

WSR 06-18-003
EMERGENCY RULES
SECRETARY OF STATE
 (Elections Division)

[Filed August 23, 2006, 3:36 p.m., effective August 23, 2006]

Effective Date of Rule: Immediately.

Purpose: Implementation of voter registration procedures for the 2006 election cycle pursuant to the August 1, 2006, preliminary injunction issued by the United States district court for the western district of Washington in *Washington Association of Churches, et al. v. Sam Reed*, No. C06-0726RSM.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-253-055; and amending WAC 434-324-010, 434-324-040, 434-324-055, 434-324-085, 434-253-024, 434-253-047, and 434-262-031.

Statutory Authority for Adoption: RCW 29A.04.611.

Other Authority: Preliminary injunction issued August 1, 2006, by United States district court in *Washington Association of Churches, et al. v. Sam Reed*, No. C06-0726RSM.

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: United States district court issued a preliminary injunction on August 1, 2006, enjoining enforcement of RCW 29A.08.107. These emergency rules implement that preliminary injunction.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 3, Amended 7, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 23, 2006.

Steve Excell
 Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

WAC 434-324-010 County election management system—Applications for voter registration. (1) Each auditor must enter and maintain voter registration records in the official statewide voter registration data base by using a county election management system. Each record must contain at least the following information from the voter registration form in a format compatible with the official statewide voter registration data base:

- (a) Name;
- (b) Complete residential address;
- (c) Complete mailing address;
- (d) County registration number;
- (e) State registration number;
- (f) Gender;
- (g) Date of birth;
- (h) Date of registration;
- (i) Applicable district and precinct codes;
- (j) Dates upon which the individual has voted, if available;
- (k) Washington state driver license number, Washington state identification card number, and/or the last four digits of the applicant's Social Security number (~~(if he or she does not have a Washington state driver license or Washington state identification card)~~); and

(1) A scanned image file (format .tiff) of the applicant's signature.

(2) In the case of an applicant who applies for voter registration by mail and sends a copy of ~~((an))~~ one of the alternative forms of identification listed in RCW 29A.08.113 for registration purposes, ~~((pursuant to RCW 29A.08.113,))~~ the auditor must either maintain a scanned image of the identifying document or make a notation in the registration record indicating which alternative form of identification was ~~((sent))~~ provided to the auditor. Pursuant to RCW 29A.08.710, a scanned image of the identification is not available for public inspection or copying.

(3) Upon entry of an applicant's information, the auditor must check for duplicate entries.

(4) Each auditor must have a quality assurance program to maintain accurate data entry into the statewide voter registration data base.

AMENDATORY SECTION (Amending WSR 06-14-050, filed 6/28/06, effective 7/29/06)

WAC 434-324-040 Data transfer to secretary and registration status. (1) Following entry into the county election management system, all information in the application for voter registration must be transferred electronically to the secretary for identity verification ~~((, outlined in RCW 29A.08.107))~~. The secretary must assign the application a state identification number ~~((, and the application must remain in the county election management system in pending status until the applicant's identity has been verified))~~.

(2) If the applicant provided a Washington driver license number or state identification card number, the applicant's identity is verified with the department of licensing. If the applicant provided the last four digits of his or her Social Security number, the applicant's identity is verified with the Social Security Administration through the department of licensing.

(3) If the applicant's identity is not verified ~~((automatically))~~ in the computerized verification process, the secretary must notify the county election management system accordingly. The county auditor must first confirm the accuracy of the information entered in the county election management system from the voter registration application. The county

auditor must correct any errors and again attempt to verify the applicant's identity automatically.

(4) If the applicant provided a Washington driver license number or state identification number and the identity is not verified (~~(automatically)~~) in the computerized verification process, the information on the application may be considered a "match" (~~(for purposes of RCW 29A.08.107)~~) if the number on the application exactly matches a number issued by the department of licensing, and it is clear to the county auditor that the information on the application describes the person on the department of licensing record. Reasons that the county auditor may conclude that the information on the application (~~(matches)~~) describes the person on the department of licensing record (~~(if)~~) include, but are not limited to, the following:

(a) The first (~~(or)~~) middle, or last name on the application is a variation of the first (~~(or)~~) middle, or last name in the department of licensing record;

(b) The first, middle, or last name has transposed letters or another typographical error on the application or in the department of licensing record;

(c) The first and last names are transposed on the application or in the department of licensing record;

(d) The first and middle names are transposed on the application or in the department of licensing record;

(e) The applicant has a compound or hyphenated name which is not accurately or completely set forth on the application or in the department of licensing record;

(f) The first or middle name is abbreviated with initials on the application or in the department of licensing record; (~~(or~~

(~~or~~)) (g) The last name on the application and the last name in the department of licensing record are not the same but, based on other information, the county auditor concludes that one of the names is a maiden name or a former name of the same person; or

(h) The month and day of the applicant's date of birth are transposed on the application or in the department of licensing record.

If the county auditor concludes that the information on the application (~~(matches the information maintained by the department of licensing)~~) describes the person on the department of licensing record, the county auditor (~~(may)~~) must override the (~~(automated)~~) computerized failure to verify and must note the reason it is considered a match. The county auditor must place the applicant on the official list of registered voters in active status.

(5) (~~(If the applicant's driver's license or state identification number cannot be considered a match, the county auditor must attempt to contact the applicant to resolve the discrepancy, as required by RCW 29A.08.107. At a minimum, the~~

Dear Voter:

Thank you for submitting a voter registration application. You are now registered to vote.

However, federal law requires that you provide identification either before or when you vote. **If you fail to provide identification, your ballot will not be counted.**

~~county auditor must send a verification notice, as required by RCW 29A.08.030, 29A.08.110, and 29A.08.210, and may attempt to contact the applicant by phone or e-mail. The county auditor may attempt to confirm the applicant's driver's license number or state identification number, obtain the last four digits of the applicant's Social Security number, or obtain an alternative form of identification as allowed by RCW 29A.08.113.~~

(6) ~~If the applicant provided the last four digits of his or her Social Security number and the identity is not verified automatically, the county auditor must contact the applicant to resolve the discrepancy, as required by RCW 29A.08.107. At a minimum, the county auditor must send a verification notice, as required by RCW 29A.08.030, 29A.08.110, and 29A.08.210, and may attempt to contact the applicant by phone or e-mail. The county auditor may attempt to confirm the last four digits of the applicant's Social Security number, obtain a Washington driver's license number or state identification number, or obtain an alternative form of identification as allowed by RCW 29A.08.113.~~

(7) ~~Once the applicant's identity has been verified, the county auditor must change the voter's registration code in the county election management system from pending status to active. Consistent with RCW 29A.08.110, the applicant is considered registered as of the original date of mailing or date of delivery, whichever is applicable.) If the applicant's identity is not verified in the computerized verification process, the applicant must be placed on the official list of registered voters in active status, but the registration record must be flagged as still requiring verification of the applicant's identity before the applicant's ballot may be counted.~~

NEW SECTION

WAC 434-324-045 Verification of applicant's identity. (1) If the applicant's identity is not verified in the computerized verification process outlined in WAC 434-324-040, the county auditor must verify the applicant's identity before counting the applicant's ballot. The county auditor may use other government resources and public records to confirm the applicant's driver's license or state identification card number or the last four digits of the applicant's Social Security number. The county auditor may also attempt to verify the applicant's identity by contacting the applicant by phone, e-mail or other means.

(2) If the county auditor has not successfully verified the applicant's identity, the county auditor must send the applicant an identity verification notice that includes a postage prepaid, preaddressed form by which the applicant may verify or send information. The identity verification notice must be in substantially the following form:

[date]

Please provide one of the following:

- The number on your Washington driver's license or state ID card: _____
Your name and date of birth as it appears on your driver's license or state ID card:

_____	_____	_____	_____
First	M.I.	Last	date of birth

- The last four digits of your Social Security number: _____
Your name and date of birth as maintained by the Social Security Administration:

_____	_____	_____	_____
First	M.I.	Last	date of birth

- A copy of one of the following:
 - Valid photo identification;
 - A valid enrollment card of a federally recognized tribe in Washington;
 - A current utility bill;
 - A current bank statement;
 - A current government check;
 - A current paycheck; or
 - A government document that shows both your name and address.

Please provide this documentation as soon possible. **If it is not provided, your ballot will not be counted.**

If you have any questions, please feel free to contact the _____ County Auditor's Office at _____.

(3) If the applicant responds with updated driver's license, state ID card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time he or she votes after registering.

(4) If the applicant fails to respond with adequate documentation to verify his or her identity, the applicant's voter registration record must remain flagged. If the applicant votes absentee, he or she must be notified that the ballot will not be counted unless he or she provides adequate verification of identity.

Reviser's note: The brackets and enclosed material in the text of 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.

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

WAC 434-324-055 Duplicate voter registration search conducted by secretary. Upon receipt of an applicant's electronic voter registration record from the auditor, and on a monthly basis (~~(pursuant to WAC 434-324-113(3))~~), the secretary must search for potential duplicate registration records in the official statewide voter registration data base (~~(; required in RCW 29A.08.651)~~) by comparing the applicant's name and date of birth or other identifying information provided by the applicant on the voter registration form. Duplicates will be determined by comparing the signatures on all available records. If a voter is transferring his or her registration to a new county or if any other information on the application has been updated, the auditor of the new county must update the registration record (~~(pursuant to RCW 29A.08.107~~

~~(4))~~ in the state data base. A duplicate registration record must not be (~~(entered)~~) maintained as a new registration record.

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

WAC 434-324-085 Notice of new registration or transfer. (1) The auditor must send (~~(notification)~~) an acknowledgement notice to an individual by nonforwardable, address correction requested mail if an individual:

- (a) Registers to vote;
- (b) Transfers his(~~/~~) or her registration record within the county;
- (c) Transfers his or her registration record from another county within Washington state; or
- (d) Changes from one precinct to another because of a change in precinct boundaries.

(2) The notice must acknowledge that the request of the individual has been processed and must include:

- (a) Voter's full name;
- (b) Mailing address;
- (c) County name;
- (d) Precinct name and/or number; and
- (e) The date the voter registered.

NEW SECTION

WAC 434-250-045 Voters requiring verification of identity. (1) If the voter registration record of an absentee voter is flagged as requiring verification of identity, a notice must be sent at the time of the election explaining that a pho-

photocopy of identification must be provided in order for the ballot to be counted, and listing what forms of identification are acceptable. The county auditor may provide an inner envelope

separate from the security envelope for return of the photocopy of the identification.

(2) The notice to the absentee voter must be in substantially the following form:

Dear Voter:

[date]

Based on your recent registration, federal law requires that you provide identification with your ballot. **If you fail to provide identification, your ballot will not be counted.**

Please provide a copy of one of the following:

- Valid photo identification;
- A valid enrollment card of a federally recognized tribe in Washington;
- A current utility bill;
- A current bank statement;
- A current government check;
- A current paycheck; or
- A government document that shows both your name and address.

You may return the photocopy with your ballot but, in order to protect the secrecy of your ballot, do not place the photocopy inside the security envelope.

If you do not provide a copy of your identification, your ballot will not be counted.

If you have any questions, please feel free to contact the _____ County Auditor’s Office at _____.

(3) If the voter provides one of the acceptable forms of identification no later than the day before certification of the election, the flag on the voter registration record must be removed and the ballot must be counted.

(4) If the voter fails to provide one of the acceptable forms of identification by the day prior to certification of the election, the ballot may not be counted. If the voter provides one of the acceptable forms of identification at a later date, the ballot cast in that election may not be counted but the flag on the voter registration record must be removed.

Reviser's note: The brackets and enclosed material in the text of 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.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-253-024 ((Contents of)) Poll book of registered voters. (1) Poll books must be printed utilizing information from the official statewide voter registration data base. The poll book of registered voters must contain the name, residence address, sex, month and day of birth, and county voter registration number of each voter in the precinct, a listing of the districts in which that voter resides, and a designation of the applicable county, legislative district, and precinct, or a ballot code identifying this information. The names must be listed alphabetically by last name. The list must contain a space for each voter to sign his((/)) or her name and to verify his((/)) or her current address, and a space for the inspector or judge to credit the voter with having participated in a particular election.

(2) The auditor may eliminate from poll books ongoing absentee voters and voters requesting absentee ballots for that election. The poll book must clearly indicate whether or not absentee voters are included on the list. If they are included, a notation must be made next to each absentee voter's name.

(3) The list must include a notation for each registered voter who failed to satisfy the identity verification requirement during the registration process. Such a voter must be issued a provisional ballot, and the reason for the provisional ballot must be marked on the outer envelope, unless the voter first shows one of the following forms of identification, in which case the voter may be issued a regular ballot:

- (a) Valid photo identification;
- (b) A valid enrollment card of a federally recognized tribe in Washington;
- (c) A current utility bill;
- (d) A current bank statement;
- (e) A current government check;
- (f) A current paycheck; or
- (g) A government document that shows both your name and address.

(4) All voters must show one of the following forms of identification before signing the poll book:

- (a) Valid photo identification, such as a driver’s license, state identification card, student identification card, or tribal identification card;
- (b) A voter registration card;
- (c) A current utility bill;
- (d) A current bank statement;
- (e) A current paycheck;

(f) A government check; or

(g) Another government document.

Any individual who cannot provide one of the above forms of identification must be issued a provisional ballot.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-253-047 Provisional ballots—Disposition.

Upon receipt of the provisional ballot, including provisional ballots from other counties or states, the auditor must investigate the circumstances surrounding the provisional ballot prior to certification of the primary or election.

A provisional ballot cannot be counted unless the voter's name, signature and the date of birth, if available, matches a voter registration record.

Once the provisional ballot has been investigated, disposition of the ballot is as follows:

(1) If there is no record of the voter ever having been registered, the voter must be offered the opportunity to register and the provisional ballot is not counted.

(2) If the voter was previously registered and later canceled and the auditor determines that the cancellation was in error, the voter's registration must be immediately restored and the provisional ballot counted.

(3) If the voter was previously registered and later canceled and the auditor determines that the cancellation was not in error, the voter must be offered the opportunity to reregister and the provisional ballot is not counted.

(4) If the voter is a registered voter but has voted a ballot other than the one which the voter would have received for his or her precinct, the auditor must ensure that only those votes for the positions and measures for which the voter was eligible to vote are counted.

(5) If the voter is a registered voter in another county, the auditor shall forward the ballot and a corresponding voter guide, or other means by which the ballot can be interpreted, to the supervisor of elections for the jurisdiction in which the voter is registered. The ballot must be forwarded within seven calendar days after a primary or special election and fifteen calendar days after a general election, and as soon as possible if past that date.

(6) If an absentee voter who voted a provisional ballot at the polls has already returned a voted absentee ballot, the provisional ballot is not counted. If the absentee voter who voted a provisional ballot at the polls has not returned a voted absentee ballot, the provisional ballot is counted. If a voted absentee ballot is returned after the provisional ballot has been counted, the absentee ballot is not counted.

(7) If the voter voted a provisional ballot because he or she failed to produce identification as required by RCW 29A.44.205 and pursuant to WAC 434-253-024(4), the ballot is counted if the signature on the envelope matches the signature in the voter registration record.

(8) If the voter voted a provisional ballot because the voter's registration record is flagged as requiring verification of identity, and the voter failed to provide identification pursuant to WAC 434-253-024(3) or 434-261-055, the provisional ballot is not counted.

(9) Provisional ballots voted for reasons not covered by this section or state statute must be determined by the county canvassing board.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-253-055 Identification.

NEW SECTION

WAC 434-261-055 Returned ballot lacking verification of identity. If a voter who still must verify his or her identity as part of the registration process votes an absentee or provisional ballot without providing adequate identification, the ballot cannot be counted unless the voter provides adequate identification no later than the day before certification of the election.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-262-031 Rejection of ballots or parts of ballots. Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

(1) Where two ballots are found folded together, or where a voter has voted more than one ballot;

(2) Where two voted ballots are contained within a returned mail ballot envelope containing only one valid signature under the affidavit, unless both ballots are voted identically, in which case one ballot will be counted. If there are two valid signatures under the affidavit, both ballots must be counted;

(3) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent;

(4) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

(5) Where the voter has voted for more candidates for an office than are permissible;

(6) Where the voter has incorrectly attempted to correct a vote on the ballot contrary to the instructions provided pursuant to WAC 434-250-040 unless the voter provides written instructions directing how the vote should be counted;

(7) In the case of a partisan primary:

(a) For physically separate ballots:

(i) A log must be kept of all voted ballots rejected and included as part of the county canvassing board minutes.

(ii) When a voted nonpartisan ballot and a voted party ballot are both returned, and the nonpartisan section of the party ballot was not voted, the votes from both ballots must be duplicated onto a blank ballot of the same party the voter originally voted for.

(iii) When a party ballot and nonpartisan ballot both have been returned with the nonpartisan offices and ballot measures voted on both ballots, the nonpartisan votes that are the same on each ballot and the party votes shall be duplicated and counted.

(iv) Write-in votes for a partisan candidate on a nonpartisan ballot must not be counted in the final write-in tally.

(v) Write-in votes for a partisan candidate who has not filed a write-in declaration of candidacy, thereby affiliating with a major party, must not be counted in the final write-in tally.

(vi) If physically separate ballots are used and a voter returns more than one voted partisan ballot, no votes cast for candidates for partisan office shall be counted. If votes are cast for nonpartisan offices and/or ballot measures on only one of the partisan ballots, the nonpartisan votes must be counted. If votes are cast for nonpartisan offices and/or ballot measures on more than one party ballot, only those votes which are the same on each ballot shall be duplicated onto a nonpartisan ballot and counted.

(vii) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.

(b) For consolidated ballots:

(i) When voting a consolidated ballot, if the voter does not mark the party checkbox, votes cast for candidates for partisan office must not be counted but votes cast on the nonpartisan portion of the ballot shall be counted.

(ii) Write-in votes for a partisan candidate in a partisan office on the nonpartisan section of the ballot must not be counted in the final write-in tally.

(iii) Write-in votes for a partisan candidate who has not filed a write-in declaration of candidacy shall not be counted in the final write-in tally.

(iv) If the voter marks one party checkbox, only those votes for candidates of that party shall count. Votes cast for candidates of other political parties must not be counted and do not cause over-votes.

Additionally, the canvassing board shall reject any ballot cast by a voter not qualified to vote, and shall reject absentee ballots where such rejection is required by law or administrative rule. The disposition of provisional ballots is governed by WAC 434-253-047.

WSR 06-18-004

EMERGENCY RULES

SECRETARY OF STATE

(Elections Division)

[Filed August 23, 2006, 3:38 p.m., effective August 23, 2006]

Effective Date of Rule: Immediately.

Purpose: These rules are necessary to accommodate vote-by-mail and other procedures for the 2006 primary and general elections.

Citation of Existing Rules Affected by this Order: Amending WAC 434-250-100, 434-253-010, 434-253-045, 434-261-050, and 434-261-102.

Statutory Authority for Adoption: RCW 29A.04.611.

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 rules are necessary to accommodate vote-by-mail and other procedures for the 2006 primary and general elections.

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 5, Repealed 0.

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

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

Date Adopted: August 23, 2006.

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 06-14-047, filed 6/28/06, effective 7/29/06)

WAC 434-250-100 Depositing of ballots. Ballots may be deposited in the auditor's office during normal business hours prior to the day of the election, and from 7:00 a.m. to 8:00 p.m. on the day of the election. Places of deposit may be staffed or unstaffed.

(1)(a) Staffed sites must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If two or more deposit site staff are persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of the duties.

(b) Staffed deposit sites must be open from 7:00 a.m. until 8:00 p.m. on the day of the election and may be open prior to the election on dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board for consideration of whether special circumstances warrant consideration, as documented by the deposit site staff.

(c) A staffed deposit site that only receives ballots is not considered a polling place. A staffed deposit site that both receives and issues ballots is considered a polling place.

(2) Unstaffed sites may be used if the ballot drop box is either:

(a) Constructed and secured according to the same requirements as United States Postal Service postal drop boxes; or

(b) Secured and located indoors.

(3) Ballot boxes must be locked and sealed at all times, with seal logs that document each time the box is opened, by whom, and the number of ballots removed. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot drop box with sufficient frequency to prevent damage or unauthorized access to the ballots. Ballots must be placed into sealed transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, ballot drop boxes must be emptied ((at exactly 8:00 p.m. to ensure that all ballots meet the 8:00 p.m. delivery deadline)) or sealed to prevent the deposit of additional ballots.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-253-010 Polling place—Activities prohibited. The county auditor shall ensure that all precinct election officers receive instruction regarding activities that are not permitted within the polling place, including electioneering, circulation of campaign material, soliciting petition signatures, or impeding the voting process((, or get out the vote campaigns)). Whenever it is necessary to maintain order within the polling place and the surrounding environs, the inspector may, if circumstances warrant and if the means to do so are available, contact the county auditor, who shall determine the corrective action required. Such corrective action may include contacting a law enforcement agency for ~~(their)~~ assistance.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

WAC 434-253-045 Provisional ballots—Required information. A provisional ballot may ~~((not))~~ only be voted on a direct recording electronic voting device if the voting system has been certified by the secretary of state for provisional voting and the county auditor has submitted approved procedures to the secretary of state. At a minimum, the following information is required to be printed on the outer provisional ballot envelope:

- (1) Name of voter.
- (2) Voter's registered address both present and former if applicable.
- (3) Voter's date of birth.
- (4) Reason for the provisional ballot.
- (5) Polling place and precinct number, if applicable, at which voter voted.
- (6) Sufficient space to list disposition of the ballot after review by the county auditor.
- (7) The following oath with a place for the voter to sign and date:

I do solemnly swear or affirm under penalty of perjury that:

I am a legal resident of the state of Washington;

I am entitled to vote in this election;

I have not already voted in this election;

It is illegal to vote if I am not a United States citizen;

It is illegal to vote if I have been convicted of a felony and have not had my voting rights restored;

It is illegal to cast a ballot or sign an absentee envelope on behalf of another voter, except as otherwise provided by law; and

Attempting to vote when not entitled, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Signature _____ Date _____

AMENDATORY SECTION (Amending WSR 06-14-050, filed 6/28/06, effective 7/29/06)

WAC 434-261-050 Unsigned oath or mismatched signatures. (1) If a voter neglects to sign the oath on an absentee or provisional ballot envelope, signs the oath with a mark and fails to have two witnesses attest to the signature, or signs the ballot envelope but the signature on the envelope does not match the signature on the voter registration ((file)) record, the auditor shall notify the voter ((pursuant to RCW 29A.60-165)) by first class mail of the correct procedures for curing the signature. If the ballot is not received within three business days of the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded by at least three business days before the final meeting of the canvassing board, the auditor must attempt to notify the voter by telephone using information in the voter registration record.

(2) If the voter neglects to sign the oath on an absentee or provisional ballot envelope, or signs the oath with a mark and fails to have two witnesses attest to the signature, the voter must either:

- (a) Appear in person and sign the envelope no later than the day before certification of the primary or election; or
- (b) Sign a copy of the envelope provided by the auditor, and return it to the auditor no later than the day before certification of the primary or election.

(3) If the signature on the oath of an absentee or provisional ballot envelope does not match the signature on the voter registration record, the voter must either:

- (a) Appear in person and sign a new registration form no later than the day before certification of the primary or election. The updated signature provided on the new registration form becomes the signature on the voter registration record for the current election and future elections; or
- (b) Sign a copy of the affidavit provided by the auditor, and provide a photocopy of a valid government or tribal identification that includes the voter's current signature. The signature on the affidavit must match the signature on the identification, and both of those signatures must match the signature on the ballot envelope. The voter must return the signed affidavit and identification to the auditor no later than the day before certification of the primary or election. The county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections; or
- (c) Sign a copy of the affidavit provided by the auditor in front of two witnesses who attest to the signature. The signa-

ture on the affidavit must match the signature on the ballot envelope. The voter must return the signed affidavit to the auditor no later than the day before certification of the primary or election. The county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections.

(4) If the signature on an absentee or provisional ballot envelope does not match the signature on the registration record because the name is different, the ballot may be counted as long as the handwriting is clearly the same. The auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form. If the signature on an absentee or provisional ballot envelope does not match the signature on the registration record because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(5) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(6) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

AMENDATORY SECTION (Amending WSR 06-11-042, filed 5/10/06, effective 6/10/06)

WAC 434-261-102 Resolving ballots ((~~tabulated~~) on digital scan vote tallying systems. In counties tabulating ballots on a digital scan vote tallying system, two staff designated by the auditor's office must resolve ballots identified as requiring resolution. A log of the resolutions must be printed and signed by the two staff.

**WSR 06-18-012
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 24, 2006, 1:42 p.m., effective August 24, 2006]

Effective Date of Rule: Immediately.

Purpose: Amending WAC 388-513-1350 to clarify the rules, increase the spousal resource maximum from \$41,000 to \$41,943 effective July 1, 2005, and increase the community spousal share maximum to \$99,540 effective January 1, 2006.

DSHS is clarifying that an individual retirement account (IRA) belonging to a community spouse is a countable resource when determining eligibility for long-term care (LTC) services (Social Security Act Section 1924 supersedes Social Security income (SSI)-related rules).

Also, DSHS is amending this rule due to federal law change in the 2005 Deficit Reduction Act of 2005 (Public Law 109-171) regarding disqualification for long-term care

assistance for individuals with home equity in excess of \$500,000 effective May 1, 2006.

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, 74.09.500, 74.09.530, 74.09.575.

Other Authority: 2005 Federal Deficit Reduction Act (DRA) Public Law 109-171; and Section 1924 of the Social Security Act (42 U.S.C. 1396r-5).

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: Congress recently adopted new standards for client available resources in P.L. 109-171 § 6104, which the state must adopt to remain eligible for federal Medicaid funding. This filing will continue the January 1, 2006, federal increase in the community spouse resource share included in WSR 06-02-043 and 06-10-033 while the department completes adoption of permanent rules initiated under WSR 06-10-019. DSHS is planning on filing a CR-102 on this WAC by October. DSHS is in the process of receiving final direction from the federal Centers for Medicare and Medicaid Services (CMS) on DRA issues.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 23, 2006.

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))~~ The department determines available resources for SSI-related clients as described in WAC 388-475-0350 through 388-475-0550 with the exception of WAC 388-475-0550(16) and WAC 388-475-0350(b). Clients applying for LTC services on or after May 1, 2006, and have an equity interest greater than five hundred thousand dollars in their primary residence, are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence;

(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))~~ ninety-nine thousand ~~((one))~~ five hundred forty dollars effective January 1, ~~((2005))~~ 2006; 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 com-

munity 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 06-18-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-219—Filed August 24, 2006, 2:35 p.m., effective August 24, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-330.

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: This emergency regulation follows the intent of the permanent regulation, which is to open the recreational crab fishery in Puget Sound on the Sunday and Monday of Labor Day weekend. In addition, the last day of the recreational crab season in Marine Areas 6, 7 South, 8-1, 8-2, 9, 10, 11 and 12 is the Monday of Labor Day weekend. 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 0.

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

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

Date Adopted: August 24, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-56-33000W Crab—Areas and seasons.

Notwithstanding the provisions of WAC 220-56-330, effective immediately until further notice, it is unlawful to fish for

or possess crab taken for personal use from Puget Sound except during the following seasons:

(a) Marine Area 4 east of the Bonilla-Tatoosh line, and Areas 5 and 13 - Open immediately through the last day in February.

(b) Waters of Area 6, those waters of Area 7 south and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the northern shore of Patos Island to the westernmost point of Patos Island, thence due west to the international boundary; westerly of a straight line from the northernmost tip of Sinclair Island through Lummi Rocks to Lummi Island; and west of a line projected from the southeast point of Sinclair Island to the ferry dock at Shannon Point, and waters of Areas 8-1, 8-2, 9, 10, 11 and 12 - Open immediately through September 2, open only Wednesday through Saturday of each week, and open Sunday, September 3 and Monday, September 4.

(c) Those contiguous waters of Marine Area 7 north, south and east of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island, and a line that extends from the Anacortes ferry dock at Shannon Point, northward to the southeastern tip of Sinclair Island, thence from the northernmost tip of Sinclair Island through Lummi Rocks to Lummi Island (southeast Hale Pass, Bellingham Bay, Samish Bay, Padilla Bay, eastern waters of Bellingham Channel, Guemes Channel and Fidalgo Bay) - Open immediately through September 30, and open only Wednesday through Saturday of each week except also open Sunday, September 3 and Monday, September 4.

(d) Those waters of Marine Area 7 north and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island due west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island - Open immediately through September 30, and open only Wednesday through Saturday of each week except also open Sunday, September 3 and Monday, September 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 06-18-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-221—Filed August 24, 2006, 2:36 p.m., effective August 24, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000R and 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: Modifies the area and time of the second period of the late August fishery to reduce the expected catch. Stock composition of the catch for early-mid August exceeded preseason expectations. Season is consistent with the 2005-2007 interim management agreement, the 2006 non-Indian allocation agreement and commercial sturgeon harvest guidelines adopted for 2006. Harvestable numbers of salmon and sturgeon are available. Regulation is consistent with compact action of August 23, 2006. 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 2.

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

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

Date Adopted: August 24, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-33-01000S 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. SEASON:

a. 12:01 a.m. to 6:00 a.m. Friday August 25, 2006

2. AREA: SMCRA 1D upstream of the I-205 Bridge and 1E

3. GEAR: Drift gill nets only. Mono-filament gear is allowed. 9-inch minimum mesh and 9-3/4 inch maximum mesh.

4. ALLOWABLE SALE: Salmon and sturgeon. A maximum of seven white sturgeon 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. Green sturgeon retention is prohibited.

5. SANCTUARIES: Washougal and Sandy Rivers.

6. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000R Columbia River season below Bonneville. (06-215)

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. August 25, 2006:

WAC 220-33-01000S Columbia River season below Bonneville.

WSR 06-18-019

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 06-222—Filed August 25, 2006, 9:37 a.m., effective August 28, 2006, 6:00 a.m.]

Effective Date of Rule: August 28, 2006, 6:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100B; and amending WAC 220-52-071.

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: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. Prohibition of all diving within two days of scheduled sea cucumber 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: August 24, 2006.

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-52-07100C Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective immediately until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Effective 6:00 a.m. August 28, 2006 until further notice, sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 5 on Monday, Tuesday and Wednesday of each week. Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 2 only on August 28, 2006.

(2) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel on Saturday and Sunday of each week, except by written permission from the Director.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. August 28, 2006:

WAC 220-52-07100B Sea cucumbers. (06-212)

WSR 06-18-020
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed August 25, 2006, 9:42 a.m., effective August 25, 2006]

Effective Date of Rule: Immediately.

Purpose: This emergency rule:

- Changes WAC 388-148-0010 to include the definition of "missing child";
- Changes WAC 388-148-0120 by removing subsection (3)(e) "runaways" from the WAC;
- Creates new WAC 388-148-0123 to address the requirements of foster parents to report to the department and to law enforcement when a child goes missing (this includes runaways).

Citation of Existing Rules Affected by this Order: Amending WAC 388-148-0010 and 388-148-0120.

Statutory Authority for Adoption: RCW 74.08.090 and 74.15.030; chapter 74.13 RCW.

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: Amending the current rules and adding a new rule brings the rule in line with policy by requiring foster parents to report within certain timeframes to the department and law enforcement when a child goes missing from their care. Without these rules, foster parents would not have consistent requirements and timeframes for reporting children missing from foster care, which could threaten the health and safety of children placed in foster care by delaying the search efforts of both law enforcement and the department. The department is working towards the adoption of the permanent rule. The proposed rule-making notice (the CR-102) was filed on August 22, 2006, as WSR 06-17-155. The public hearing will be held on September 26, 2006.

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 1, Amended 2, 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 2, Repealed 0.

Date Adopted: August 23, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-08-073, filed 4/5/04, effective 5/6/04)

WAC 388-148-0010 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understand these rules:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or mistreatment of a child where the child's health, welfare and safety are harmed.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Capacity" means the maximum number of children that a home or facility is licensed to care for at a given time.

"Care provider" means any licensed or certified person or organization or staff member of a licensed organization that provides twenty-four-hour care for children.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child. Case managers are responsible for implementing the child's case plan, assisting in achieving those goals, and assisting with day-to-day problem solving.

"Certification" means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that it meets the minimum licensing requirements; or

(2) Department licensing of a child-placing agency to certify that a foster home meets licensing requirements.

"Children" or **"youth,"** for this chapter, means individuals who are:

(1) Under eighteen years old, including expectant mothers under eighteen years old; or

(2) Up to twenty-one years of age and pursuing a high school, equivalent course of study (GED), or vocational program;

(3) Up to twenty-one years of age with developmental disabilities; or

(4) Up to twenty-one years of age if under the custody of the Washington state juvenile rehabilitation administration.

"Child-placing agency" means an agency licensed to place children for temporary care, continued care or adoption.

"Crisis residential center (CRC)" means an agency under contract with DSHS that provides temporary, protective care to children in a foster home, regular (semi-secure) or secure group setting.

"Compliance agreement" means a written licensing improvement plan to address deficiencies in specific skills, abilities or other issues of a fully licensed home or facility in order to maintain and/or increase the safety and well-being of children in their care.

"DCFS" means the division of children and family services.

"DDD" means division of developmental disabilities.

"Department" means the department of social and health services (DSHS).

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources.

"Firearms" means guns or weapons, including but not limited to the following: BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, and shotguns.

"Foster-adopt" means placement of a child with a foster parent(s) who intends to adopt the child, if possible.

"Foster home or foster family home" means person(s) licensed to regularly provide care on a twenty-four-hour basis to one or more children in the person's home.

"Full licensure" means an entity meets the requirements established by the state for licensing or approved as meeting state minimum licensing requirements.

"Group care facility for children" means a location maintained and operated for a group of children on a twenty-four-hour basis.

"Group receiving center" or **"GRC"** means a facility providing the basic needs of food, shelter, and supervision for more than six children placed by the department, generally for thirty or fewer days. A group receiving center is considered a group care program and must comply with the group care facility licensing requirements.

"Hearing" means the administrative review process.

"I" refers to anyone who operates or owns a foster home, staffed residential home, and group facilities, including group homes, child-placing agencies, maternity homes, day treatment centers, and crisis residential centers.

"Infant" means a child under one year of age.

"License" means a permit issued by the department affirming that a home or facility meets the minimum licensing requirements.

"Licensor" means:

(1) A division of licensed resources (DLR) employee at DSHS who:

(a) Approves licenses or certifications for foster homes, group facilities, and child-placing agencies; and

(b) Monitors homes and facilities to ensure that they continue to meet minimum health and safety requirements.

(2) An employee of a child-placing agency who:

(a) Attests that foster homes supervised by the child-placing agency meets licensing requirements; and

(b) Monitors those foster homes to ensure they continue to meet the minimum licensing standards.

"Maternity service" as defined in RCW 74.15.020.

"Medically fragile" means the condition of a child who has a chronic illness or severe medical disabilities requiring regular nursing visits, extraordinary medical monitoring, or on-going (other than routine) physician's care.

"Missing child" means:

(1) Any child up to eighteen years of age for whom Children's Administration (CA) has custody and control (not including children in dependency guardianship) and:

(a) The child's whereabouts are unknown; and/or

(b) The child has left care without the permission of the child's caregiver or CA.

(2) Children who are missing are categorized under one of the following definitions:

(a) "Taken from placement" means that a child's whereabouts are unknown, and it is believed that the child is being or has been concealed, detained or removed by another person from a court-ordered placement and the removal, concealment or detention is in violation of the court order;

(b) "Absence not authorized, whereabouts unknown" means the child is not believed to have been taken from placement, did not have permission to leave the placement, and there has been no contact with the child and the whereabouts of the child is unknown; or

(c) "Absence not authorized, whereabouts known" means that a child has left his or her placement without permission and the social worker has some contact with the child or may periodically have information as to the whereabouts of the child.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at-risk youth or children in need of services, and their parents.

"Nonambulatory" means not able to walk or traverse a normal path to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Probationary license" means a license issued as part of a disciplinary action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies to minimum licensing requirements.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, antidepressants and anti-anxiety medications.

"Relative" means a person who is related to the child as defined in RCW 74.15.020 (4)(a)(i), (ii), (iii), and (iv) only.

"Respite" means brief, temporary relief care provided to a child and his or her parents, legal guardians, or foster parents with the respite provider fulfilling some or all of the functions of the care-taking responsibilities of the parent, legal guardian, or foster parent.

"Secure facilities" means a crisis residential center that has locking doors and windows, or secured perimeters intended to prevent children from leaving without permission.

"Service plan" means a description of the services to be provided or performed and who has responsibility to provide or perform the activities for a child or child's family.

"Severe developmental disabilities" means significant disabling, physical and/or mental condition(s) that cause a child to need external support for self-direction, self-support and social participation.

"Social service staff" means a clinician, program manager, case manager, consultant, or other staff person who is an employee of the agency or hired to develop and implement the child's individual service and treatment plans.

"Staffed residential home" means a licensed home providing twenty-four-hour care for six or fewer children or expectant mothers. The home may employ staff to care for children or expectant mothers. It may or may not be a family residence.

"Standard precautions" is a term relating to procedures designed to prevent transmission of bloodborne pathogens in health care and other settings. Under standard precautions, blood or other potentially infectious materials of all people should always be considered potentially infectious for HIV and other pathogens. Individuals should take appropriate precautions using personal protective equipment like gloves to prevent contact with blood or other bodily fluids.

"Washington state patrol fire protection bureau" or **"WSP/FPB"** means the state fire marshal.

"We" or **"our"** refers to the department of social and health services, including DLR licensors and DCFS social workers.

"You" refers to anyone who operates a foster home, staffed residential home, and group facilities, including group homes, maternity programs, day treatment programs, crisis residential centers, group receiving centers, and child-placing agencies.

AMENDATORY SECTION (Amending WSR 04-08-073, filed 4/5/04, effective 5/6/04)

WAC 388-148-0120 What incidents involving children must I report? (1) You or your staff must report the incidents contained in WAC 388-148-0120(2), as soon as possible and in no instance later than forty-eight hours to your local:

- (a) Children's administration intake staff, and
 - (b) The child's social worker or case manager.
- (2) The incidents to be reported include:
- (a) Any reasonable cause to believe that a child has suffered child abuse or neglect;
 - (b) Any violations of the licensing or certification requirements where the health and safety of a foster child is at risk and the violations are not corrected immediately;
 - (c) Death of a child;
 - (d) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;
 - (e) Any use of physical restraint that is alleged improperly applied or excessive;
 - (f) Sexual contact between two or more children that is not considered typical play between preschool age children;
 - (g) Any disclosures of sexual or physical abuse by a child in care;
 - (h) Physical assaults between two or more children that result in injury requiring off-site medical attention or hospitalization;
 - (i) Physical assaults of foster parent or staff by children that result in injury requiring off-site medical attention or hospitalization;
 - (j) Any medication that is given incorrectly and requires off-site medical attention; or
 - (k) Serious property damage or other significant licensing requirement that is a safety hazard and is not immediately corrected or may compromise the continuing health and safety of children.
- (3) You or your staff must report the following incidents as soon as possible or in no instance later than forty-eight hours, to the child's social worker, if the child is in the department's custody or to the case manager if placed with a child-placing agency program:
- (a) Suicidal/homicidal ideations, gestures, or attempts that do not require professional medical treatment;
 - (b) Unexpected health problems outside the anticipated range of reactions caused by medications, that do not require professional medical attention;
 - (c) Any incident of medication incorrectly administered;
 - (d) Physical assaults between two or more children that result in injury but did not require professional medical attention;
 - (e) ~~(Runaways;~~
 - (~~f~~) Any emergent medical or psychiatric care that requires off-site attention; and
 - (~~g~~) (f) Use of prohibited physical restraints for behavior management as described in WAC 388-148-0485.
- (4) Programs providing care to medically fragile children who have nursing care staff on duty may document the incidents described in WAC 388-148-0120 (3)(b)(c) in the facility daily logs, rather than contacting the social worker or case manager, if agreed to in the child's ISSP.

NEW SECTION

WAC 388-148-0123 What are my reporting responsibilities when a child is missing from care? (1) As soon as you have reason to know a child in your care is missing as defined in WAC 388-148-0010, or has refused to return to or remain in your care, or whose whereabouts are otherwise unknown, you or your staff are required to notify the following:

(a) The child's assigned social worker, if the child is in the department's custody;

(b) CA intake, if the social worker is not available or it is after normal business hours; or

(c) The case manager if the child is placed by a child-placing agency program.

(2) You or your staff are required to contact local law enforcement if the child is missing as defined in WAC 388-148-0010 within six hours. However, if one or more of the following factors are present, you must contact law enforcement immediately:

(a) The child has been, or is believed to have been, taken from placement as defined in WAC 388-148-0010;

(b) The child has been, or is believed to have been, lured from placement or to have left placement under circumstances that indicate the child may be at risk of physical or sexual assault or exploitation;

(c) The child is age thirteen or younger;

(d) The child has one or more physical or mental health conditions that if not treated daily will place the child at severe risks;

(e) The child is pregnant or parenting and the infant/child is believed to be with him or her;

(f) The child has severe emotional problems (e.g., suicidal ideations) that if not treated will place the child at severe risk;

(g) The child has a developmental disability that impairs the child's ability to care for him/herself;

(h) The child has a serious alcohol and/or substance abuse problem; or

(i) The child is at risk due to circumstances unique to that child.

After contacting local law enforcement, the Washington State Patrol's (WSP) Missing Children Clearinghouse must also be contacted and informed that the child is missing from care. The telephone number for the Clearinghouse is 1 (800) 543-5678.

(3) If the child leaves school or has an unauthorized absence from school, the caregiver should consult with the social worker to assess the situation and determine when law enforcement should be called. If any of the factors listed in subsections (2)(a) through (h) of this section are present, the caregiver and the social worker may decide it is appropriate to delay notification to law enforcement for up to four hours after the end of the school day to give the child the opportunity to return on their own.

(4) The caregiver will provide the following information to law enforcement and to the social worker when making a missing child report, if available:

(a) When the child left;

(b) Where the child left from;

(c) What the child was wearing;

(d) Any known behaviors or interactions that may have precipitated the child's departure;

(e) Any possible places the child may go to;

(f) Any special physical or mental health conditions or medications that affect the child's safety;

(g) Any known companions who may be aware of and involved in the child's absence;

(h) Other professionals, relatives, significant adults or peers who may know where the child would go; and

(i) A recent photo of the child.

(5) The caregiver should obtain the number of the missing person report and provide that number to CA staff.

WSR 06-18-021**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed August 25, 2006, 9:44 a.m., effective August 25, 2006]

Effective Date of Rule: Immediately.

Purpose: The department is proposing these amendments and new text to change transfer of asset rules for clients found eligible for long-term care (LTC) services. This change is due to the 2005 Federal Deficit Reduction Act (DRA). The new WAC section is entitled WAC 388-513-1363 Evaluating the transfer of an asset for clients found eligible for LTC services on or after May 1, 2006. The department will be updating WAC 388-513-1330 to include a reference to WAC 388-513-1363 and 388-513-1364.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1330.

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

Other Authority: 2005 Federal Deficit Reduction Act (DRA), Public Law 109-171.

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 department must adopt the applicable language from the federal Deficit Reduction Act (Public Law 109-171) in order for the state to remain eligible for federal Medicaid funding. This filing continues the emergency rule filed as WSR 06-10-045 while the department completes adoption of permanent rules initiated under WSR 06-10-020. DSHS is planning on filing a CR-102 on this WAC by October. DSHS is in the process of receiving final direction from the federal Centers for Medicare and Medicaid services (CMS) on DRA issues.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 1, 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 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: August 23, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

WAC 388-513-1330 Determining available income for legally married couples for long-term care (LTC) services. This section describes income the department considers available when determining a legally married client's eligibility for LTC services.

(1) The department must apply the following rules when determining income eligibility for LTC services:

(a) WAC 388-450-0005(3), Income—Ownership and availability and WAC 388-475-0200, SSI-related medical;

(b) WAC 388-450-0085, Self-employment income—Allowable expenses;

(c) WAC 388-450-0210 (4)(b) and (e), Countable income for medical programs, and WAC 388-475-0750, SSI-related medical - Countable unearned income;

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

(e) WAC 388-513-1315 (15) and (16), Eligibility for long-term care (institutional, waiver, and hospice) services.

(2) For an institutionalized client married to a community spouse who is not applying or approved for LTC services, the department considers the following income available, unless subsection (4) applies:

(a) Income received in the client's name;

(b) Income paid to a representative on the client's behalf;

(c) One-half of the income received in the names of both spouses; and

(d) Income from a trust as provided by the trust.

(3) The department considers the following income unavailable to an institutionalized client:

(a) Separate or community income received in the name of the community spouse; and

(b) Income established as unavailable through a fair hearing.

(4) For the determination of eligibility only, if available income described in subsections (2)(a) through (d) minus income exclusions described in WAC 388-513-1340 exceeds the special income level (SIL), then:

(a) The department follows community property law when determining ownership of income;

(b) Presumes all income received after marriage by either or both spouses to be community income; and

(c) Considers one-half of all community income available to the institutionalized client.

(5) If both spouses are either applying or approved for LTC services, then:

(a) The department allocates one-half of all community income described in subsection (4) to each spouse; and

(b) Adds the separate income of each spouse respectively to determine available income for each of them.

(6) The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.

(7) The department considers income not generated by a transferred resource available to the client, even when the client transfers or assigns the rights to the income to:

(a) The spouse; or

(b) A trust for the benefit of the spouse.

(8) The department evaluates the transfer of a resource described in subsection (6) according to WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366 to determine whether a penalty period of ineligibility is required.

NEW SECTION

WAC 388-513-1363 Evaluating the transfer of an asset for clients found eligible for LTC services on or after May 1, 2006. This section describes how the department evaluates asset transfers made on or after May 1, 2006, by a client who is applying for or receiving Long Term Care (LTC) services. The department must consider whether a transfer made within a specified time before the month of application, or while the client is receiving LTC services, requires a penalty period. Clients subject to asset transfer penalty periods are not eligible for LTC services. Refer to WAC 388-513-1364 for rules used to evaluate asset transfers made on or after April 1, 2003 and before May 1, 2006. Refer to WAC 388-513-1365 for rules used to evaluate asset transfer made prior to April 1, 2003.

(1) The department does not apply a penalty period to the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling the average daily private nursing facility rate or less in any month;

(b) The transfer of an excluded resource described in WAC 388-513-1350 with the exception of the client's home, unless the transfer of the client's home meets the conditions described in subsection (1)(d);

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship, see subsection (13) for further instructions.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided care that enabled the client to remain in the home; or

(iii) Brother or sister, who has:

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c);

(f) The transfer of an asset, if the transfer meets the conditions described in subsection (2), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the client's child who meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c); or

(2) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (1)(f), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (2)(c) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b) and (7)(a) and (b).

(3) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of institutional status, if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the Medicaid state plan or the department's waived services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(4) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (3) as the transfer of an asset without adequate consideration.

(5) When evaluating the effect of the transfer of an asset made on or after May 1, 2006 on a client's eligibility for LTC services the department counts sixty months before the month of application to establish what is referred to as the "look-back" period.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services.

(7) If a client or the client's spouse transfers an asset on or after May 1, 2006, the department must establish a penalty period by adding together the total uncompensated value of all transfers made on or after May 1, 2006. The penalty period:

(a) For a LTC services applicant, begins on the date the client would be otherwise eligible for LTC services based on an approved application or the first day after any previous penalty period has ended; or

(b) For a LTC services recipient, begins the first of the month following the transfer allowing for reporting requirement timeframes described in WAC 388-418-007; or the first day after any previous penalty period has ended; and

(c) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later.

(8) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1360 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (8)(a) becomes an available resource as of the first day of the following month.

(9) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (6) through (8).

(10) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in subsection (10)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsections (7)(a), (b), and (c).

(11) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and
 (b) A division of penalty period between the spouses is requested.

(12) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

(13) An undue hardship exists when application of the transfer of assets provision would deprive the individual:

(a) Of medical care that would endanger an individual's health or life; or

(b) Of food, clothing, shelter, or other necessities of life; or

(c) Which provides for:

(i) Notice to recipients that an undue hardship exception exists;

(ii) A timely process for determining whether an undue hardship waiver will be granted; and

(iii) A process under which an adverse determination can be appealed.

WSR 06-18-030

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 28, 2006, 11:45 a.m., effective August 28, 2006]

Effective Date of Rule: Immediately.

Purpose: This rule amendment is necessary to implement ESSB 6090, section 205 (1)(e), 2005-2007 conference budget (chapter 518, Laws of 2005), which established a flexible family support pilot program for families who are providing care and support for family members with developmental disabilities. The family support pilot program is funded through June 30, 2007. These amendments will allow the reimbursement to parents who have purchased necessary goods or services. The proposed rule-making document for permanent adoption, WSR 06-16-074, was filed on July 28, 2006, and the public hearing is scheduled for September 5, 2006.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-825-560.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040.

Other Authority: Section 205 (1)(e), chapter 518, Laws of 2005; Title 71A RCW.

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: Emergency rules are needed [to] preserve the public general welfare to comply with the intent of the legislature's directive in section 205 (1)(e), chapter 518, Laws of 2005, to preserve and improve the welfare of families of persons with developmental disabilities by providing family support pilot program services. The original

rules failed to allow reimbursement to parents who have purchased necessary goods or services that are not available through an existing contract. The proposed rule-making document for permanent adoption, WSR 06-16-074, was filed on July 28, 2006, and the public hearing is scheduled for September 5, 2006.

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: August 28, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-06-040, filed 2/23/06, effective 3/26/06)

WAC 388-825-560 What department restrictions apply to FSP? The following department restrictions apply to FSP:

(1) FSP services are authorized only after you have accessed what is available to you under Medicaid, and any other private health insurance plan, school or child development services.

(2) All FSP service payments must be agreed to by DDD and the client in a written service plan.

(3) The department will contract directly with a service provider(s), or a parent for the reimbursement of goods or services purchased by the parent. FSP funding cannot be authorized for services or treatments determined by the department to be experimental.

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

(5) Respite care cannot be a replacement for child care while the parent or guardian is at work regardless of the age of the child.

(6) The department shall not authorize a birth parent, adoptive parent, stepparent or any other primary caregiver or their spouse living in the same household with the client to provide respite, nursing, therapy or counseling services.

(7) FSP will not pay for conference registrations.

(8) FSP will not pay for behavior management/counseling procedures, modifications, or equipment that are restrictive.

(9) FSP will not pay for services provided after the death of the eligible client. Payment may occur after the date of death, but not the service.

(10) FSP will not pay for employment services if you are under age twenty-one or are designated to receive DDD funded transition services.

**WSR 06-18-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-223—Filed August 29, 2006, 1:59 p.m., effective August 29, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100U; and amending WAC 220-47-501.

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: This regulation opens sockeye fishing in Areas 7 and 7A. This regulation also enacts permanent regulation changes arising from North of Falcon agreements made by comanagers. The permanent regulation change package has been filed with the code reviser's office under expedited rule procedures, but the permanent regulation changes are not yet in effect. These emergency rules are necessary to initiate fisheries, which are scheduled to commence before those permanent rules will become effective. These fisheries are not expected to exceed chinook by-catch levels modeled during the preseason process. 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: August 29, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-47-50100V Puget Sound all-citizen commercial salmon fishery. Notwithstanding the provisions of

Chapter 220-47 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 - Open August 30 - 6:00 a.m. to 9:00 a.m.

Gill Nets - Open August 30, 9:00 a.m. to 1:00 a.m. August 31, 2006

Reef Nets - Open August 30 - 5:00 a.m. to 9:00 p.m.

Areas 7B and 7C:

Purse Seines - (a) Open in Area 7B and 7C to purse seines during the following hours and dates:

6:00 a.m. to 8:00 p.m. August 30.

(i) It is unlawful to retain coho salmon, and any coho salmon caught must be released immediately.

(ii) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net, meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(iii) The 5-inch strip requirement is not in effect during these openings.

Gill Nets - Open to gill nets as follows:

Areas	Mesh Size	Hours	Dates
7B and 7C	7" minimum	7:00 p.m. August 29 to 7:00 a.m. August 30.	
		7:00 p.m. August 31 to 7:00 a.m. September 1	

Area 9A:

Gill Nets - Open to gill nets using 5-inch minimum mesh as follows:

7:00 a.m. August 29 through 8:00 p.m. October 28

It is unlawful to retain chum salmon in Area 9A prior to October 1 and unlawful to retain Chinook salmon at any time. Any salmon not to be retained must be released from the net by cutting the meshes ensnaring the fish.

All Other Saltwater and Freshwater Areas: Closed.

"Quick Reporting" Fisheries:

All fisheries opened under this section, and any fishery openings under authority of the Fraser Panel for sockeye or pink salmon in Areas 7 and 7A are designated as "Quick Reporting Required" fisheries.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-47-50100U Puget Sound all-citizen commercial salmon fishery. (06-220)

**WSR 06-18-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-227—Filed August 29, 2006, 4:22 p.m., effective August 29, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100V; and amending WAC 220-47-501.

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: This regulation opens sockeye fishing in Areas 7 and 7A. This regulation also enacts permanent regulation changes arising from North of Falcon agreements made by co-managers. The permanent regulation change package has been filed with the code reviser's office under expedited rule procedures, but the permanent regulation changes are not yet in effect. These emergency rules are necessary to initiate fisheries, which are scheduled to commence before those permanent rules will become effective. These fisheries are not expected to exceed chinook by-catch levels modeled during the preseason process. 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: August 29, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-47-50100W Puget Sound all-citizen commercial salmon fishery. Notwithstanding the provisions of Chapter 220-47 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 - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

<u>Hours</u>	<u>Dates</u>
6:00 a.m. to 9:00 a.m. if using a Recovery Box during all fishing activities throughout the entire open period	August 30
6:45 a.m. to 9:00 a.m. if NOT using a Recovery Box during all fishing activities throughout the entire open period	August 30

(i) It is unlawful to retain chinook, coho, and chum salmon

(ii) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net, meeting the specifications in WAC 22-47-325, prior to the seine net being removed from the water, except all salmon must be immediately sorted and those required to be released, must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(iii) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

Areas 7 and 7A:

Gill Nets - Open to gill net gear with 5 inch minimum and 5 1/2 in maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

<u>Hours</u>	<u>Dates</u>
9:00 a.m. to 1:00 a.m.	August 30 - August 31

It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

Reef Nets - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

<u>Hours</u>	<u>Dates</u>
5:00 a.m. to 9:00 p.m.	August 30

It is unlawful to retain chinook salmon at all times, and it is unlawful to retain chum salmon and wild coho salmon prior to October 1. It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

Areas 7B and 7C:

Purse Seines - (a) Open in Area 7B and 7C to purse seines during the following hours and dates:

6:00 a.m. to 8:00 p.m. August 30.

(i) It is unlawful to retain coho salmon, and any coho salmon caught must be released immediately.

(ii) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net, meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(iii) The 5-inch strip requirement is not in effect during these openings.

Gill Nets - Open to gill nets as follows:

<u>Areas</u>	<u>Mesh Size</u>	<u>Hours</u>	<u>Dates</u>
7B and 7C	7" minimum	7:00 p.m. August 29 to 7:00 a.m. August 30	
		7:00 p.m. August 31 to 7:00 a.m. September 1	

Area 9A:

Gill Nets - Open to gill nets using 5-inch minimum mesh as follows:

7:00 a.m. August 29 through 8:00 p.m. October 28

It is unlawful to retain chum salmon in Area 9A prior to October 1 and unlawful to retain Chinook salmon at any time. Any salmon not to be retained must be released from the net by cutting the meshes ensnaring the fish.

All Other Saltwater and Freshwater Areas: Closed.

"Quick Reporting" Fisheries:

All fisheries opened under this section, and any fishery openings under authority of the Fraser Panel for sockeye or pink salmon in Areas 7 and 7A are designated as "Quick Reporting Required" fisheries.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-47-50100V Puget Sound all-citizen commercial salmon fishery. (06-223)

**WSR 06-18-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-224—Filed August 30, 2006, 11:29 a.m., effective August 30, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000T; 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: Opens select area fall season commercial fishery. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. Harvestable salmon and sturgeon are available. The season is consistent with the 2005-2007 interim management agreement and the 2006 non-Indian allocation agreement. Regulation is consistent with compact action of July 27, 2006. 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: August 29, 2006.

J. P. Koenings
Director

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. Blind Slough/Knappa Slough Select Area.

a. OPEN 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.

b. SEASON: Tuesday, Wednesday, and Thursday nights from September 5 through September 15 and Monday, Tuesday, Wednesday, and Thursday nights from September 18 through October 27, 2006. Open hours are 7:00 p.m. to 7:00

a.m. from September 5 through September 15 and 6:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gillnet. Monofilament gear is allowed. 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.

2. Tongue Point/South Channel Select Area.

a. OPEN 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.

b. SEASON: Tuesday, Wednesday, and Thursday nights from September 5 through September 15 and Monday, Tuesday, Wednesday, and Thursday nights from September 18 through October 27, 2006. Open hours are 7:00 p.m. to 7:00 a.m. from September 5 through September 15 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh.

In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets with leadline in excess of two pounds per any one fathom.

In the South Channel area: 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.

3. Deep River Select Area.

a. OPEN 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

b. SEASON: Monday Tuesday, Wednesday, and Thursday nights from September 4 through October 27, 2006. Open hours are 7:00 p.m. to 7:00 a.m. from September 4 through September 22 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Monofilament gear is allowed. 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

4. ALLOWABLE SALES: Applies to all seasons stated in items 1-3: Salmon and sturgeon. A maximum of five white

sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The possession and sales limit includes mainstem and Select Area fisheries. Green sturgeon retention is prohibited.

5. MISCELLANEOUS REGULATIONS: Applies to all seasons stated in items 1-3: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 28, 2006:

WAC 220-33-01000T Columbia River season
below Bonneville.

WSR 06-18-051 EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 30, 2006, 11:44 a.m., effective August 30, 2006]

Effective Date of Rule: Immediately.

Purpose: Language from chapter 180-38 WAC is being adopted as new language in chapter 392-380 WAC as required by the transfer of duties from the state board of education to the superintendent of public instruction under E2SHB 2098 sections 909 through 911.

Citation of Existing Rules Affected by this Order: Amending chapter 180-38 WAC.

Statutory Authority for Adoption: RCW 28A.210.160.

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: Unless these changes are done, there are no rules governing public school immunization requirements.

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 0, Repealed 0.

Date Adopted: August 30, 2006.

Marty Daybell

AMENDATORY SECTION (Amending WSR 05-23-044, filed 11/9/05, effective 12/10/05)

WAC 180-38-005 Purpose and authority. (1) The purpose of this chapter is to establish the procedural and substantive due process requirements governing the exclusion of students from public ~~((and private))~~ schools for failure to comply with the immunization requirement of the state of Washington or ~~((, in the case of public schools only,))~~ failure to present a medication or treatment order for a life-threatening health condition.

(2) The authority for this chapter is RCW 28A.210.160.

AMENDATORY SECTION (Amending WSR 02-24-019, filed 11/26/02, effective 12/27/02)

WAC 180-38-045 School attendance conditioned upon presentation of proofs. (1) The initial attendance of every student at every public ~~((and private))~~ school in the state is conditioned upon proof of immunization as set forth in RCW 28A.210.080.

(2) The chief administrator of each public ~~((or private))~~ school shall prohibit the further presence at school of each student already in attendance and who has failed to provide proof of immunization in accordance with RCW 28A.210.080(1). Such exclusion shall be preceded by written notice as set forth in WAC 180-38-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent, guardian or other adult *in loco parentis*.

(3) The initial attendance of every student at every public school who has a life-threatening health condition is conditioned upon:

(a) Presentation by the parent of a medication or treatment order addressing any life-threatening health condition the child has that may require medical services to be performed at the school; and

(b) Formulation of a nursing plan to implement the order.

The parent shall also provide any medication or equipment identified in the medication or treatment order necessary to carry out the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(4) The chief administrator of each public school shall prohibit the further attendance of each student already in attendance for whom a medication or treatment order has not been provided if the child has a life-threatening health condition that may require medical services to be performed at the school. Any such exclusion shall be preceded by written notice as set forth in WAC 180-38-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent. The school shall continue to prohibit the child's presence until the school:

(a) Receives a medication or treatment order and any medication or equipment identified in the order necessary to carry out the order, unless the school district is required to

provide such medication or equipment as a related service under federal law; and

(b) Has a nursing plan in place.

A new medication or treatment order must be submitted whenever there are changes in the medication or treatment needs of the child. The nursing plan shall be amended accordingly.

(5) Upon receipt of a medication or treatment order, the school shall develop a nursing plan.

(6) The requirements of this chapter shall be applied consistent with the requirements of section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

AMENDATORY SECTION (Amending WSR 02-24-019, filed 11/26/02, effective 12/27/02)

WAC 180-38-050 Written notice prior to exclusions from school. (1) Schools must provide written notice to parents prior to excluding students from school for failure to comply with WAC 180-38-045.

(2) The written notice for public school students shall:

(a) Be delivered in person or by certified mail and provided to parents in their native language if feasible.

(b) Inform the appropriate parents of the applicable laws and implementing rules. In addition to notification of the applicable laws and regulations, a copy of the laws and regulations shall be included with the notice.

(c) In cases of exclusion due to lack of proof of immunization, provide information regarding immunization services that are available from or through the local health department and other public agencies.

(d) Order the student excluded from school and state that such order is effective immediately upon receipt of the notice.

(e) Describe the rights of the parents and student to a hearing, describe the hearing process, and explain that the exclusion continues until either the necessary proof of immunization, or medication or treatment plan is received, or until a hearing officer determines that the student is no longer excluded from school.

~~((3) The written notice for private school students shall:~~

~~(a) Inform the appropriate party of the applicable laws and provide copies of such law and implementing rules.~~

~~(b) Provide information regarding immunization services that are available from or through the local health department or other public agencies.~~

~~(c) Order the exclusion of the student from school and state that such order is effective upon receipt of the notice.))~~

AMENDATORY SECTION (Amending WSR 03-13-079, filed 6/16/03, effective 7/17/03)

WAC 180-38-080 Prehearing and hearing process. (1) If a request for hearing is received by the school district, it shall schedule a hearing. The hearing must be scheduled within three school days of receiving the request. The hearing may be continued to a later date if the parent requests a longer period.

(2) The school district shall establish a hearing process consistent with the procedures set forth for disciplinary cases under chapter ((180-40)) 392-400 WAC.

WSR 06-18-056

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 31, 2006, 2:22 p.m., effective September 1, 2006]

Effective Date of Rule: September 1, 2006.

Purpose: The purpose of the amended sections is to expand the population eligible to receive the state supplementary payment (SSP) to include certain individuals in residential settings; to clarify and increase the amount of SSP certain individuals who were previously on family support are eligible to receive; to expand the window for the receipt of supplemental security income to qualify for SSP; and to establish rules allowing one-time payments to certain individuals.

Citation of Existing Rules Affected by this Order: Amending WAC 388-827-0115 and 388-827-0145.

Statutory Authority for Adoption: RCW 71A.12.030, 74.04.057.

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: In order to receive federal funding for Title XIX Medicaid, the state is required to expend a certain amount of state supplementary payments (SSP) to meet a yearly maintenance of effort established by the federal Social Security Administration as specified in 20 C.F.R. 416.2099. By expanding the population eligible to receive SSP, clarifying and increasing the amount of SSP to certain individuals, expanding the window for the receipt of supplemental security income to qualify for SSP, and allowing the authorization of one-time payments, the state will achieve this maintenance of effort. This emergency rule replaces the emergency rule filed as WSR 06-14-060 on June 30, 2006. The department has begun the permanent rule-making process as the preproposal statement of inquiry was filed as WSR 06-17-138 on August 22, 2006, and the proposed rule-making notice, CR-102, will be filed within the next one hundred twenty days.

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 2, 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 2, Repealed 0.

Date Adopted: August 23, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-10-039, filed 4/28/05, effective 5/29/05)

WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP? (1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, ((2003)) 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, ((2003)) 2006 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

- (i) Foster care basic maintenance,
- (ii) Foster care specialized support,
- (iii) Agency specialized support,
- (iv) Staffed residential home,
- (v) Out-of-home respite care,
- (vi) Agency in-home specialized support,
- (vii) Group care basic maintenance,
- (viii) Group care specialized support,
- (ix) Transportation,
- (x) Agency attendant care,
- (xi) Child care,
- (xii) Professional services,
- (xiii) Nursing services,
- (xiv) Interpreter services,

(b) Family support;

(c) One or more of the following residential services:

- (i) Adult family home,
- (ii) Adult residential care facility,
- (iii) Alternative living,
- (iv) Group home,
- (v) Supported living,
- (vi) Agency attendant care,
- (vii) Supported living or other residential service allowance,
- (viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received Medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

(7) You received one or more of the following state-only funded residential services between July 1, 2003 and June 30, 2006 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services:

(a) Adult residential care facility;

(b) Alternative living;

(c) Group home;

(d) Supported living;

(e) Agency attendant care;

(f) Supported living or other residential allowance.

AMENDATORY SECTION (Amending WSR 05-10-039, filed 4/28/05, effective 5/29/05)

WAC 388-827-0145 How much money will I receive?

The purpose of the SSP is to increase the amount of income to meet your needs. The department will determine your payment amount based on your living arrangement and your assessed needs.

(1) For residential and voluntary placement program services, the amount of your SSP will be based on the amount of state-only dollars spent on certain services at the time the funding source was converted to SSP. If the type of your residential living arrangement changes, your need will be reassessed and your payment adjusted based on your new living arrangement and assessed need.

(2) For family support services, refer to WAC 388-825-200 through ~~((388-825-284))~~ 388-825-256.

(a) If you are on the home and community based services (HCBS) waiver administered by DDD:

(i) You will receive nine hundred dollars DDD/SSP money per year to use as you determine.

(ii) The remainder up to the maximum allowed may be authorized by DDD to purchase HCBS waiver services and will be paid directly to the provider.

(b) If you are not on the HCBS waiver administered by DDD, and you received state-only funding for the Traditional Family Support Program between March 1, 2001 and June 30, 2003 the amount of your SSP will be based on the yearly maximum allowed at the time the funding source was converted to SSP unless your need changes.

(i) Need is based on your Service Need Level and whether you receive Medicaid Personal Care as specified in WAC 388-825-254.

(ii) If your need changes, the amount of your SSP will be adjusted accordingly.

(c) If you are not on the HCBS waiver administered by DDD, and you received state-only funding for the Family Support Opportunity Program between March 1, 2001 and June 30, 2003 the amount of your SSP will be fifteen hundred dollars per year.

(d) The yearly amount of DDD/SSP money will be prorated into monthly amounts. You will receive one twelfth of the yearly amount each month.

(3) If you are eligible for SSP because you meet the criteria in WAC 388-827-0115(5), you will receive one hundred dollars per month.

~~((a) For individuals whose initial CARE assessment was completed prior to January 1, 2005, January 2005 is the first month for which payment is made.~~

~~(b) For individuals whose initial CARE assessment is completed after December 31, 2004, the first month for which payment is made is the month in which the results of the initial CARE assessment are effective.))~~

(4) DDD may authorize additional payments to certain individuals if the SSP budget has sufficient funds to allow this payment.

WSR 06-18-064

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 06-228—Filed September 1, 2006, 2:52 p.m., effective September 1, 2006]

Effective Date of Rule: Immediately.

Purpose: Amending hunting rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-353 and 232-28-354.

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: The number of permits for these hunts must be increased to accommodate permit holders who were subject to errors during the initiation of a new electronic licensing system. Hunting seasons begin soon; therefore there is insufficient time to promulgate permanent

rules. The Toledo E elk special hunt is a damage control hunt and in order to allow for greater hunter participation, we are broadening the types of weapons and/or tags permissible.

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 2, Repealed 0.

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

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

Date Adopted: September 1, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-35300A 2006 Deer special permits. Notwithstanding the provisions of WAC 232-28-353, the number of permits to be issued for:

- (1) Chiliwist A deer special permit hunt is 16.
- (2) Wynoochee A deer special permit hunt is 111.
- (3) Deschutes deer special permit hunt is 81.
- (4) Mt. Spokane B deer special permit hunt is 501.
- (5) Almota B deer special permit hunt is 101.

NEW SECTION

WAC 232-28-35400B 2006 Elk special permits. Notwithstanding the provisions of WAC 232-28-354:

- (1) The number of permits to be issued for:
 - (a) Cowiche A elk special permit hunt is 25.
 - (b) Manastash A elk special permit hunt is 251.
 - (c) Bumping B elk special permit hunt is 101.
 - (d) Winston A elk special permit hunt is 13.
 - (e) Ryderwood A elk special permit hunt is 33.
 - (f) Mountain View D elk special permit hunt is 26.
 - (g) Observatory C elk special permit hunt is 89.
 - (h) Rimrock D elk special permit hunt is 119.
- (2) The elk tag type for Toledo E elk special permit hunt is "any elk tag".

**WSR 06-18-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 06-229—Filed September 1, 2006, 2:53 p.m., effective September 1, 2006]

Effective Date of Rule: Immediately.
Purpose: Amending commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000T and 220-33-01000U; 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: Delays the September 5 opener in the Knappa Slough select area for one week. There is a potential shortfall in meeting the broodstock goal at Big Creek Hatchery. Impacts to ESA-listed stocks in these fisheries are covered under the biological opinion for the interim management agreement. Harvestable salmon and sturgeon are available. The season is consistent with the 2005-2007 interim management agreement and the 2006 non-Indian allocation agreement. Regulation is consistent with compact action of August 31, 2006. 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 2.

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: September 1, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-33-01000U 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. Blind Slough/Knappa Slough Select Area.

a. OPEN 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.

b. SEASON: Tuesday, Wednesday, and Thursday nights from September 5 through September 15 EXCEPT **Knappa Slough closed September 5-8** and Monday, Tuesday, Wednesday, and Thursday nights from September 18 through October 27, 2006. Open hours are 7:00 p.m. to 7:00 a.m. from September 5 through September 15 and 6:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gillnet. Monofilament gear is allowed. 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.

2. Tongue Point/South Channel Select Area.

a. OPEN 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.

b. SEASON: Tuesday, Wednesday, and Thursday nights from September 5 through September 15 and Monday, Tuesday, Wednesday, and Thursday nights from September 18 through October 27, 2006. Open hours are 7:00 p.m. to 7:00 a.m. from September 5 through September 15 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh. In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets with leadline in excess of two pounds per any one fathom. In the South Channel area: 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.

3. Deep River Select Area.

a. OPEN 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

b. SEASON: Monday Tuesday, Wednesday, and Thursday nights from September 4 through October 27, 2006. Open hours are 7:00 p.m. to 7:00 a.m. from September 4 through September 22 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Monofilament gear is allowed. 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

4. ALLOWABLE SALES: Applies to all seasons stated in items 1-3: Salmon and sturgeon. A maximum of five white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The possession and sales limit includes mainstem and Select Area fisheries. Green sturgeon retention is prohibited.

5. MISCELLANEOUS REGULATIONS: Applies to all seasons stated in items 1-3: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000T Columbia River season below Bonneville. (06-224)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 28, 2006:

WAC 220-33-01000U Columbia River season below Bonneville.

WSR 06-18-066

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 06-230—Filed September 1, 2006, 2:55 p.m., effective September 1, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100W; and amending WAC 220-47-501.

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: This regulation opens sockeye fishing in Areas 7 and 7A. This regulation also enacts permanent regulation changes arising from North of Falcon agreements made by comanagers. The permanent regulation change package has been filed with the code reviser's office under expedited rule procedures, but the permanent regulation changes are not yet in effect. These emergency rules are necessary to initiate fisheries, which are scheduled to com-

mence before those permanent rules will become effective. These fisheries are not expected to exceed chinook by-catch levels modeled during the preseason process. 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: September 1, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-47-50100X Puget Sound all-citizen commercial salmon fishery. Notwithstanding the provisions of Chapter 220-47 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 7A:

Purse Seines - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

<u>Hours</u>	<u>Dates</u>
8:00 a.m. to 11:00 a.m. - Recovery box required.	September 6

(i) It is unlawful to retain chinook, coho, and chum salmon

(ii) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net, meeting the specifications in WAC 22-47-325, prior to the seine net being removed from the water, except all salmon must be immediately sorted and those required to be released, must be placed in an operating recovery box or released into the water before the next haul may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(iii) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

Areas 7 and 7A:

Gill Nets - Open to gill net gear with 5 inch minimum and 5 1/2 in maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

<u>Hours</u>	<u>Dates</u>
3:00 p.m. to 11:00 p.m.	September 6

It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

Reef Nets - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

<u>Hours</u>	<u>Dates</u>
5:00 a.m. to 9:00 p.m.	September 6

It is unlawful to retain chinook salmon at all times, and it is unlawful to retain chum salmon and wild coho salmon prior to October 1. It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

Area 9A:

Gill Nets - Open to gill nets using 5-inch minimum mesh as follows:

7:00 a.m. September 1 through 8:00 p.m. October 28

It is unlawful to retain chum salmon in Area 9A prior to October 1 and unlawful to retain Chinook salmon at any time. Any salmon not to be retained must be released from the net by cutting the meshes ensnaring the fish.

All Other Saltwater and Freshwater Areas: Closed.

"Quick Reporting" Fisheries:

All fisheries opened under this section, and any fishery openings under authority of the Fraser Panel for sockeye or pink salmon in Areas 7 and 7A are designated as "Quick Reporting Required" fisheries.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-47-50100W Puget Sound all-citizen commercial salmon fishery. (06-227)

WSR 06-18-089

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

[Filed September 5, 2006, 3:14 p.m., effective September 5, 2006]

Effective Date of Rule: Immediately.

Purpose: This emergency rule filing amends WAC 16-54-030 Health certificate. This filing is necessary to help

prevent the spread of vesicular stomatitis (VS) to Washington state livestock from the affected areas in Wyoming. This emergency rule filing replaces the emergency rule that the department filed with the office of the code reviser on September 2, 2005 (WSR 05-18-046). The department's animal services division is currently developing permanent rule amendments to chapter 16-54 WAC. A CR-101 was filed with the office of the code reviser on May 15, 2006 (WSR 06-11-071).

Citation of Existing Rules Affected by this Order: Amending WAC 16-54-030(4).

Statutory Authority for Adoption: RCW 16.36.040.

Other Authority: RCW 34.05.350.

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: On August 17, 2006, a case of vesicular stomatitis was confirmed in a horse in Wyoming; additional suspect cases are being examined. Vesicular stomatitis is a serious viral disease of livestock that can also be transmitted to humans. The last outbreak of vesicular stomatitis in the United States involved nine western states and was formally declared over on April 11, 2006. The disease caused serious animal health and financial problems in Washington in 1983/1984 prior to its elimination from the state.

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 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: September 5, 2006.

Robert W. Gore
Deputy Director

AMENDATORY SECTION (Amending WSR 99-09-023, filed 4/15/99, effective 5/16/99)

WAC 16-54-030 Health certificate. (1) All animals entering Washington shall be accompanied by an official health certificate except:

(a) Dogs and cats originating in Washington and visiting Canada for thirty days or less.

(b) Dogs, cats and ferrets that are family pets traveling by private automobile with their owners who possess a current rabies certificate for the animals. This exemption does

not apply to dogs, cats or ferrets imported for sale or puppies, kittens, or kits too young to vaccinate.

(c) Horses traveling into Washington with their Oregon or Idaho owners in personal vehicles for round-trip visits of not more than ninety-six hours duration. This exemption does not apply during emergency disease conditions declared by the state veterinarian or extend to any required testing.

(d) Llamas and alpacas traveling into Washington with their Oregon or Idaho owners in personal vehicles for round-trip visits of not more than ninety-six hours duration. This exemption does not apply during emergency disease conditions declared by the state veterinarian.

(e) Sheep traveling into Washington with their Oregon or Idaho owners in personal vehicles for round-trip visits of not more than ninety-six hours duration. This exemption does not apply during emergency disease conditions declared by the state veterinarian or extend to any animals entering for breeding purposes.

(f) Those classes of animals specifically exempted in laws or regulations of this state.

(2) Official health certificate shall contain the following information:

(a) Date of inspection. All health certificates void after thirty days, except breeding cattle forty-five days from date of issue. The director may give special exemption for show animals.

(b) Names and addresses of the consignor and consignee.

(c) Certification that the animals are apparently free from evidence of infectious and communicable disease.

(d) Test or vaccination status when required.

(e) Description of each animal to include species, breed, age, sex, tag or tattoo and for cattle, only an official ear tag will be accepted or if registered, the registry name, number and tattoo for individual identification except one brand or other owner identified animals, all of the same description, for which tests are not required.

(f) Certification of disinfection of cars and trucks when required.

(g) An owner/agent statement which says "the animals in this shipment are those certified to and listed on this certificate" and is signed and dated by the owner, agent, or veterinarian.

(3) All health certificates shall be reviewed by the livestock sanitary official of the state of origin and a copy shall be forwarded immediately to the department of agriculture, Olympia, Washington.

(4)(a) No livestock (equine, bovine, porcine, caprine, or ovine) may enter Washington if, within the last thirty days, vesicular stomatitis has been diagnosed within ten miles of any premises where the livestock have been located.

(b) Livestock entering Washington from a state where vesicular stomatitis has been diagnosed within the last thirty days must be accompanied by:

(i) A valid import number issued by the department's animal services division; and

(ii) An official certificate of veterinary inspection issued within twenty-four hours of movement that contains:

(A) The temperature reading of the livestock; and

(B) The following statement written by the accredited veterinarian who completes the certificate:

"All animals identified on this certificate have been examined and found to be free from vesicular stomatitis. During the past thirty days, these animals have not been exposed to vesicular stomatitis or located within ten miles of an area where vesicular stomatitis has been diagnosed."

(c) Livestock with elevated body temperatures that are from a state where vesicular stomatitis has been diagnosed within the last thirty days may only enter Washington with written permission of the state veterinarian.

WSR 06-18-093
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 06-231—Filed September 5, 2006, 4:12 p.m., effective September 5, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial use fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-52-05100Y; and amending WAC 220-52-051.

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: The 2006 state/tribal Puget Sound shrimp harvest management plan requires adoption of harvest seasons contained in this emergency rule. The spot shrimp quota has been taken in the areas closed in this regulation. 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: September 5, 2006.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-05100Z Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provi-

sions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1B, 1C, 2, 3 and 6 outside the shrimp districts are open to the harvest of all shrimp species immediately until further notice, except as provided for in this section:

i) It is unlawful to harvest shrimp for commercial purposes in Marine Fish/Shellfish Management and Catch Reporting Areas 23A-C, 23A-E, 23A-W and 26D.

ii) It is unlawful to harvest spot shrimp for commercial purposes in Shrimp Management Areas 1B, 1C, 2-E, 2-W and Marine Fish/Shellfish Management and Catch Reporting Areas 23A-S, 23B, 23C, 23D and 25A, except as provided for in this section:

a. Those waters in 25D south of the 48°06' North latitude line, north of the 48°04' North latitude line and east of the 122°46' west longitude line are closed to the harvest of all shrimp species.

(b) The shrimp trip limit accounting week is Monday through Sunday.

(c) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week from Shrimp Management Area 6 outside of Marine Fish-Shellfish Catch and Reporting Area 26D, except, any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29, shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession on board the fishing vessel spot shrimp harvested from the previous trip limit accounting week or weeks.

(d) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information.

(i) The number of pots being moved to a new area and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(e) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(d) above.

(2) Shrimp beam trawl gear:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Areas 21A north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi

Island, and 22A, within Shrimp Management Area 1B, are open immediately, until further notice.

(b) Shrimp Management Area 3 outside of the shrimp districts is open immediately until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100Y Puget Sound shrimp beam
trawl fishery—Season (06-
218)

WSR 06-18-094 EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 5, 2006, 4:19 p.m., effective September 5, 2006]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule is to clarify that a client has the right to an administrative hearing if the department reduces or terminates services that were previously authorized through an exception to rule. This rule extends the emergency rule filed as WSR 06-11-081. The proposed rule making document for permanent adoption, WSR 06-16-075, was filed on July 28, 2006, and the public hearing is scheduled for September 5, 2006.

Citation of Existing Rules Affected by this Order: Amending WAC 388-825-120.

Statutory Authority for Adoption: RCW 71A.12.030.

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: These rules preserve the public's welfare by clarifying the client's right to an administrative hearing if the department reduces or terminates services that were previously authorized by an exception to rule. This rule extends the emergency rule filed as WSR 06-11-081. The proposed rule making document for permanent adoption, WSR 06-16-075, was filed on July 28, 2006, and the public hearing is scheduled for September 5, 2006.

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: September 5, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-120 When can I appeal department decisions through an administrative hearing process? (1) Administrative hearings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter and by chapter 388-02 WAC. If any provision in this chapter conflicts with chapter 388-02 WAC or WAC 388-440-0001(3), the provision in this chapter shall prevail.

(2) A client, former client, or applicant acting on the applicant's own behalf or through an authorized representative has the right to an administrative hearing.

(3) You have the right to an administrative hearing to dispute the following department actions:

(a) Authorization, denial, reduction, or termination of services;

(b) Reduction or termination of a service that was initially approved through an exception to rule;

(c) Authorization, denial, or termination of eligibility;

~~((e))~~ (d) Authorization, denial, reduction, or termination of payment of SSP authorized by DDD set forth in chapter 388-827 WAC;

~~((f))~~ (e) Admission or readmission to, or discharge from, a residential habilitation center;

~~((g))~~ (f) Refusal to abide by your request not to send notices to any other person;

~~((h))~~ (g) Refusal to comply with your request to consult only with you;

~~((i))~~ (h) A decision to move you to a different type of residential service;

~~((j))~~ (i) Denial or termination of the provider of your choice or the denial of payment for any reason listed in WAC 388-825-375 through 388-825-390;

~~((k))~~ (j) An unreasonable delay to act on an application for eligibility or service;

~~((l))~~ (k) A claim the client, former client, or applicant owes an overpayment debt.