or after July 1, 2005, then the tax consequences are the same as in (ii) above except that the cost of the extended warranty ($200) is subject

to retailing B&O tax and retail sales tax must be collected from the customer.

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

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 05-22-006
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 05-250—Filed October 20, 2005, 2:39 p.m., effective October 22, 2005]

Effective Date of Rule: October 22, 2005.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300U; and amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibition of all diving from licensed sea urchin and sea cucumber harvest vessels within two days of scheduled sea urchin openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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 1, Amended 0, Repealed 1.

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: October 20, 2005.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-52-07300V Sea urchins. Notwithstanding the provisions of WAC 220-52-073, effective October 22, 2005 until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 1, 2, 3, 4, 6 and 7 are open only on Monday and Tuesday of each week. The minimum size for green sea urchins is 2.25 inches (size in largest test diameter exclusive of spines).

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on Monday through Wednesday of each week. In Sea Urchin Districts 1 and 2 it is unlawful to harvest red sea urchins smaller than 4.0 inches or larger than 5.5 inches (size in largest test diameter exclusive of spines).

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin or sea cucumber fishing vessel on Saturday and Sunday of each week.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 22, 2005:

WAC 220-52-07300U Sea urchins. (05-224)

WSR 05-22-010
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 05-251—Filed October 21, 2005, 3:47 p.m., effective October 23, 2005, 6:00 p.m.]

Effective Date of Rule: October 23, 2005, 6:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000S; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets fishing periods for October 23-28. Allows limited coho harvest and sets chinook directed fisheries. The late coho run size is expected to be considerably larger than the preseason forecast, providing for harvestable numbers of fish. ESA impacts on coho will be within the preseason guidelines. Chinook and sturgeon allocations have not been achieved and there remains harvestable numbers of both on the commercial allocation. The season is consistent with the 2005-2007 interim management agreement and the 2005 non-Indian allocation agreement. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. A biological opinion covering Columbia River fisheries was

received from NMFS on May 9, 2005. Regulation is consistent with compact action of October 20, 2005. There is insufficient time to promulgate permanent rules.

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 1, Amended 0, Repealed 1.

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: October 21, 2005.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-33-01000T Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, and 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

1. OPEN AREA: SMCRA 1A, 1B, 1C, 1D, 1E

a. SEASON: 6:00 p.m. October 23 through 6:00 a.m. October 25, 2005.

6:00 p.m. October 25 through 6:00 a.m. October 27, 2005.

6:00 p.m. October 27 through 6:00 a.m. October 28, 2005.

b. GEAR: Drift gill nets only. No minimum mesh size in Zones 1-3 (1A, 1B, 1C) and 8-inch minimum mesh size Zones 4-5 (1D and 1E).

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of five sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. SANCTUARIES: Elochoman-B, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal.

e. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

2. OPEN AREA: Blind Slough/Knappa Slough Select Area. Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 0.5 mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough. Concurrent waters extend downstream of the railroad bridge. Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore. An area closure of about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 7:00 p.m. to 7:00 a.m. through September 23 and 6:00 p.m. to 8:00 a.m. thereafter.

b. GEAR: Gillnet - 6-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of five sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

3. OPEN AREA: Tongue Point/South Channel Select Area. Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. All waters are under concurrent jurisdiction. South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 4:00 p.m. to 8:00 a.m.

b. GEAR: In the Tongue Point area the mesh size is restricted to 6-inch maximum mesh. Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. In the South Channel area the mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of five sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

The sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

4. OPEN AREA: Deep River Select Area. Deep River fishing area includes all waters downstream of the town of Deep River to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 4:00 p.m. to 8:00 a.m.

b. GEAR: The mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of five sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

5. OPEN AREA: Steamboat Slough Select Area. Steamboat Slough fishing area includes all waters bounded by markers on Price Island and the Washington shore, at both ends of Steamboat Slough. All open waters are under concurrent jurisdiction.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28. Open hours are 6:00 p.m. to 8:00 a.m.

b. GEAR: The mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

c. ALLOWABLE SALE: Salmon and sturgeon. A maximum of five sturgeon total (white or green) may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

d. MISCELLANEOUS REGULATIONS: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. October 23, 2005:

WAC 220-33-01000S	Columbia River season below Bonneville. (05-248)

WSR 05-22-011

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 05-252—Filed October 21, 2005, 3:48 p.m., effective October 21, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900A; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Hatchery coho escapement is expected to be met which will result in harvestable numbers. There is insufficient time to promulgate permanent rules.

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 1, Amended 0, Repealed 1.

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: October 21, 2005.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 232-28-61900A Exceptions to statewide rules—Kalama and Washougal rivers. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective immediately through December 31, 2005, it is lawful to fish for and possess hatchery coho in those waters of the Kalama River from boundary markers at the mouth to 1000 feet below the fishway at the upper salmon hatchery.

(2) Effective immediately through December 31, 2005, it is lawful to fish for and possess hatchery coho in those waters of the Washougal River from the mouth of the Washougal River upstream.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 1, 2006:

WAC 232-28-61900A	Exceptions to statewide rules—Kalama Washougal River.

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

WSR 05-22-021
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 05-253—Filed October 24, 2005, 2:53 p.m., effective October 26, 2005, 6:00 p.m.]

Effective Date of Rule: October 26, 2005, 6:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000N; and amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The state may not authorize commercial shellfish harvests absent agreed planning or compliance with a process. The provisions of this rule are in conformity with agreed plans with applicable tribes which have been entered as required by court order. The pot limit for the commercial crab fishery in the Puget Sound licensing district is to maintain commercial harvest allocation plans. There is insufficient time to promulgate permanent rule.

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 1, Amended 0, Repealed 1.

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: October 24, 2005.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-52-04000P Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Effective immediately until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license, per buoy tag number in Marine Fish Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B. The remaining 25 buoy tags per license must be onboard the designated vessel and available for inspection in the pot-limited areas.

(2) Effective 6:00 p.m. October 26, 2005, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license, per buoy tag number in Marine Fish Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A-E. The remaining 50 buoy tags per license must be onboard the designated vessel and available for inspection in the pot-limited areas.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. October 26, 2005:

WAC 220-52-04000N	Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (05-241)

WSR 05-22-026
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 05-254—Filed October 25, 2005, 2:30 p.m., effective October 25, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-12-090.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Invasive tunicates have been found in several locations in Puget Sound. These rules classify two species of solitary tunicates are prohibited aquatic species, and allow for removal under a rapid response plan. These emergency rules will be in effect while permanent rules are being promulgated.

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 2, 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: October 24, 2005.

J. P. Koenings
Director
Larry Peck

NEW SECTION

WAC 220-12-09000B Prohibited aquatic species—Invasive tunicates. Notwithstanding the provisions of WAC 220-12-090, the following invasive species of tunicates are classified as prohibited aquatic species:

(1) Family Styela: the rough or leathery sea squirt, *Styela clava*.

(2) Family Cionidae: *Ciona savignyi*

NEW SECTION

WAC 220-77-10000A Invasive tunicate rapid response plan. (1) The provisions of this section apply to the invasive tunicate species *Styela clava* and *Ciona savignyi*.

(2) It is lawful to remove these tunicates from all state waters in unlimited quantities. The preferred method of removal is scraping the animal off the substrate, keeping the base intact. If this is impracticable, cutting the base as close to the substrate as possible and removal of the whole animal is acceptable.

(3) Once specimens of these tunicate has been separated from the substrate, every effort should be made to remove the animal from the water. It is unlawful to simply scrape or cut the animal free from the substrate and release the animal into the water.

(4) Specimens of these tunicates that have been removed from the water must be disposed of at an upland site. While delivery to a landfill or burial above the higher-high water line is preferred, any disposal that will not allow reintroduction of these tunicates into marine waters is acceptable. It is unlawful to reintroduce the tunicates into the water.

(5) It is lawful to possess specimens of these tunicates for identification purposes, provided that they have been chemically preserved. Except for removal to an upland disposal site, it is unlawful to possess live specimens of these tunicates. This subsection does not apply to live specimens of these tunicates taken under a scientific collection permit.

WSR 05-22-037
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 05-255—Filed October 27, 2005, 3:55 p.m., effective October 27, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-47-311 and 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These regulations implement expanded fishing opportunity in Areas 7 and 7A made by the co-managers, to enhance the chance of taking the United States share of chum salmon. These emergency rules are necessary to initiate fisheries. There is insufficient time to promulgate permanent rules.

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 2, 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: October 27, 2005.

Evan Jacoby
for Jeff Koenings
Director

NEW SECTION

WAC 220-47-31100D Purse seine—Open periods Notwithstanding the provisions of Chapter 220-47-311 WAC, effective immediately until further notice, it is unlawful to take, fish for or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

Purse Seines - (a) Open in Area 7 and 7A to the purse seine vessels using the 5-inch strip during the following hours and dates, provided it is unlawful to retain Chinook or

Coho salmon, and any Chinook or Coho salmon caught must be released immediately.

If fishing with an operating recovery box:

7:00 a.m. to 6:00 p.m. 10/27, 10/28

7:00 a.m. to 5:00 p.m. 10/31, 11/1, 11/2, 11/3, 11/4, 11/7, 11/8, 11/9, 11/10, 11/11

If fishing without an operating recovery box:

7:00 a.m. to 3:15 p.m. 10/27, 10/28

7:00 a.m. to 2:30 p.m. 10/31, 11/1, 11/2, 11/3, 11/4, 11/7, 11/8, 11/9, 11/10, 11/11

NEW SECTION

WAC 220-47-41100D Gill net—Open periods Notwithstanding the provisions of Chapter 220-47-411 WAC, effective immediately until further notice, it is unlawful to take, fish for or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Nightly opening refer to the start date.

7 /7A	8AM	-	8PM	10/27, 10/28	6 1/4"
	7AM	-	7PM	11/31, 11/1, 11/2, 11/3, 11/4, 11/7, 11/8, 11/9, 11/10, 11/11	6 1/4"

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

WSR 05-22-038
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed October 27, 2005, 4:23 p.m., effective October 28, 2005]

Effective Date of Rule: October 28, 2005.

Purpose: To comply with the requirements of the 2005 legislature, the department is adopting a separate base community psychiatric hospital payment rate for Medicaid and non-Medicaid clients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-2800.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Other Authority: Chapter 518, Laws of 2005 (ESSB 6090 Part II, Section 204).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The legislature appropriated funds from the general fund for fiscal year 2006 and 2007 to establish a separate base community psychiatric hospitalization payment rate for Medicaid and non-Medicaid clients at hospitals that accept commitments under the Involuntary Treatment Act (ITA) and free-standing psychiatric hospitals that accept commitments under ITA. This filing continues the emergency rule that is currently in effect under WSR 05-14-080 to carry out the legislature's directive while the department completes the permanent rule-making process begun under WSR 05-14-145 and filed on July 5, 2005.

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 1, 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 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 1, Repealed 0.

Date Adopted: October 11, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-12-022, filed 5/20/05, effective 6/20/05)

WAC 388-550-2800 Inpatient payment methods and limits. (1) The department reimburses hospitals for Medicaid inpatient hospital services using the rate setting methods identified in the department's approved state plan that includes:

Method	Used for
Diagnoses related group (DRG) negotiated conversion factor	Hospitals participating in the Medicaid hospital selective contracting program under waiver from the federal government
DRG cost-based conversion factor	Hospitals not participating in or exempt from the Medicaid hospital selective contracting program
Ratio of costs-to-charges (RCC)	Hospitals or services exempt from DRG payment methods; Hospitals eligible to be paid through the certified public expenditure (CPE) payment program
Single case rate	Bariatric surgery
Fixed per diem rate	Acute physical medicine and rehabilitation (Acute PM&R) Level B facilities and long-term acute care (LTAC) hospitals
Cost settlement	MAA-approved critical access hospitals (CAHS)

(2) The department's annual aggregate Medicaid payments to each hospital for inpatient hospital services provided to Medicaid clients will not exceed the hospital's usual and customary charges to the general public for the services (42 CFR § 447.271). The department recoups annual aggregate Medicaid payments that are in excess of the usual and customary charges.

(3) The department's annual aggregate payments for inpatient hospital services, including state-operated hospitals, will not exceed the estimated amounts that the department would have paid using Medicare payment principles.

(4) When hospital ownership changes, the department's payment to the hospital will not exceed the amount allowed under 42 U.S.C. Section 1395x (v)(1)(O).

(5) Hospitals participating in the medical assistance program must annually submit to the medical assistance administration:

(a) A copy of the hospital's HCFA 2552 Medicare Cost Report; and

(b) A disproportionate share hospital application.

(6) Reports referred to in subsection (5) of this section must be completed according to:

(a) Medicare's cost reporting requirements;

(b) The provisions of this chapter; and

(c) Instructions issued by MAA.

(7) The department requires hospitals to follow generally accepted accounting principles unless federally or state regulated.

(8) Participating hospitals must permit the department to conduct periodic audits of their financial and statistical records.

(9) The department reimburses hospitals for claims involving clients with third-party liability insurance:

(a) At the lesser of either the DRG:

(i) Billed amount minus the third-party payment amount; or

(ii) Allowed amount minus the third-party payment amount; or

(b) The RCC allowed payment minus the third-party payment amount.

(10) Beginning in state fiscal year 2006 and in accordance with legislative directive, the department implemented separate base community psychiatric hospitalization payment rates for Medicaid clients and non-Medicaid clients.

(a) An eligible client's length of stay (LOS) is determined by counting the number of days from the date of inpatient psychiatric admission through date of discharge, and subtracting one day.

(b) A hospital described in this section that submits an initial and/or interim billing for inpatient psychiatric services provided to an eligible client is reimbursed only for a single LOS, subject to other applicable rules.

(c) The Medicaid base community psychiatric hospitalization payment rate applies only to a Medicaid client:

(i) Admitted to a free-standing psychiatric hospital located in Washington state; and

(ii) Assigned to a department of health (DOH)-certified psychiatric hospital bed.

(d) The non-Medicaid base community psychiatric hospitalization payment rate applies only to a non-Medicaid client:

(i) Admitted to a hospital that is certified by the department to accept patients under the Involuntary Treatment Act (ITA); and

(ii) Assigned to a DOH-certified psychiatric hospital bed.

(e) A client's hospital admission must have a root cause that is psychiatric in nature. The department:

(i) Defines "root cause" as the reason the client was admitted based on the principle diagnosis and the department's review of the client's medical record; and

(ii) Does not consider detoxification to be psychiatric in nature.

(f) For inpatient psychiatric services provided on and after August 1, 2005, the department reimburses:

(i) An Involuntary Treatment Act (ITA)-certified acute care hospital's DOH-certified distinct psychiatric unit as follows:

(A) For Medicaid clients, inpatient psychiatric services are paid using the ratio of costs-to-charges (RCC) payment method.

(B) For non-Medicaid clients, inpatient psychiatric services are paid using for the allowable, the greater of:

(I) The state-only diagnostic-related group (DRG) allowable (including the high cost outlier allowable, if applicable); or

(II) The non-Medicaid base community psychiatric hospitalization payment rate multiplied by the LOS.

(ii) An ITA-certified acute care hospital without a DOH-certified distinct psychiatric unit as follows:

(A) For Medicaid clients, inpatient psychiatric services are paid using:

(I) The DRG payment method; or

(II) The RCC payment method if no relative weight exists for the DRG in the department's payment system.

(B) For non-Medicaid clients, inpatient psychiatric services are paid using for the allowable, the greater of:

(I) The state-only DRG allowable (including the high cost outlier allowable, if applicable); or

(II) The non-Medicaid base community psychiatric hospitalization payment rate multiplied by the LOS.

(iii) A free-standing psychiatric hospital as follows:

(A) For Medicaid clients, inpatient psychiatric services are paid using for the allowable, the greater of:

(I) The RCC allowable; or

(II) The Medicaid base community psychiatric hospitalization payment rate multiplied by the LOS.

(B) For non-Medicaid clients, inpatient psychiatric services are paid the same as for Medicaid clients, except the base community psychiatric hospitalization payment rate is the non-Medicaid rate.

(iv) An ITA-certified hospital that is participating in the certified public expenditure (CPE) payment program as follows:

(A) For Medicaid clients, inpatient psychiatric services are paid using the methods identified in WAC 388-550-4650.

(B) For non-Medicaid clients, inpatient psychiatric services are paid using the methods identified in WAC 388-550-

4650, except that the allowable to which the federal funds participation percentage is applied is the greater of:

(I) The RCC allowable; or

(II) The non-Medicaid base community psychiatric hospitalization payment rate multiplied by the LOS.

WSR 05-22-039
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed October 27, 2005, 4:25 p.m., effective October 27, 2005]

Effective Date of Rule: October 27, 2005.

Purpose: DSHS is amending these rules to change personal needs allowance allowed in a medical facility for non-general assistance clients to the following effective July 1, 2005:

- Forty-one dollars and sixty-two cents for clients receiving general assistance; and
- Fifty-one dollars and sixty-two cents for all other clients residing in a medical facility.

This also continues the April 1, 2005, changes to the community spouse income and family standard ($1604) and the community spouse excess shelter standard ($481). This filing continues the emergency rule adopted as WSR 05-14-075 on June 30, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1380.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.09.500, and 74.09.530.

Other Authority: Chapter 518, Laws of 2005.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Legislative mandate (2005 supplemental budget, section 207, chapter 518, Laws of 2005) to increase personal needs allowance for institutional medical clients. Implementation of the April 1, 2005, federal changes to the institutional Medicaid standard and community spouse income and family allocation and excess shelter standard is required by the state in order to ensure the continued receipt of federal funds, under 42 U.S.C., chapter 7. This emergency rule is necessary while the permanent rule-making process initiated under WSR 05-13-138 is completed. The department is currently completing the draft review process on this WAC section and is incorporating clarifying changes into the rule in anticipation of the proposed rule making.

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 1, 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 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 1, Repealed 0.

Date Adopted: October 17, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-07-033, filed 3/9/05, effective 4/9/05)

WAC 388-513-1380 Determining a client's participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care (in the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical facility, the department applies all subsections of this rule.

(2) For a client receiving waivered services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, the department applies rules used for the community options program entry system (COPES).

(4) Excess resources are reduced in an amount equal to incurred medical expenses (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

(a) Health insurance and Medicare premiums, deductions, and co-insurance charges;

(b) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

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

(i) For LTC services provided under the categorically needy (CN) program, the amount described in WAC 388-513-1315(3); or

(ii) For LTC services provided under the medically needy (MN) program, the amount described in WAC 388-513-1395 (2)(a) or (b).

(5) The department allocates nonexcluded income up to a total of the medically needy income level (MNIL) in the following order:

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives a VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all ((~~other~~)) clients in a medical facility receiving general assistance.

(iv) Fifty-one dollars and sixty-two cents for all other clients in a medical facility effective July 1, 2005.

(b) Federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 388-503-0510(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(6) The department allocates nonexcluded income after deducting amounts described in subsection (5) in the following order:

(a) Income garnisheed for child support:

(i) For the time period covered by the PNA; and

(ii) Not deducted under another provision in the post-eligibility process.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2005, two thousand three hundred seventy-eight dollars, unless a greater amount is allocated as described in subsection (8) of this section. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) An amount added to the community spouse's gross income to provide a total of one thousand ((~~five~~)) six hundred ((~~sixty-two~~)) four dollars, effective April 1, 2005; and

(B) Excess shelter expenses as specified under subsection (7) of this section; and

(ii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse who:

(i) Resides with the community spouse, equal to one-third of the amount that one thousand ((~~five~~)) six hundred ((~~sixty-two~~)) four dollars (effective April 1, 2005) exceeds the dependent family member's income.

(ii) Does not reside with the community spouse, equal to the MNIL for the number of dependent family members in the home less the income of the dependent family members.

(iii) Child support received from noncustodial parent is the child's income.

(d) Incurred medical expenses described in subsections (4)(a) and (b) not used to reduce excess resources.

(e) Maintenance of the home of a single client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents initial need for the income exemption and reviews the client's circumstances after ninety days.

(7) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (7)(b) less the standard shelter allocation under subsection (7)(a). For the purposes of this rule:

(a) The standard shelter allocation is four hundred ((~~sixty nine~~)) eighty-one dollars, effective April 1, ((~~2004~~)) 2005; and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(8) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(9) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

WSR 05-22-040
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed October 27, 2005, 4:27 p.m., effective October 27, 2005]

Effective Date of Rule: October 27, 2005.

Purpose: To reinstate twelve-month continuous eligibility for children's medical. This filing continues the emergency rule that was adopted under WSR 05-14-077 on July 1, 2005. The permanent rule has been proposed under WSR 05-18-068 and is scheduled for a public hearing on October 11, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 388-418-0025, 388-505-0210, and 388-523-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.415, and 74.09.530.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The governor has directed the Department of Social and Health Services to reinstate twelve-month continuous eligibility for the children's medical programs.

Observing the time requirements of regular rule-making procedures would prevent the department from implementing the governor's directive timely and thereby prevent potentially eligible children from continuing on Medicaid.

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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, 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: October 17, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-03-019, filed 1/12/04, effective 2/12/04)

WAC 388-418-0025 Effect of changes on medical program eligibility. (1) You continue to be eligible for Medicaid until the department determines your ineligibility or eligibility for another medical program. This applies to you if, during a certification period, you become ineligible for, or are terminated from, or request termination from:

(a) A CN Medicaid program; or

(b) Any of the following cash grants:

(i) TANF;

(ii) SSI; or

(iii) GA-X. See WAC 388-434-0005 for changes reported during eligibility review.

(2) If you become ineligible for refugee cash assistance, refugee medical assistance can be continued through the eight-month limit, as described in WAC 388-400-0035(4).

(3) If you receive a TANF cash grant or family medical, you are eligible for a medical extension, as described under WAC 388-523-0100, when your cash grant or family medical program is terminated as a result of:

(a) Earned income; or

(b) Collection of child or spousal support.

(4) A change in income during a certification period does affect eligibility for all medical programs except:

(a) Pregnant women's medical programs;

(b) Children's medical for newborns (F05); ((~~or~~))

(c) Children's medical benefits (F06);

(d) Children's Health Program (F08); or

(e) The first six months of the medical extension benefits.

(5) For a child receiving benefits under SCHIP as described in chapter 388-542 WAC, the department must redetermine eligibility for a Medicaid program when the family reports:

(a) Family income has decreased to less than two hundred percent Federal Poverty Level (FPL);

(b) The child becomes pregnant;

(c) A change in family size; or

(d) The child receives SSI.

AMENDATORY SECTION (Amending WSR 04-15-057, filed 7/13/04, effective 8/13/04)

WAC 388-505-0210 Children's medical eligibility. (1) A child under the age of one is eligible for categorically needy (CN) medical assistance when:

(a) The child's mother was eligible for and receiving coverage under a medical program at the time of the child's birth; and

(b) The child remains with the mother and resides in the state.

(2) Children under the age of nineteen are eligible for CN medical assistance when they meet the requirements for:

(a) Citizenship or U.S. national status as defined in WAC 388-424-0001 or "qualified alien" status as described in WAC 388-424-0006 (1) or (4);

(b) State residence as described in chapter 388-468 WAC;

(c) A social security number as described in chapter 388-476 WAC; and

(d) Family income levels as described in WAC 388-478-0075 (1)(c) at each application or review.

(3) Children under the age of nineteen are eligible for the state children's health insurance program (SCHIP), as described in chapter 388-542 WAC, when:

(a) They meet the requirements of subsection (2)(a), (b), and (c) of this section;

(b) They do not have other creditable health insurance coverage; and

(c) Family income exceeds two hundred percent of the federal poverty level (FPL), but does not exceed two hundred fifty percent of the FPL as described in WAC 388-478-0075 (1)(c) and (d).

(4) Children under the age of twenty-one are eligible for CN medical assistance when they meet:

(a) Citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c) of this section;

(b) Income levels described in WAC 388-478-0075; and

(c) One of the following criteria:

(i) Reside, or are expected to reside, in a medical hospital, intermediate care facility for mentally retarded (ICF/MR), or nursing facility for thirty days or more;

(ii) Reside in a psychiatric or chemical dependency facility for ninety days or more;

(iii) Are in foster care; or

(iv) Receive subsidized adoption services.

(d) For a child meeting the criteria (c)(i) of this subsection, the only parental income the department considers available to the child is the amount the parent chooses to contribute.

(e) For a child meeting the criteria in (c)(ii) of this subsection, parental income is counted as described in WAC 388-408-0055 (1)(c).

(5) Children are eligible for CN medical assistance if they:

(a) Receive Supplemental Security Income (SSI) payments based upon their own disability; or

(b) Received SSI cash assistance for August 1996, and except for the August 1996 passage of amendments to federal disability definitions, would be eligible for SSI cash assistance.

(6) Children under the age of nineteen are eligible for medically needy (MN) medical assistance as defined in chapter 388-500 WAC when they:

(a) Meet citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c); and

(b) Have income above the income levels described in WAC 388-478-0075 (1)(c).

(7) A child is eligible for SSI-related MN when the child:

(a) Meets the blind and/or disability criteria of the federal SSI program or the condition in subsection (5)(b); and

(b) Has countable income above the level described in WAC 388-478-0070(1).

(8) Noncitizen children under the age of eighteen, including visitors or students from another country, undocumented children and "qualified alien" children as defined in WAC 388-424-0001 who are ineligible due to the five-year bar as described in WAC 388-424-0006(3), are eligible for the state-funded children's health program, if:

(a) The department determines the child ineligible for any CN or MN scope of care medical program;

(b) They meet family income levels described in WAC 388-478-0075 (1)(e);

(c) They meet state residence as described in chapter 388-468 WAC; and

(d) Program limits established by the legislature would not result in an overexpenditure of funds.

(9) There are no resource limits for children under CN, MN, ((~~or~~)) SCHIP, or children's health coverage.

(((~~9~~))) (10) Children may also be eligible for:

(a) Family medical as described in WAC 388-505-0220; or

(b) Medical extensions as described in WAC 388-523-0100.

(((~~10~~))) (11) Except for a client described in subsection (4)(c)(i) and (ii), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.

AMENDATORY SECTION (Amending WSR 02-10-018, filed 4/22/02, effective 5/23/02)

WAC 388-523-0130 Medical extension—Redetermination. (1) When the department determines the family or an individual family member is ineligible during the medical extension period, the department must determine if they are eligible for another medical program.

(2) Children are eligible for twelve month continuous eligibility beginning with the first month of the medical extension period.

(3) When a family reports a reduction of income, the family may be eligible for a family medical program instead of medical extension benefits.

(((~~3~~))) (4) Postpartum and family planning extensions are described in WAC 388-462-0015.

WSR 05-22-041
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed October 27, 2005, 4:29 p.m., effective October 27, 2005]

Effective Date of Rule: Immediately.

Purpose: The purpose of this amendment is to reflect the changes governing the allocation of funds to regional support networks for community mental health services based on funding directives from the Center for Medicare and Medicaid Services and the 2006-2007 biennial budget passed by the Washington state legislature and signed by the governor on May 17, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 388-865-0201.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035, 71.34.380.

Other Authority: 1915(b) Freedom of Choice Waiver (42 U.S.C. 1396n); 42 C.F.R. 438; section 204, chapter 518, Laws of 2005, DSHS MHD Program Budget.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: These rules are necessary to implement the mandates required by the Center for Medicare and Medicaid Services (CMS) 1915(b) Freedom of Choice Waiver. These are regulations implementing section 1903 (m)(2)(A)(iii) of the Social Security Act requiring payments in risk contracts to be made on an actuarially sound basis. Section 204 (1)(b), chapter 518, Laws of 2005, directs new methodology for distributing non-Medicaid ("state only") funds to RSNs. This continues the emergency rule that is currently in effect filed as WSR 05-14-081. The department has filed a preproposal statement of inquiry as WSR 05-14-072 and anticipates filing a proposed rule-making notice (CR-102) in December of 2005.

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 1, 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 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 1, Repealed 0.

Date Adopted: October 18, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0201 Allocation of funds to RSN/PIHPs. This section describes how Medicaid and community mental health funds are allocated to the RSN/PIHPs.

(1) Funding allocations are projected at the beginning of each fiscal year, using forecasted Medicaid enrollees for that fiscal year.

(2) Payments are made on the number of actual Medicaid enrollees disabled and nondisabled adults and disabled and nondisabled children each month, which may result in actual payments being higher or lower than projected payments, depending on whether actual Medicaid enrollees are more or less than forecasted enrollees.

(3) The mental health division (MHD) ((~~uses two different methodologies to allocate funds:~~)) allocates funds according to a formula.

(a) ((~~Historical method;~~

~~(b) Eligibles method.~~

~~(4) For the period July 1, 2001 to June 30, 2005, the funds will be allocated using the methodologies as follows:~~

~~(a) For July, 1, 2001 to June 30, 2002, seventy-five percent of funds of will be allocated using the historical method and twenty-five percent of funds will be allocated using the prevalence method;~~

~~(b) For June 1, 2002 to June 30, 2003, fifty percent of funds will be allocated using the historical method and fifty percent of funds will be allocated using the prevalence method;~~

~~(c) For June 1, 2003 to June 30, 2004, twenty-five percent of funds will be allocated using the historical method and seventy-five percent of funds will be allocated using the prevalence method;~~

~~(d) For June 1, 2004 forward, one hundred percent of funds will be allocated using the prevalence method. These percentages will remain in effect unless the department is directed otherwise by the state Legislature.~~

~~(5)(a) Historical method means that federal Medicaid funds projected to be paid to the RSN/PHPs are calculated using actuarially determined per member per month (PMPM) rates specific to each regional support network multiplied by the number of persons enrolled in the Medicaid program in each regional support network for each month during the fiscal year.~~

~~(b) The actuarially determined rates were determined at the beginning of the managed care program (1992 for outpatient services and 1997 for inpatient services) and have been increased periodically by the Legislature.~~)) Medicaid funds are allocated based on the product of rates and enrollees by category disabled and nondisabled adults and disabled and nondisabled children.

(i) ((~~Rates differ by RSN and by category of enrollee (disabled and nondisabled adults and disabled and nondisabled children)~~)) Rate ranges for each category of Medicaid enrollee disabled and nondisabled adults and disabled and nondisabled children are set by an independent actuary. Actual rates paid are set by the MHD within these rate ranges to ensure both the rates are actuarially sound and within the budget authority. The rate study is conducted every five years or as directed by the Centers for Medicare and Medicaid Services (CMS).

(ii) ((~~These~~)) Rates are tracked by MHD.

(iii) The number of Medicaid enrollees is tracked by the medical assistance administration.

(((~~(c) The product of rates and enrollees is the projected amount of Medicaid funding each RSN/PHP will receive during the year.~~

~~(i) This amount is divided into two portions - federal funds and state match funds.~~

~~(ii) The two portions of Medicaid funds are determined by a percentage known as the Federal Medicaid Assistance Percentage (FMAP). This percentage is set by the federal Health Care Financing Authority and changes each year.~~

~~(d) In the inpatient program, each RSN/PHP is allocated the amount of federal and state funds projected in the calculations explained above.~~

~~(e) State funds in the outpatient program (also called "consolidated") to be paid to the RSN/PHPs are set by the Legislature. These funds are allocated to the RSN/PHPs according to the RSN/PHP's calculated percentage of the total funds. The RSN/PHP's percentage is based primarily on historical fee-for-service data.~~

~~(i) The RSN/PHP percentages are tracked by MHD and are carried forward each year.~~

~~(ii) The percentage of consolidated funds paid to each RSN/PHP is adjusted each year by the Legislature through budget proviso direction, generally requiring that new funds in the program be allocated according to Medicaid enrollees in each RSN. Therefore, the amount of consolidated funds in the outpatient program at the beginning of the fiscal year (also called "base funds") are allocated according to the percentage tracked by MHD (put in place by the Legislature in the previous year).~~

~~(iii) New consolidated funds are allocated as directed by the Legislature, generally according to the number of Medicaid enrollees residing in each RSN.~~

~~(f) The base allocation and new consolidated allocations are combined into one percentage that serves as the RSN/PHP's percentage allocation for the next year's base funds.~~

~~(g) The sum of federal Medicaid funds, state match funds in the inpatient program, and consolidated funds equals the amount of funding provided to each RSN/PHP.~~

~~(6) Eligibles method.~~

~~(a) Medicaid and non-Medicaid funds are allocated based on a formula that reflects prevalence of mental disor-~~

~~ders in each county. The formula takes into consideration each RSN's:~~

~~(i) Concentrations of priority populations;~~

~~(ii) Commitments to state hospitals under chapters 71.05 and 71.34 RCW;~~

~~(iii) Population concentrations in urban areas;~~

~~(iv) Population concentrations at border crossings at state boundaries; and~~

~~(v) Other demographic and workload factors such as number of MI/GA-U clients, commitments to community hospitals under chapters 71.05 and 71.34 RCW, and number of homeless persons.~~

~~(b) The RSN/PHP historical method rates for 2001 have been used to calculate a weighted average statewide rate (WASR) for each category of Medicaid eligible (disabled and nondisabled adults and disabled and nondisabled children).~~

~~(c) The WASR for each category is determined by:~~

~~(i) Adding the RSN/PHP's inpatient and outpatient rates to create one combined rate;~~

~~(ii) Multiplying each RSN/PHP's rate by the number of Medicaid enrollees residing in that RSN/PHP;~~

~~(iii) Adding the results; and~~

~~(iv) Dividing the sum by the statewide number of Medicaid eligibles.~~

~~(d) WASR rates are tracked by MHD.~~

~~(e) The number of Medicaid enrollees is tracked by the medical assistance administration.~~

~~(f)~~)) (b) To project the amount of Medicaid funding each RSN/PIHP will receive during the year, MHD multiplies the RSN/PIHP's ((~~WASR~~)) rates for each category by the projected number of Medicaid enrollees in each category.

(i) ((~~This amount is divided into two portions - federal funds and state match funds.~~

~~(ii)~~)) Each RSN/PIHP's projected allocation includes both portions of Medicaid funding (federal and state match funds).

(((~~iii~~))) (ii) Payments to the RSN/PIHP are made based on the actual number of Medicaid enrollees.

(((~~g~~))) (4) The level of non-Medicaid funds appropriated to the community mental health services program is determined by the state Legislature.

(((~~i) Eighty percent of the non-Medicaid funds appropriated are allocated to the RSN/PHPs according to the number persons enrolled in the state funded general assistance-unemployable, medically indigent and state only "v" programs (persons in the state only "v" program are counted at thirteen percent of the total enrolled).~~

~~(A) The number of persons enrolled in these programs is tracked by the medical assistance administration.~~

~~(B) The projected number of persons in these programs residing in each RSN, divided by the total persons projected to be in these programs, is multiplied by eighty percent of the total funds appropriated to determine the amount of funding provided to each RSN/PHP.~~

~~(ii) Twenty percent of the non-Medicaid funds appropriated are allocated according to a summary z score factor that is calculated using four subfactors:~~

~~(A) The number of urban counties in each RSN;~~

~~(B) The number of state and country border counties in each RSN;~~

~~(C) The number of homeless persons in each RSN; and~~

~~(D) The number of ITA commitments from each RSN.~~

~~These subfactors are weighted differently, with the urban factor weighted at 0.3, the border county factor weighted at 0.05, the homeless factor weighted at 1.0 and the ITA commitments factor weighted at 0.2. For each of these factors, information is tracked by MHD and the most recent complete year of data is used to calculate z score factors for each subfactor. These factors are combined into a summary z score factor for each RSN that is multiplied by the total funding available (twenty percent of non-Medicaid funds appropriated).~~)) (a) A portion of the funds are allocated based on fiscal year 2003 non-Medicaid expenditures incurred by each RSN

(b) A portion of the funds are allocated based on population in each RSN.

(c) The remaining funds are allocated to ensure that each RSN projected total revenue (PIHP revenue and state only revenue) excluding local match remains at the same level as their projected FY 2005 total revenue.

(((~~(7)~~))) (5) The mental health division does not pay providers on a fee-for-service basis for services that are the responsibility of the mental health RSN or PIHP, even if the RSN or PIHP has not paid for the service for any reason.

(((~~(8)~~))) (6) To the extent authorized by the state legislature, regional support networks and mental health prepaid inpatient health plans may use local funds spent on health services to increase the collection of federal Medicaid funds. Local funds used for this purpose may not be used as match for any other federal funds or programs.

WSR 05-22-042
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed October 27, 2005, 4:31 p.m., effective October 28, 2005]

Effective Date of Rule: October 28, 2005.

Purpose: The department is amending this rule to increase spousal resource maximum from $41,000 to $41,943.00 effective July 1, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1350.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575, 74.09.500, and 74.09.530.

Other Authority: RCW 74.09.575.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: State law, RCW 74.09.575(3), requires that every biennium, beginning July 1, 2005, the department increase the allowable maximum for the spouse of an institutionalized Medicaid-eligible individual. This continues the emergency rule that is currently in effect under WSR 05-14-079 while the department completes the perma-

nent rule-making process begun under WSR 05-13-139 and filed on June 20, 2005.

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 1, 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 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 1, Repealed 0.

Date Adopted: October 24, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-07-033, filed 3/9/05, effective 4/9/05)

WAC 388-513-1350 Defining the maximum amount of resources allowed and determining resources availability for long-term care (LTC) services. This section describes how the department defines the resource standard and available resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (5) through (8); or

(b) Three thousand dollars for a legally married couple, unless subsection (2) applies.

(2) If the department has already established eligibility for one spouse, then it applies the standard described in subsection (1)(a) to each spouse, unless doing so would make one of the spouses ineligible.

(3) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility and limits;

(b) WAC 388-475-0250, How to determine who owns a resource;

(c) WAC 388-470-0060(6), Resources of an alien's sponsor; and

(d) WAC 388-506-0620, SSI-related medical clients.

(4) For LTC services the department determines a client's nonexcluded resources as follows:

(a) For an SSI-related client, the department reduces available resources by excluding resources described in WAC 388-475-0350 through 388-475-0550;

(b) For an SSI-related client who has a community spouse, the department:

(i) Excludes resources described in WAC 388-513-1360; and

(ii) Adds together the available resources of both spouses according to subsection (5)(a) or (b) as appropriate;

(c) For a client not described in subsection (4)(a) or (b), the department applies the resource rules of the program used to relate the client to medical eligibility.

(5) The department determines available resources of a legally married client, when both spouses are institutionalized, by following WAC 388-506-0620 (5) and (6). For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of nonexcluded resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(6) If subsection (5)(b) applies, the department determines the amount of resources that are allocated to the community spouse before determining nonexcluded resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. The maximum allocation amount is ninety-five thousand one hundred dollars effective January 1, 2005; or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined nonexcluded resources as of the beginning of the current period of institutional status, up to the amount described in subsection (6)(a); or

(ii) The state spousal resource standard of ((~~forty-thousand~~)) forty-one thousand, nine-hundred forty-three dollars effective July 1, 2005.

(7) The amount of the spousal share described in (6)(b)(i) is determined sometime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and

declares the spousal share exceeds the state spousal resource standard. The client will be required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(8) The amount of allocated resources described in subsection (6) can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC or by consent order, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(9) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (10)(a), (b), or (c) applies.

(10) A redetermination of the couple's resources as described in subsections (4)(b) or (c) is required, if:

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

(b) The institutionalized spouse's nonexcluded resources exceed the standard described in subsection (1)(a), if subsection (5)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (6) or (8) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

WSR 05-22-043
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed October 27, 2005, 4:33 p.m., effective October 28, 2005]

Effective Date of Rule: October 28, 2005.

Purpose: WAC 388-105-0035 is being amended to limit the payment of a capital add-on rate to licensed boarding homes with assisted living (AL) contracts that make units that meet new structural requirements available to Medicaid clients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0035.

Statutory Authority for Adoption: RCW 74.39A.030.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department has paid a capital add-on rate to licensed boarding homes with AL contracts when a boarding home meets new construction requirements under WAC 388-110-140. In October 2004, the department revised WAC 388-110-140 that "grandfathered" licensed boarding homes that did not meet new construction requirements as meeting new requirements. The purpose of the capital add-on rate is to ensure Medicaid clients access to AL facilities that meet new construction requirements. Unless the department adopts an emergency rule to change WAC 388-105-0035, then the July 1, 2005, capital add-on rates will be paid to AL facilities that do not meet new construction requirements. This would limit access of Medicaid clients to new AL facilities. Limiting access would be contrary to the public interest in ensuring the health, safety and general welfare of the public that depends on Medicaid to pay for their care in AL facilities. This is the second filing of this emergency. A preproposal notice has been filed as WSR 05-13-127, and the department plans to file the CR-102 for permanent adoption within the next month.

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 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 1, Repealed 0.

Date Adopted: October 24, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-22-058, filed 10/31/02, effective 12/1/02)

WAC 388-105-0035 ((~~What are the~~)) Requirements for a capital add-on rate for licensed boarding homes contracted to provide assisted living ((~~facilities (ALF)?~~)) (AL) services. (1) ((~~Effective July 1, 2002,~~)) (a) To the extent of available funding, the department will grant a capital add-on rate to ((~~an ALF~~)) AL contractors that((~~:~~

~~(a) Meets~~)) attest in writing that their facilities have units meeting the following construction requirements ((~~of WAC 388-110-140; and~~)):

(i) A private apartment-like unit of two hundred and twenty square feet that may include counters, closets and built-ins, but must exclude the bathroom;

(ii) A separate private bathroom that includes a sink, toilet, and a shower or bathtub. The licensed boarding home must have a minimum of one wheelchair accessible bathroom with a roll-in shower of at least forty-eight inches by thirty inches for every two residents whose care is partially or fully funded by Medicaid;

(iii) A lockable entry door;

(iv) A kitchen area equipped with a refrigerator, microwave oven or stove top; a counter surface of a minimum of thirty inches wide by twenty-four inches in depth, a maximum height of thirty-four inches, and a knee space beneath at least twenty-seven inches in height; a storage space for utensils and supplies; and

(v) A living area wired for telephone and television service when available in the geographic location; and

(b) That Medicaid residents for which the contractor receives a Medicaid daily rate with a capital add-on rate reside in units that meet the construction requirements of subsection (1)(a)(i) through (1)(a)(v) of this section.

((~~(b) Has~~)) (2) In addition to meeting the requirements of subsection (1) of this section, to receive a capital add-on rate, the AL contractor must have a Medicaid occupancy percentage that equals or exceeds the applicable biyearly Medicaid minimum occupancy percentage set in accordance with subsection (3) of this section.

((~~(2)~~)) The department will determine an ((~~ALF's~~)) AL contractor's Medicaid occupancy percentage by dividing its Medicaid resident days by the product of all its licensed boarding home beds irrespective of use times calendar days for the six-month period beginning one year prior to the percentage effective date.

(3)(a) To set the biyearly Medicaid minimum occupancy percentage, the department will:

(i) Determine the estimated total budgeted funds for capital add-on rates for the six-month period;

(ii) Rank from highest to lowest the individual ((~~ALF~~)) AL contractor occupancy percentages determined in accordance with subsection (2) of this section;

(iii) Assign, beginning with the highest ((~~ALF~~)) AL contractor's Medicaid occupancy percentage, the estimated expenditure needed to pay the capital add-on rate to each facility for the six-month period;

(iv) Identify the ((~~ALF~~)) AL contractor's Medicaid occupancy percentage at which the estimated total budgeted funds determined under subsection (3)(a)(i) of this section would be expended; and

(v) Set that Medicaid occupancy percentage as the biyearly Medicaid minimum occupancy percentage.

(b) The biyearly Medicaid minimum occupancy percentage will be set every January 1 and July 1.

WSR 05-22-050
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed October 28, 2005, 10:28 a.m., effective October 28, 2005]

Effective Date of Rule: Immediately.

Purpose: WAC 458-20-166 explains the tax-reporting responsibilities of persons providing lodging and related services to transients for a charge. The rule explains that charges for coin-operated and self-service laundry facilities are a retail sale and subject to the retailing business and occupation (B&O) tax and retail sales tax. Chapter 514, Laws of 2005, excludes such charges from the definition of a retail sale. Thus, effective July 1, 2005, charges for coin-operated and self-service laundry facilities will not be subject to retail sales tax and income derived from such charges will be subject to the service and other activities B&O tax.

The department is adopting revisions to Rule 166 on an emergency basis to reflect this legislative change. The department plans to proceed with rule making for permanent revisions to this rule.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency adoption of Rule 166 is necessary because a permanent rule cannot be adopted at this time. This rule action will provide needed tax information to taxpayers and department staff about the law changes. This emergency rule is the same as that filed on June 30, 2005 (WSR 05-14-088).

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 1, 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 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: October 28, 2005.

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit
by Roseanna Hodson

AMENDATORY SECTION (Amending WSR 94-05-001, filed 2/2/94, effective 3/5/94)

WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc. (1) **Introduction.** This section explains the taxation of persons operating establishments such as hotels, motels, and bed and breakfast facilities, which provide lodging and related services to transients for a charge. In addition to retail sales tax and B&O tax, this section explains the special hotel/motel tax, the convention and trade center tax, and the taxation of emergency housing furnished to the homeless.

(a) In addition to persons operating hotels or motels, this section applies to persons operating the following establishments:

(i) Trailer camps and recreational vehicle parks which charge for the rental of space to transients for locating or parking house trailers, campers, recreational vehicles, mobile homes, tents, etc.

(ii) Educational institutions which sell overnight lodging to persons other than students. See WAC 458-20-167.

(iii) Private lodging houses, dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms or schools solely for the accommodation of employees of such firms or students which are not held out to the public as a place where sleeping accommodations may be obtained. As will be discussed more fully below, in some circumstances these businesses may not be making retail sales of lodging.

(iv) Guest ranches or summer camps which, in addition to supplying meals and lodging, offer special recreation facilities and instruction in sports, boating, riding, outdoor living, etc. In some cases these businesses may not be making retail sales, as discussed below.

(b) This section does not apply to persons operating the following establishments:

(i) Hospitals, sanitariums, nursing homes, rest homes, and similar institutions. Persons operating these establishments should refer to WAC 458-20-168.

(ii) Establishments such as apartments or condominiums where the rental is for longer than one month. See WAC 458-20-118 for the distinction between a rental of real estate and the license to use real estate.

(2) **Transient defined.** The term "transient" as used in this section means any guest, resident, or other occupant to whom lodging and other services are furnished under a license to use real property for less than one month, or less than thirty continuous days if the rental period does not begin on the first day of the month. An occupant remaining in continuous occupancy for thirty days or more is considered a nontransient upon the thirtieth day. An occupant who contracts in advance and does remain in continuous occupancy for the initial thirty days will be considered a nontransient from the start of the occupancy.

(3) **Business and occupation tax (B&O).** Where lodging is sold to a nontransient, the transaction is a rental of real estate and exempt from B&O tax. (See RCW 82.04.390.) Sales of lodging and related services to transients are subject to B&O tax, including transactions which may have been identified or characterized as membership fees or dues. (See WAC 458-20-114.) The B&O tax applies as follows:

(a) **Retailing.** Amounts derived from the following charges to transients are retail sales and subject to the retailing B&O tax: Rental of rooms for lodging, rental of radio and television sets, coin operated laundries, rental of rooms, space and facilities not for lodging, such as ballrooms, display rooms, meeting rooms, etc., automobile parking or storage, and the sale or rental of tangible personal property at retail. See "retail sales tax" below for a more detailed explanation of the charges included in the retailing classification.

(b) **Service and other business activities.** Commissions, amounts derived from accommodations not available to the public, and certain unsegregated charges are taxable under this classification.

(i) Hotels, motels, and similar businesses may receive commissions from various sources which are generally taxable under the service and other business activities classification. The following are examples of such commissions:

(A) Commissions received from acting as a laundry agent for guests when someone other than the hotel provides the laundry service (see WAC 458-20-165).

(B) Commissions received from telephone companies for long distance telephone calls where the hotel or motel is merely acting as an agent (WAC 458-20-159) and commissions received from coin-operated telephones (WAC 458-20-245). Refer to the retail sales tax subsection below for a further discussion of telephone charges.

(C) Commissions or license fees for permitting a satellite antenna to be installed on the premises or as a commission for permitting a broadcaster or cable operator to make sales to the guest of the hotel or motel.

(D) Commissions from the rental of videos for use by guests of the hotel or motel when the hotel or motel operator is clearly making such sales as an agent for a seller.

(E) Commissions received from the operation of amusement devices. (WAC 458-20-187.)

(ii) Taxable under this classification are amounts derived from the rental of sleeping accommodations by private lodging houses, and by dormitories, bunkhouses, etc., operated by or on behalf of business and industrial firms and which are not held out to the public as a place where sleeping accommodations may be obtained.

(iii) Summer camps, guest ranches and similar establishments making an unsegregated charge for meals, lodging, instruction and the use of recreational facilities must report the gross income from such charges under the service and other business activities classification.

(iv) Deposits retained by the business as a penalty charged to a customer for failure to timely cancel a reservation is taxable under the service and other business activities classification.

(v) Effective July 1, 2005, the definition of retail sale excludes charges made for the use of self-service or coin-operated laundry facilities. Chapter 514, Laws of 2005. Thus, gross income received from charges for the use of such facilities is subject to the service and other activities B&O tax. Charges for the use of these facilities are not subject to retail sales tax.

Between July 1, 1998 and June 30, 2005, charges for the use of coin-operated and self-service laundry facilities were included in the definition of a retail sale and taxable as explained below in subsection (4)(d).

(4) **Retail sales tax.** Persons providing lodging and other services generally must collect retail sales tax on their charges for lodging and other services as discussed below. They must pay retail sales or use tax on all of the items they purchase for use in providing their services.

(a) **Lodging.** All charges for lodging and related services to transients are retail sales. Included are charges for vehicle parking and storage and for space and other facilities, including charges for utility services, in a trailer camp.

(i) An occupant who does not contract in advance to stay at least thirty days does not become entitled to a refund of retail sales tax where the rental period extended beyond thirty days. For example, a tenant rents the same motel room on a weekly basis. The tenant is considered a transient for the first twenty-nine days of occupancy and must pay retail sales tax on the rental charges. The rental charges become exempt of retail sales tax beginning on the thirtieth day. The tenant is not entitled to a refund of retail sales taxes paid on the rental charges for the first twenty-nine days.

(ii) A business providing transient lodging must complete the "transient rental income" information section of the combined excise tax return. The four digit location code must be listed along with the income received from transient lodging subject to retail sales tax for each facility located within a participating city or county.

(b) **Meals and entertainment.** All charges for food, beverages, and entertainment are retail sales.

(i) Charges for related services such as room service, banquet room services, and service charges and gratuities which are agreed to in advance by customers or added to their bills by the service provider are also retail sales.

(ii) In the case of meals sold under a "two meals for the price of one" promotion, the taxable selling price is the actual amount received as payment for the meals.

(iii) Meals sold to employees are also subject to retail sales tax. See WAC 458-20-119 for retail sales tax applicability on meals furnished to employees.

(iv) Sale of food and other items sold through vending machines are retail sales. See WAC 458-20-187 for reporting income from vending machine sales and WAC 458-20-244 for the distinction between taxable and nontaxable sales of food products.

(v) Except for guest ranches and summer camps, when a lump sum is charged for lodging to nontransients and for meals furnished, the retail sales tax must be collected upon the fair selling price of such meals. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. The cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other costs incidental thereto, including an appropriate portion of overhead expenses.

(vi) Cover charges for dancing and entertainment are retail sales.

(vii) Charges for providing extended television reception to guests are retail sales.

(c) **Laundry services.** Charges for laundry services provided by a hotel/motel in the hotel's name are retail sales. Before July 1, 2005, ((~~RCW 82.04.050, which defines retail sales, was amended by chapter 25, Laws of 1993 sp.s. to include~~)) charges for the use of self-service or coin-operated laundry facilities ((~~located in hotels, motels, rooming houses, and trailer camps for the exclusive use of the tenants. This change became effective July 1, 1993. Prior to that date income from charges to tenants for coin-operated laundry facilities was subject to service B&O tax.~~)) were included in the definition of a retail sale and subject to tax as provided in subsections (3)(a) and (4). Effective July 1, 2005, such charges are taxable as explained above in subsection (3)(b)(v).

(d) **Telephone charges.** Telephone charges to guests, except those subject to service B&O tax as discussed above and in WAC 458-20-245, are retail sales. "Message service" charges are also retail sales.

If the hotel/motel is acting as an agent for a telephone service provider who provides long distance telephone service to the guest, the actual telephone charges are not taxable income to the hotel/motel. These amounts are advances and reimbursements (see WAC 458-20-111 and 458-20-159). Any additional handling or other charge which the hotel/motel may add to the actual long distance telephone charge is a retail sale.

(e) **Telephone lines.** If the hotel/motel leases telephone lines and then provides telephone services for a charge to its guests, these charges are taxable as retail sales. In this case the hotel/motel is in the telephone business. (See WAC 458-20-245.) The hotel/motel may give a resale certificate to the provider of the leased lines and is not subject to the payment of retail sales tax to the provider of the leased lines.

(f) **Rentals.** Rentals of tangible personal property such as movies and sports equipment are retail sales.

(g) **Purchases of tangible personal property for use in providing lodging and related services.** All purchases of tangible personal property for use in providing lodging and related services are retail sales. The charge for lodging and related services is for services rendered and not for the resale of any tangible property.

(i) Included are such items as beds and other furnishings, restaurant equipment, soap, towels, linens, and laundry supply services. Purchases, such as small toiletry items, are included even though they may be provided for guests to take home if not used.

(ii) The retail sales tax does not apply to sales of food products to persons operating guest ranches and summer camps for use in preparing meals served to guests. Sales of prepared meals or other items which require a food handler's permit to persons operating guest ranches and summer camps are subject to retail sales tax. See WAC 458-20-244 for sales of food products.

(h) **Sales to the United States government**. Sales made directly to the United States government are not subject to retail sales tax. Sales to employees of the federal government are fully taxable notwithstanding that the employee ultimately will be reimbursed for the cost of lodging. The department of revenue has identified the following methods of billing or payment which are presumed to be sales directly to the federal government:

(i) The lodging is paid by government voucher or government check payable directly to the hotel/motel.

(ii) Charges made through the use of a VISA I.M.P.A.C. card (International merchant purchase authorization card). The VISA I.M.P.A.C. cards include the embossed legend "U.S. Government Tax Exempt." The account number on each card begins with the prefix "4716."

(iii) For periods prior to November 30, 1993, charges made through Diner's Club Corporate Charge Card (the card contains the statement "for official use only"). There were two Diner's Club Corporate Charge Cards available to federal employees. Only one was sales tax exempt. The card providing the exemption was embossed with the name of the

employee followed by the statement "for official use only." This card was used by federal agencies to pay for group lodging. The Diner's Club card program for federal employees ended November 29, 1993.

(iv) Beginning November 30, 1993, charges made through the use of certain American Express charge cards issued for the use of federal government travelers. Only those cards directly charging a government travel account (central bill account) qualify for the exemption. These cards begin with an account number prefix of "3783-9."

(v) A cash purchase made on behalf of the federal government by a federal employee who gives the seller a federal standard form SF 1165. A cash purchase by a federal employee made on behalf of the federal government qualifies for a sales tax exemption provided that the federal employee presents a federal standard form SF 1165 to document the fact that the purchase is made on behalf of the federal agency out of petty cash funds. The vendor (hotel/motel) is required to sign form SF 1165 to signify receipt of cash for the purchase. The vendor must retain a photocopy of SF 1165, describing the item purchased, to document the sales tax exemption.

(5) **Special hotel/motel tax.** Beginning in October 1987, some locations in the state have been authorized to charge a special hotel/motel tax. (See chapters 67.28 and 36.100 RCW.) If a business is in one of these locations, an additional tax is charged and reported under the special hotel/motel portion of the tax return. The four digit location code, the amount received for the lodging, and the tax rate must be completed for each location in which the lodging is provided. The tax applies without regard to the number of lodging units except that the tax of chapter 36.100 RCW applies only if there are forty or more lodging units. The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for telephone services, laundry, or other incidental charges are not subject to the special hotel/motel tax. Neither is the charge for use of meeting rooms, banquet rooms, or other special use rooms subject to this tax. However, the tax does apply to charges for use of camping and recreational vehicle sites.

(6) **Convention and trade center tax.** Businesses selling lodging to transients, having sixty or more units located in King County, must charge their customers the convention and trade center tax and report the tax under the "convention and trade center" portion of the tax return. See RCW 67.40.-090.

(a) A business having more than sixty units which are rented to transients and nontransients will be subject to the convention and trade center tax only if the business has at least sixty rooms which are available or being used for transient lodging. For example, a business with one hundred forty total rooms of which ninety-five are rented to nontransients is not subject to the convention and trade center tax.

(b) The tax only applies to the charge for the rooms to be used for lodging by transients. Additional charges for telephone services, laundry, or other incidental charges are not subject to the convention and trade center tax. Neither is the charge for use of meeting rooms, banquet rooms, or other special use rooms subject to the convention and trade center tax.

(c) The four digit location code, amount received for the lodging, and the tax rate must be completed for each location in which the lodging is provided. However, the tax does apply to charges for camping or recreational vehicle sites. Each camp site is considered a single unit.

(7) **Furnishing emergency lodging to homeless.** The charge made for the furnishing of emergency lodging to homeless persons purchased via a shelter voucher program administered by cities, towns, and counties or private organizations that provide emergency food and shelter services is exempt from the retail sales tax, the convention and trade center tax, and the special hotel/motel tax. This exemption became effective July 1, 1988. This form of payment does not influence the required minimum of transient rooms available for use as transient lodging under the "convention and trade center tax" or under the "special hotel/motel tax."

WSR 05-22-051
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed October 28, 2005, 10:29 a.m., effective October 28, 2005]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Emergency rule findings are required; see below.

Purpose: Beginning July 1, 2005, sellers must collect a one dollar fee on every retail sale of each new replacement vehicle tire. Chapter 354, Laws of 2005 (SHB 2085). The tire fee is to be collected by the seller from the buyer, and the seller is personally liable for the fee if the seller fails to collect it from the buyer. This tire fee is effective until June 30, 2010.

WAC 458-20-272 Tire fee, is a new rule explaining the seller's responsibility for collecting the fee from the buyer, how the fee is reported, and what tires are subject to the fee. WAC 458-20-250 Refuse-solid waste collection business—Core deposits and credits, and battery core charges, provides information about taxes imposed on solid waste collection and special provisions in law for core deposits and credits, battery core charges, and a tire fee that expired in 1994. Rule 250 is being revised to remove the two brief paragraphs referring to the expired tire fee to eliminate possible confusion.

The department is adopting the new Rule 272 and a revised Rule 250 on an emergency basis to recognize the legislative change. This [These] emergency rules are the same as the emergency rules filed on June 30, 2005.

The department has scheduled a CR-101 public meeting for a new Rule 272 and revised Rule 250 (WSR 05-21-006). This public meeting is scheduled for 9:30 a.m. on November 16, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-250 Refuse-solid waste collection business—Core deposits and credits, and battery core charges((~~, and tires~~)).

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(1).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency adoption of a new Rule 272 and revised Rule 250 is necessary because permanent rules cannot be adopted at this time. This rule action will provide needed tax information to taxpayers and department staff about the seller's obligation to collect and the buyer's obligation to pay the new tire fee. These emergency rules are the same as those adopted on June 30, 2005 (WSR 05-14-089).

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 1, Amended 1, 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 1, 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 1, Amended 1, Repealed 0.

Date Adopted: October 28, 2005.

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit
by Roseanna Hodson

NEW SECTION

WAC 458-20-272 Tire fee. (1) **Introduction.** Beginning July 1, 2005, sellers must collect a one dollar fee on every retail sale of each new replacement vehicle tire. The tire fee is effective until June 30, 2010.

(2) **How do I report the tire fee?**

A seller must report on the excise tax return the number of new replacement vehicle tires sold. If new tires are leased, the fee must be collected once at the beginning of the lease. Tire sellers may retain ten percent of the fee and must remit the remainder to the department of revenue (department). As a result, the amount that must be reported and paid to the department is the number of new replacement vehicle tires sold during the tax reporting period multiplied by ninety cents.

(3) **What if the seller fails to collect the fee or does not pay the fee on time?**

The seller is personally liable for payment of the fee, whether or not the fee is collected from the buyer. Interest and penalties apply to late payments. Refer to WAC 458-20-228 (Returns, remittances, penalties, extensions, interest, stay of collection) for more information.

(4) **What happens if a buyer fails to pay the fee?** The tire fee, until paid by the buyer to the seller or the department, is considered a debt from the buyer to the seller. Any buyer who refuses to pay the fee is guilty of a misdemeanor.

(5) **Is sales tax imposed on the tire fee?**

No. The measure of the sales tax does not include the tire fee.

(6) **Is the ten percent amount retained by the seller taxed?**

Yes. The seller must report the retained amount as gross income under the service and other activities tax classification on the excise tax return.

(7) **What tires are subject to the tire fee?**

All new replacement vehicle tires are subject to the tire fee. Refer to RCW 70.95.030 for the definition of "vehicle" for purposes of the tire fee.

(a) Examples of vehicles for which new replacement tires are subject to the fee include:

(i) Automobiles;

(ii) Trucks;

(iii) Recreational vehicles;

(iv) Trailers;

(v) All-terrain vehicles (ATVs);

(vi) Agricultural vehicles, such as tractors or combines;

(vii) Industrial vehicles, such as forklifts;

(viii) Construction vehicles, such as loaders or graders; and

(ix) Golf carts.

(b) Examples of devices for which new replacement tires are not subject to the fee include human-powered devices, such as bicycles, wheelbarrows, and hand trucks.

(c) The tire fee does not apply to the sale of re-treaded vehicle tires. Nor does it apply to tires provided free of charge under the terms of a recall or warranty.

(8) **May I refund the fee if a tire is returned?**

If a customer returns the purchased new tire and the entire selling price is refunded to the customer, the one dollar tire fee is likewise refundable. The refunded amount may be claimed on the excise tax return in the same manner as refunded sales tax. Refer to WAC 458-20-108 (Returned goods, allowances, cash discounts) for more information.

AMENDATORY SECTION (Amending WSR 89-16-090, filed 8/2/89)

WAC 458-20-250 Refuse-solid waste collection business—Core deposits and credits, and battery core charges((~~, and tires~~)). ((~~[(1)]~~)) (1) **Introduction.** This section administers the taxes on solid waste collection and the special provisions for core deposits and credits, and battery core charges((~~, and tires~~)).

(a) Chapter 282, Laws of 1986 established the specific business activity of the "refuse collection business" and imposed a "refuse collection tax" similar in nature to retail sales tax. The burden of this tax is upon the ultimate consumer of the refuse collection service. The tax rate is three and six tenths percent (.036), and the tax measure is the total consideration charged to the consumer-customer for the services. Chapter 431, Laws of 1989 changes the name of this tax from a refuse collection tax to a solid waste collection tax.

(b) Chapter 431, Laws of 1989, imposes, effective July 1, 1989, an additional tax of 1 percent of the consideration

charged for the service. Generally, the tax is imposed in addition to and is similar to the refuse collection tax enacted in 1986. However, unlike the refuse collection tax, the measure of the new 1 percent tax is limited to the charges for the actual solid waste collection services that are provided and a maximum tax measure is provided for residential collection service charges.

(c) For ease of administration and accounting, the 3.6 percent tax shall retain its former name and be called for purposes of this section the "refuse collection tax," and, the tax imposed in 1989, the 1 percent tax, shall be called the "solid waste collection tax."

(2) Neither the 1986 law or the 1989 law expressly establishes a specific business tax classification for the gross receipts of persons engaged in the refuse-solid waste collection business. Thus, because of the provisions of RCW 82.04.290, such persons are subject to the service or other activities classification of business and occupation tax.

(3) For purposes of this section the following terms will apply.

(a) "Refuse collection business" - "solid waste collection business" means every person who receives waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations.

(b) "Person" shall have the meaning given in RCW 82.04.030 or any later, superseding section.

(c) "Waste"-"solid waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

(d) "Taxpayer" means that person upon whom the refuse-solid waste collection tax is imposed, that is, the private or commercial consumer-customer.

(e) "Department" means the department of revenue.

(f) "Consideration charged for the services" means the total amount billed to a taxpayer as compensation for refuse-solid waste collection services, without any deduction for any costs of doing business or any other expense whatsoever, paid or accrued, provided, that the term does not include any amount included in the charges for materials collected primarily for recycling, nor the refuse-solid waste collection tax itself whether separately itemized or not, nor any similar utility taxes or consumer taxes, imposed by the state or any political subdivision thereof or any municipal corporation, directly upon the consumer-taxpayer and separately itemized on the taxpayer's billing. Also, the term does not include late charges or penalties which may be imposed for nontimely payment by taxpayers.

(4) Refuse and solid waste collection tax measure.

(a) The refuse collection tax applies to the consideration paid for refuse-solid waste collection services. The rate of the tax is 3.6 percent of the amount charged for garbage collection and disposal services.

(b) For purposes of the solid waste collection tax, the following terms will apply.

(i) "Standby," "availability," or "base" charges mean those charges to a residential customer who receives no actual garbage pickup service.

(ii) "Residential collection service" has its ordinary meaning and is per can garbage collection service other than commercial or industrial service. For purposes of this section, a residential collection service is that service provided for each housing unit. In the case of multiple housing units in a single structure such as apartments, condominiums, or duplexes, or, an association of housing units such as a mobile home park or retirement village, the service is deemed commercial unless each occupier of a housing unit is individually provided can service and is individually billed for such service.

(iii) "Can" or "can equivalent" has its ordinary meaning and shall include a receptacle for waste collection made of durable, corrosion-resistant material, watertight with a close fitting cover, with two handles, and does not exceed 32 gallons, 4 cubic feet or 65 lbs. (including contents), nor weigh more than 12 lbs. when empty. (This definition comports with the definition of "unit" by the utilities and transportation commission.) For purposes of this section, containers of 60 gallon or more capacity, commonly called "toters," are considered more than 2 cans.

(c) The solid waste collection tax applies to the consideration paid for actual solid waste collection services provided and utilized by the customer and does not apply to amounts charged by a solid waste collection business for "standby," "availability," or "base" charges where no actual garbage collection occurs. Additionally, the tax does not apply to amounts charged for materials primarily collected for recycling.

(d) For a residential customer, the tax measure is the consideration paid, but not more than $8.00 of the monthly charge for garbage pickup service of less than 2 cans, or, not more than $12.00 of the monthly charge for 2 cans or more.

(i) Example. City X provides residential garbage collection service to a customer and the customer has subscribed to less than two can service. The monthly charge is $11.00 for the service which includes a charge of $2.00 for special pickup of recyclables. After adjustment for the recycling charges of $2.00, the refuse collection tax measure is $9.00 and the solid waste collection tax measure is $8.00. The tax measure for solid waste residential pickup is limited to not more than $8.00 of monthly charge paid. The refuse collection tax is 32 cents ($9.00 x .036), and, the solid waste collection tax is 8 cents ($8.00 x .01), for a total refuse-solid waste collection tax of 40 cents.

(e) For computation of the maximum solid waste collection tax due for residential customers, extra solid waste collected effects the tax base only for a residential customer with less than 2 can service. The tax measure for a customer with 2 or more can service will never exceed $12.00. The tax measure for a customer with less than 2 can service does not exceed $8.00 unless the extras collected are an additional can equivalent sufficient to change the less than 2 can customer to a 2 can or more customer. A less than 2 can customer becomes a 2 can or more customer when, over a reasonable period of time, i.e., 6 months, charges for less than 2 can service plus extras equals or exceeds the customary charges for 2 can service.

(i) Example. Residential customer Z has less than 2 can service for which Z is charged $9.00 per month and results in

a refuse tax of 32 cents ($9.00 x .036) and a solid waste tax of 8 cents ($8.00 x .01) for a total tax of 40 cents. For 7 consecutive months Z has extra trash bags picked up each month. The monthly charge including extras is $11.00 and the customary 2 can or more charge is $12.00. The refuse tax for each month is 40 cents ($11.00 x .036) and the solid waste tax is 8 cents ($8.00 x .01) for a total tax of 48 cents. Z remains a less than 2 can customer during the period as the monthly charge, including the charge for extras, is less than the customary 2 can or more rate. The solid waste tax measure is limited to the consideration paid up to $8.00, while the refuse tax is not so limited.

(ii) Example. Residential customer X has 2 or more can service for which X is charged $9.00 per month resulting in a refuse tax of 32 cents ($9.00 x .036) and a solid waste tax of 9 cents ($9.00 x .01) for a total tax of 41 cents. One month X has several trash bags picked up and the charge for this month is $13.00. The refuse tax is 47 cents ($13.00 x .036) and the solid waste tax is 12 cents ($12.00 x .01) for a total tax of 59 cents. The solid waste tax measure for 2 can or more service is limited to the consideration paid up to $12.00 while the refuse collection tax measure is not so limited.

(iii) Example. A city provides residential garbage collection for which the city charges a $5.00 base fee and a total charge of $9.00 for less than 2 can service and $13.00 for 2 can or more service. A customer chooses to deliver his garbage by his own means to the local disposal site for which the customer is charged $10.00 per month. The city charges the customer on his monthly utility bill the $5.00 base fee. The refuse tax collected at the disposal site is 36 cents ($10.00 x .036) and the solid waste tax collected at the disposal site is 10 cents ($10.00 x .01) for a total collection at the disposal site of 46 cents. The refuse tax collected by the city is 18 cents ($5.00 x .036) and no solid waste tax is collected by the city because no actual garbage collection services were provided the customer. As the per can limitations apply only to residential pick up service, any garbage delivered to disposal site by anyone other than another refuse-solid waste collection business will always incur a combined refuse-solid waste tax of 4.6 per cent of the consideration paid.

(5) The person who collects the charges for refuse-solid waste collection services from the taxpayer is responsible for collecting the refuse-solid waste collection tax and remitting it to the state.

(6) The law provides that if any person charged with collecting the tax fails to bill the taxpayer for it, or to notify the taxpayer in writing that the tax is due, then that person shall be personally liable for the tax. Thus, unlike the retail sales tax, the refuse-solid waste collection tax may be included within the gross refuse fee or charge billed to taxpayers and need not be separately itemized on such billings, but only if such taxpayers are notified in writing that the tax has been imposed and is being collected. Nothing prevents any refuse-solid waste collection business from separately itemizing the tax on customer billings, at its option.

(7) Furthermore, if any person collects that tax from the taxpayer and fails to pay it to the department in the manner provided in this section, for any reason whatever, that person shall be personally liable for the tax.

(8) The refuse-solid waste collection tax is due from the taxpayer within twenty-five days from the date the taxpayer is billed for the refuse-solid waste collection services. The refuse collection tax and the solid waste collection tax shall be separately reported upon lines provided on the combined excise tax return.

(9) The tax is due to be remitted to the department by the person collecting it at the end of the tax reporting period in which the tax is received by that person.

(10) If a taxpayer makes only a partial payment of the amount billed for the services and tax, the amount paid must first be used to remit the refuse-solid waste collection tax to the department. This tax has first priority over all other claims against the amount paid by the taxpayer.

(11) The federal government, its agencies and instrumentalities, and all refuse service contracts with such federal entities are not subject to the refuse-solid waste collection tax. There are no other taxpayers expressly exempted from paying the refuse-solid waste collection tax. Any other taxpayer claiming exemption of this tax for any reason whatsoever must provide the refuse-solid waste collection business with proof of its entitlement to exemption. The department will verify such claims upon request.

(12) To prevent pyramiding or multiple taxation of single transactions, the refuse-solid waste collection tax does not apply to any person other than the taxpayer. It is a tax upon the ultimate consumer-customer of the refuse-solid waste service.

(13) Persons who collect the refuse-solid waste collection tax and who, themselves, utilize the further services of others for the transfer, storage, or disposal of the waste collected are not required to again pay the tax to such other service providers. However, in order to be exempt of such tax payment a refuse-solid waste collection business must provide other refuse-solid waste service providers with a refuse-solid waste collector's exemption certificate in the following form:

(a) We hereby certify that we are engaged in the refuse-solid waste collection business and are registered with the state department of revenue to collect and report the refuse collection tax imposed under chapter 282, Laws of 1986 and chapter 431, Laws of 1989. We certify further that the refuse-solid waste collection tax due with respect to the refuse-solid waste collection business being performed under this certificate has been or will be collected and paid and that we are exempt ((~~[of] [for]~~)) from further payment of such tax on charges for any refuse-solid waste collection services being procured by us.

Business Name . . . . . Authorized Signature . . . . .

Business Address . . . . . Date . . . . . .

Revenue Registration No. . . . . .

U.T.C. Certificate of Public Necessity No. . . . . .

If not regulated by U.T.C., please check here . . . . . .

(b) Blanket certificates may be provided in advance by refuse-solid waste collectors or other persons who collect the customer charges for refuse-solid waste collection and who are liable for collecting and remitting the refuse-solid waste collection tax.

(c) Refuse-solid waste collection businesses which provide services for the transfer, storage, or disposal of waste, and who accept completed certifications in good faith are not required to collect and remit the refuse-solid waste collection tax and will not be held personally liable for it.

(14) Persons engaged in the refuse-solid waste collection business by operating facilities for the transfer, storage, or disposal of waste, including public and private dumps, and who provide such services directly to taxpayers for a charge, are liable for the collection of the refuse collection tax on such charges.

(15) Examples of taxable and tax exempt transactions are:

(a) A private person or commercial customer hauls its own waste to a dump site for disposal and pays a fee - the fee is subject to the 3.6 percent refuse collection tax and the 1 percent solid waste collection tax.

(b) A refuse-solid waste collection company picks up and hauls residential or commercial waste to a dump for disposal - this company bills the customer for the tax and need not pay the tax upon any further charge made by the dump site operator, by providing a refuse-solid waste collector's certificate.

(c) A city provides refuse-solid waste collection services to its residents through an independent hauler under a negotiated contract, and uses a county operated land fill. The city bills the residents on their utility bills. The 3.6 percent and 1 percent taxes apply to the refuse-solid waste portion of the utility bill adjusted as provided in this section. These taxes do not apply to any charge paid by the city to the hauling company, nor to any charge made by the county to the city for dumping services. The city must provide the hauler and the county with a refuse-solid waste collector's certificate.

(16) The refuse-solid waste collection tax is imposed in much the same manner as retail sales tax; that is, it is payable by the refuse-solid waste consumer to the refuse-solid waste service provider who does the customer billing. Likewise, other refuse-solid waste service providers up the chain of transactions from the billing provider are treated in the same manner as wholesalers and need not collect the tax if the appropriate certificate is taken.

(17) Business and occupation tax. There is no exemption from business and occupation tax measured by gross income of any person engaged in the refuse-solid waste collection business. Such persons are subject to the service classification of business and occupation tax measured by their gross receipts. (See RCW 82.04.290.) Also, there is no general provision under the law for the nonpyramiding effect of the business and occupation tax. Thus, each refuse-solid waste collection business is separately liable for this tax on its total gross receipts without any deduction for any costs of doing business or any amounts paid over to other refuse-solid waste service providers. Also, all amounts designated as late charges or penalties are included within this business tax measure.

(18) The refuse-solid waste collection business is an "enterprise activity," as defined in WAC 458-20-189, when it is funded over fifty percent by user fees. Thus, the amounts derived from this activity are not exempt of business and occupation tax even though they may be charged by governmental entities. (See RCW 82.04.419.)

(19) The exemption of refuse-solid waste collection tax for the federal government, its agencies and instrumentalities, does not apply for business and occupation tax. Thus, refuse-solid waste collection businesses who charge such federal entities for services, under contract or otherwise, must pay the business and occupation tax upon such gross receipts.

(20) Persons engaged in the refuse-solid waste collection business may be entitled to certain express deductions or exemptions from business and occupation tax for specific reasons unrelated to the nature of their refuse-solid waste business activity. (See RCW 82.04.419 and 82.04.4291.)

(21) Refuse-solid waste collection businesses which provide waste receptacles, containers, dumpsters, and the like to their customers for a charge, separate from any charge for collection of the waste, are engaged in the business of renting tangible personal property taxable separate and apart from the refuse-solid waste collection business. Charges for such rentals, however designated, are subject to retailing business and occupation tax when they are billed separately or are line itemized on customer billings. Such businesses are engaged in more than one taxable kind of business activity and are separately taxable on each. (See RCW 82.04.440.)

(22) Retail sales tax. Persons who separately charge and bill customers for waste receptacles, as explained earlier, must collect and remit the retail sales tax on the itemized rental price, fee, or other consideration, however designated, charged for the receptacles.

(23) Refuse-solid waste collection businesses are themselves the consumers of all tangible personal property purchased for their own use in conducting such business, other than items for resale or renting to customer((~~[s]~~))s, e.g., rented receptacles. Retail sales tax must be paid to materials suppliers and providers of such tangible consumables. (See RCW 82.04.050.)

(24) Use tax. The use tax is due upon all tangible personal property used as consumers by refuse-solid waste collection businesses, upon which the retail sales tax has not been paid. (See RCW 82.12.020.)

(25) Core deposits and credits - Battery core charges.

(a) For purposes of this section the following terms apply.

(i) "Core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for purposes of recycling or remanufacturing.

(ii) "Battery core charge" means that amount of the retail selling price of a vehicle battery, not less than $5.00, which is retained by the seller when the purchaser has no used battery to exchange or trade-in.

(b) Retail sales tax.

(i) The retail sales tax does not apply to the consideration received as core deposits or credits in a retail or wholesale sale when a purchaser exchanges or trades-in a core to the seller. (RCW 82.08.010, WAC 458-20-247, and chapter 431, Laws of 1989). Therefore, when a purchaser of a vehicle battery, starter, etc., exchanges or trades-in a used battery, starter, etc., to the seller, retail sales tax does not apply to the value of the used property exchanged or traded-in.

(ii) Chapter 431, Laws of 1989, effective July 23, 1989, requires the retail selling price of a vehicle battery to include a core charge of not less than $5.00. The core charge must be omitted from the sales price when the purchaser offers to the seller a used battery of equivalent size. The retail sales tax does apply to the core charge amount included in the sales price of a vehicle battery when the purchaser does not offer to the seller a used battery for exchange or trade-in. The exemption for "core deposits or credits" applies only when an article of tangible personal property is returned by the purchaser to the seller for the purpose of recycling or remanufacturing. Upon the offer by the purchaser to the seller of a used battery of equivalent size for exchange or trade-in within 30 days after the purchase date of the battery, the seller shall refund to the purchaser the core charge amount and the retail sales tax paid on such core charge.

(c) Use tax. The use tax does not apply to the value of core deposits or credits in a retail or wholesale sale.

(d) Business and occupation tax. The core deposit and credit exemptions apply only to the amount of retail sales tax and use tax to be collected and paid. There is no core deposit or credit exclusion for B&O tax. It is important to note that the base for B&O tax and retail sales tax may be different amounts. Thus, the gross receipts under the appropriate classification of B&O tax, retailing, wholesaling, manufacturing, etc., continues to include the value of core deposits and credits. Battery core charges are included as gross receipts in the retailing classification of the B&O tax.

(e) Examples:

(i) A customer wishes to purchase from an auto parts store a new replacement battery and a reconditioned starter. He brings with him a battery core and a starter core. The purchase price of the new battery is $60.00 less $3.00 for the value of the core exchanged; and, the purchase price of the starter is $50.00 less $5.00 for the starter core. Retailing B&O tax is due upon the total value of cash plus core value, in this case $110.00 ($60.00 + 50.00). However, retail sales tax is due only on $102 ($57.00 + 45.00), which is the purchase price less the core deposits. The customer pays $102.00 plus sales tax for the battery and the starter.

(ii) A customer wishes to purchase a new replacement battery which sells for $62.00. The customer has no returnable battery core to exchange. Thus, a battery core charge of $5.00 or more must be added to the sales price for a total of $67.00 or more. Both retail sales tax and B&O tax apply to the actual price paid by the customer.

(iii) In example (ii) above, the customer returns to the store within 30 days with a proof of purchase and a used battery of equivalent size. The seller must refund the $5.00 or more battery core charge plus the sales tax paid on the $5.00 or more. B&O tax is due upon the value of the battery, $62.00.

~~((26) Tires. Chapter 431, Laws of 1989 amends RCW 70.95.510 and, effective October 1, 1989, levies a $1 per tire fee on the retail sale of new replacement tires. The $1 per tire fee levied replaces the .012 percent tax imposed in 1985. The fee imposed shall be paid by the buyer and collected by the seller. The fee collected from the buyer by the seller shall be paid to the department in accordance with RCW 82.32.045 less 10 percent retained by the seller.~~

~~(a) Retail sales tax - Use tax - Business and occupation tax. Chapter 431, Laws of 1989 exempts the fee from retail sales tax and use tax. Neither the fee nor the part of the fee retained by the seller is subject to business and occupation tax. The seller is only the state's collecting and reporting agent for the portion paid to the department. The 10 percent retained portion is expressly authorized for use by the seller to defray costs associated with the proper management of waste tires.~~))

WSR 05-22-052
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed October 28, 2005, 10:30 a.m., effective October 28, 2005]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Emergency rule findings are required; see below.

Purpose: **Background:** WAC 458-20-141 explains the B&O, retail sales, and use tax reporting responsibilities of persons who engage in duplicating activities or who provide mailing bureau services in Washington. WAC 458-20-144 explains the B&O and retail sales tax reporting responsibilities of persons engaged in printing activities. Both rules were revised in January 2005, each with an effective date of July 1, 2005.

One of the major changes in that revision was the removal of language stating that a deduction from the measure of tax for both B&O tax and the retail sales tax was available where a mailing bureau purchases postage for a customer and charges that customer for the postage. This revision explained that amounts received from a customer for postage costs incurred by the seller are, under the law, included in the measures of both taxes. The change to Rule 141 also identified circumstances under which postage charges are not included in the measure of tax because the charges qualify as advances or reimbursements.

WAC 458-20-17803 explains the use tax reporting responsibilities of persons who distribute or cause to be distributed tangible personal property promoting the sale of products or services are subject to use tax on the value of the property. While the January 2005 rule action had a July 1, 2005 effective date, the rule explains a use tax responsibility that resulted from provisions of chapter 367, Laws of 2002 that became effective June 1, 2002.

Current Rule-making Action: Chapter 514, Laws of 2005, provides a B&O tax deduction and retail sales/use tax exemption for delivery charges made for the delivery of direct mail, if the charges are separately stated. These provisions of chapter 514 became effective May 16, 2005, and supercede the instructions regarding charges for postage costs in these rules.

The department is adopting revisions to Rules 141, 144, and 17803 on an emergency basis to reflect this legislative change. The department plans to proceed with rule making for permanent revisions to these rules.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-141 Duplicating activities and mail-

ing bureaus, 458-20-144 Printing industry, and 458-20-17803 Use tax on promotional material.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency adoption of revised Rules 141, 144, and 17803 is necessary because permanent rules cannot be adopted at this time. This rule action will provide needed tax information to taxpayers and department staff about the seller's and buyer's tax-reporting responsibilities relative to delivery costs for direct mail. The rules being adopted are the same as those adopted on an emergency basis on June 30, 2005 (WSR 05-14-091).

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 Request of a Nongovernmental 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 3, Repealed 0.

Date Adopted: October 28, 2005.

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit
by Roseanna Hodson

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-23 issue of the Register.

WSR 05-22-053
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed October 28, 2005, 10:31 a.m., effective October 28, 2005]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Emergency rule findings are required; see below.

Purpose: WAC 458-20-210, explains the application of business and occupation (B&O), retail sales, and use taxes to the sale and/or use of feed, seed, fertilizer, spray materials, and other tangible personal property for farming. This rule also explains the application of B&O, retail sales, and litter taxes to the sale of agricultural products by farmers.

One of the issues discussed [in] Rule 210 is the tax incentives provided for reducing agricultural burning of cereal grain and grass fields. Chapter 420, Laws of 2005, made a number of changes to the tax incentives. These changes are effective July 1, 2005. The department has adopted a new WAC 458-20-271 to explain the tax incentives to reduce agricultural burning. The information on the tax incentives for periods prior to the legislative change has been removed from Rule 210 and incorporated into Rule 271.

The department is adopting the new Rule 271 and a revised Rule 210 on an emergency basis to recognize the legislative change. This [These] emergency rules are the same as the emergency rules filed on June 30, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-210 Sales of agricultural products by farmers.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(1).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency adoption of a new Rule 271 and revised Rule 210 is necessary because permanent rules cannot be adopted at this time. This rule action will provide needed tax information to taxpayers and department staff about the change in the retail sales and use tax exemption provided for reducing agricultural burning. These emergency rules are the same as those filed on June 30, 2005 (WSR 05-14-105).

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 1, Amended 1, 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 1, 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 1, Amended 1, Repealed 0.

Date Adopted: October 28, 2005.

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit
by Roseanna Hodson

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-23 issue of the Register.

WSR 05-22-056
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 05-256—Filed October 28, 2005, 2:22 p.m., effective October 31, 2005, 7:00 a.m.]

Effective Date of Rule: October 31, 2005, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100D; and amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation implements a comanager agreement to extend the Area 6D Dungeness Bay coho fishery by one week due to low effort and catch to date. There is insufficient time to promulgate permanent rules.

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 1, Amended 0, Repealed 1.

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: October 28, 2005.

Evan Jacoby
for Jeff Koenings
Director

NEW SECTION

WAC 220-47-41100E Gill net—Open periods. Notwithstanding the provisions of Chapter 220-47-411 WAC, effective immediately until further notice, it is unlawful to take, fish for or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Area 6D open for Skiff Gill Nets using 6 1/4 inch mesh from 7:00 a.m. to 7:00 p.m. on 10/31, 11/1, 11/2, 11/3, 11/4. Nets must be attended at all times and Chinook and Chum salmon must be released by cutting the meshes ensnaring the fish.

(2) Area 7 and 7A open for Gill Nets using 6 1/4 inch mesh from 7:00 a.m. to 7:00 p.m. 10/31, 11/1, 11/2, 11/3, 11/4, 11/7, 11/8, 11/9, 11/10, 11/11.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 a.m. October 31, 2005:

WAC 220-47-41100D	Gill nets—Open periods. (05-255)

WSR 05-22-066
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed October 31, 2005, 4:23 p.m., effective November 1, 2005]

Effective Date of Rule: November 1, 2005.

Purpose: To comply with federal regulations as clarified by the federal Centers for Medicare and Medicaid (CMS), the department is amending the eligibility criteria for the alien emergency medical (AEM) program. Clients who meet COPES/nursing facility level of care will no longer automatically qualify for the AEM program; and personal care services, waiver services, and nursing facility services will no longer be covered under AEM.

Citation of Existing Rules Affected by this Order: Amending WAC 388-438-0110.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Being out of compliance with federal regulation (42 C.F.R. § 440.255) could jeopardize the state's federal funding for the AEM program.

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 Request of a Nongovernmental 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 1, Repealed 0.

Date Adopted: October 19, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-15-057, filed 7/13/04, effective 8/13/04)

WAC 388-438-0110 The alien emergency medical (AEM) program. (1) The alien emergency medical (AEM) program is a required federally funded program. It is for aliens who are ineligible for other Medicaid programs, due to the citizenship or alien status requirements described in WAC 388-424-0010.

(2) Except for the social security number, citizenship, or alien status requirements, an alien must meet categorical Medicaid eligibility requirements as described in:

(a) WAC 388-505-0110, for an SSI-related person;

(b) WAC 388-505-0220, for family medical programs;

(c) WAC 388-505-0210, for a child under the age of nineteen; or

(d) WAC 388-523-0100, for medical extensions.

(3) When an alien has monthly income that exceeds the CN medical standards, the department will consider AEM medically needy coverage for children or for adults who are age sixty-five or over or who meet SSI disability criteria. See WAC 388-519-0100.

(4) To qualify for the AEM program, the alien must meet one of the criteria described in subsection (2) of this section and have((:

~~(a) A~~)) a qualifying emergency medical condition as described in WAC 388-500-0005((~~; or~~

~~(b) Been approved by the department for, and receiving, nursing facility or COPES level of care~~)).

(5) The alien's date of arrival in the United States is not used when determining eligibility for the AEM program.

(6) The department does not deem a sponsor's income and resources as available to the client when determining eligibility for the AEM program. The department counts only the income and resources a sponsor makes available to the client.

(7) Under the AEM program, a person receives CN scope of care, as described in WAC 388-529-0100. Covered services are limited to those medical services necessary for treatment of the person's emergency medical condition. The following services are not covered:

(a) Organ transplants and related services;

(b) Prenatal care, except labor and delivery; ((~~and~~))

(c) School-based services;

(d) Personal care services;

(e) Waiver services; and

(f) Nursing facility services, unless they are approved by the department's medical consultant.

(8) When a person's income exceeds the CN income standard as described in subsection (3) of this section, the person has spend down liability and MN scope of care. MN scope of care is described in WAC 388-529-0100. The medical service limitations and exclusions described in subsection (7) are also excluded under the MN program.

(9) A person determined eligible for the AEM program is certified for three months. The number of three-month certification periods is not limited, but, the person must continue to meet eligibility criteria in subsection (2) and (4) of this section.

(10) A person is not eligible for the AEM program if they entered the state specifically to obtain medical care.

WSR 05-22-080
EMERGENCY RULES
STATE BOARD OF EDUCATION

[Filed November 1, 2005, 8:12 a.m., effective November 1, 2005]

Effective Date of Rule: Immediately.

Purpose: The amendment eliminates a possible loophole that might allow a school bus driver to retain his/her authorization even if convicted of certain conduct or alleged to have in certain conduct relating to the job of a bus driver.

Citation of Existing Rules Affected by this Order: Amending WAC 180-20-103 Disqualifying conditions for authorized school bus drivers.

Statutory Authority for Adoption: RCW 28A.160.210.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: See Purpose above.

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 1, 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 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 28, 2005.

Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-103 Disqualifying conditions for authorized school bus drivers. A school bus driver's authorization will be denied or revoked as a result of the following conditions:

(1) Misrepresenting or concealing a material fact in obtaining a school bus driver's authorization or in reinstatement thereof in the previous five years.

(2) Having a driving license privilege suspended or revoked as a result of a moving violation as defined in WAC 308-104-160 within the preceding five years or have had their commercial driver's license disqualified, suspended, or revoked within the preceding five years; a certified copy of the disqualification, suspension, or revocation order issued by the department of licensing being conclusive evidence of the disqualification, suspension, or revocation.

(3) Incurring three or more speeding tickets of ten miles per hour or more over the speed limit within the last five years.

(4) Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a lapsed, suspended, surrendered, or revoked school bus driver's authorization in a position for which authorization is required under this chapter.

(5) Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a suspended or revoked driver's license or a suspended, disqualified or revoked commercial driver's license.

(6) Having refused to take a drug or alcohol test as required by the provisions of 49 CFR 382 within the preceding five years. Provided, That this requirement shall not apply to any refusal to take a drug or alcohol test prior to January 31, 2005.

(7) Having a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, school bus drivers, or other coworkers.

(8) Having been convicted of any misdemeanor, gross misdemeanor, or felony (including instances in which a plea of guilty or *nolo contendere* is the basis for the conviction) or being under a deferred prosecution under chapter 10.05 RCW ((~~where the conduct or alleged conduct is related to the occupation of a school bus driver~~)), including, but not limited to, the following:

(a) The physical neglect of a child under chapter 9A.42 RCW;

(b) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, excepting motor vehicle violations under chapter 46.61 RCW;

(c) The sexual exploitation of a child under chapter 9.68A RCW;

(d) Sexual offenses where a child is the victim under chapter 9A.44 RCW;

(e) The promotion of prostitution of a child under chapter 9A.88 RCW;

(f) The sale or purchase of a child under RCW 9A.64.030;

(g) Any crime involving the use, sale, possession, or transportation of any controlled substance or prescription drug within the last ten years;

(h) Any crime involving driving when a driver's license is suspended or revoked, hit and run driving, driving while intoxicated, being in physical control of motor vehicle while intoxicated, reckless driving, negligent driving of a serious nature, vehicular assault or vehicular homicide, within the last five years;

(i) Provided, That the general classes of felony crimes referenced within this subsection shall include equivalent federal crimes and crimes committed in other states;

(j) Provided further, That for the purpose of this subsection "child" means a minor as defined by the applicable state or federal law;

(k) Provided further, That for the purpose of this subsection "conviction" shall include a guilty plea.

(9) Having been convicted of any crime within the last ten years, including motor vehicle violations, which would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver. In determining whether a particular conviction would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver, the following and any other relevant considerations shall be weighed:

(a) Age and maturity at the time the criminal act was committed;

(b) The degree of culpability required for conviction of the crime and any mitigating factors, including motive for commission of the crime;

(c) The classification of the criminal act and the seriousness of the actual and potential harm to persons or property;

(d) Criminal history and the likelihood that criminal conduct will be repeated;

(e) The permissibility of service as an authorized school bus driver within the terms of any parole or probation;

(f) Proximity or remoteness in time of the criminal conviction;

(g) Any evidence offered which would support good moral character and personal fitness;

(h) If this subsection is applied to a person currently authorized as a school bus driver in a suspension or revocation action, the effect on the school bus driving profession, including any chilling effect, shall be weighed; and

(i) In order to establish good moral character and personal fitness despite the criminal conviction, the applicant or authorized school bus driver has the duty to provide available evidence relative to the above considerations. The superintendent of public instruction has the right to gather and present additional evidence which may corroborate or negate that provided by the applicant or authorized school bus driver.

WSR 05-22-101
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 1, 2005, 4:33 p.m., effective November 1, 2005]

Effective Date of Rule: Immediately.

Purpose: The Division of Employment and Assistance Programs is amending WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? This rule change is necessary to increase state supplemental payments to individuals residing in nursing facilities by $10 per month as mandated by the 2005 legislative session in ESSB 6090.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0055.

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

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The 2005 budget, section 207, chapter 518, Laws of 2005, increased state supplemental pay-

ments effective July 1, 2005, as follows: "(3) Within amounts appropriated in this section, the department shall increase the state supplemental payment by $10 per month for SSI clients who reside in nursing facilities, residential habilitation centers, or state hospitals and who receive a personal needs allowance and decrease other state supplemental payments." The department is in the process of filing this rule change by the regular adoption process but cannot meet the legislatively mandated effective date without a second emergency adoption. The department has filed a notice of intent to adopt the permanent rule, WSR 05-13-173, and proposed rules with be filed this month.

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 1, 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 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 1, Repealed 0.

Date Adopted: November 1, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-07-024, filed 3/8/04, effective 4/8/04)

WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? (1) The SSP is a payment from the state for certain SSI eligible people (see WAC 388-474-0012).

If you converted to the federal SSI program from state assistance in January 1974, because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a mandatory income level (MIL) client.

A change in living situation, cost-of-living adjustment (COLA) or federal payment level (FPL) can affect a grandfathered (MIL) client. A grandfathered (MIL) client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal cost-of-living adjustments (COLA) since then; or

(b) The current payment standard.

(2) The monthly SSP rates for eligible persons under WAC 388-474-0012 and individuals residing in an institution are:

SSP eligible persons	Monthly SSP Rate
Individual (aged 65 and older) - Calendar Year ((~~2004~~)) 2005	$46.00
Individual (blind as determined by SSA) - Calendar Year ((~~2004~~)) 2005	$46.00
Individual with an ineligible spouse - Calendar Year ((~~2004~~)) 2005	$46.00
Grandfathered (MIL)	Varies by individual based on federal requirements. Payments range between $0.54 and $199.77.

Medical institution	Monthly SSP Rate
Individual	$((~~11.62~~)) 21.62

WSR 05-22-117
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-257—Filed November 2, 2005, 10:19 a.m., effective November 2, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100G.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to meet allocation, conservation, and management agreements. There is insufficient time to promulgate permanent rules.

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 0, Repealed 1.

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: November 1, 2005.

J. P. Koenings
Director
by Larry Peck

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100G	Puget Sound shrimp pot and beam trawl fishery—Season (05-240)