

**WSR 07-01-010**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-298—Filed December 7, 2006, 2:36 p.m., effective December 7, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-35400E; and amending WAC 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: An additional permit hunt is necessary to minimize habitat damage on the Mt. St. Helens wildlife area. Recent surveys indicated an excessive number of elk in the vicinity. The hunting season needs to occur soon and there is insufficient time to promulgate 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: December 6, 2006.

J. P. Koenings  
 Director

NEW SECTION

**WAC 232-28-35400E 2006 Elk special permits.** Notwithstanding the provisions of WAC 232-28-354, effective immediately through December 31, 2006, establish a special elk permit hunt called Mudflow C, for persons of disability, for antlerless only, with any elk tag, within Elk Area 5099, for a total of up to 10 permits.

REPEALER

The following section of the Washington Administrative code is repealed effective January 1, 2007:

WAC 232-28-35400E 2006 Elk special permits.

**WSR 07-01-037**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed December 12, 2006, 1:54 p.m., effective December 12, 2006]

Effective Date of Rule: Immediately.

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 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 effort. Extension of the emergency rule as WSR 06-18-056 is needed until the permanent rule, filed as WSR 06-24-074, is effective. The permanent rule will supersede this emergency filing.

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: December 7, 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 allow-

ance,  
(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)) yearly award for traditional family support or family support opportunities 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.

hunting public utilize all these areas. Last season, hunters on the dike were responsible for shooting windows of a private residence along Fir Island Road. The Fir Island Quality Snow Goose Hunt program afforded the opportunity to include the dike and lands to the west into a more regulated hunt situation. However, a portion of Brown's Slough (between the existing reserve boundary and the west bank dike) is not in the program and therefore is still subject to uncontrolled "firing line" shooting. This small adjustment in the reserve boundary will resolve the problem for this season only. Negotiation with the landowner to the west of Brown's Slough will be required for a long-term solution.

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: December 12, 2006.

J. P. Koenings  
Director

**WSR 07-01-040**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-302—Filed December 13, 2006, 8:55 a.m., effective December 13, 2006]

Effective Date of Rule: Immediately.

Purpose: Modify boundary of game reserve.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-16-78000A; and amending WAC 232-16-780.

Statutory Authority for Adoption: RCW 77.12.040.

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 area along the west shoreline of Brown's Slough has been a chronic management problem for several years now. The dike and adjacent slough had become a "firing line" with as many as thirty guns firing at snow geese as they enter the reserve. Much of the shooting has been at birds that were outside the effective killing range of shotguns and has resulted in an extraordinarily high wounding loss rate. Wounded snow geese from this firing line routinely fall in the parking area of the reserve, on and along the entry road to the reserve, or on the heavily traveled Fir Island Road. Local birders and other members of the non-

NEW SECTION

**WAC 232-16-78000A 2006-07 Fir Island Farm Game Reserve adjustments.** Notwithstanding the provisions of WAC 232-28-780, effective 12:01 a.m. December 13, 2006 through January 7, 2007, the boundaries of the Fir Island Farm Game Reserve are modified as follows:

In Skagit County, beginning at the intersection of Fir Island Road and the west bank of Brown's Slough inside base of dike; then east along Fir Island Road (96 feet) to the Brown's Slough dike; then southerly and easterly along the Brown's Slough dike to the Fir Island Farm access road; then north along the Fir Island Farm access road to Fir Island Road; then east along Fir Island Road to the northeast corner of Section 22 (T33N, R3E); then south along the east line of Section 22 (T33N, R3E) to Dry Slough; then westerly and south along the west bank of Dry Slough to the intersection with Dike District #22 dike; then westerly along the south side (Skagit Bay side) of the Dike District #22 dike to the intersection of the Dike District #22 dike and the south line of Government Lot #5 (Section 22, T33N, R3E), then west approximately 1900 feet to the west bank of Brown's Slough inside base of dike, then north along the west bank of Brown's Slough to the intersection with the Fir Island Road and the point of beginning.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 8, 2007:

WAC 232-16-78000A 2006-07 Fir Island Farm  
Game Reserve adjustments.

**WSR 07-01-042**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-304—Filed December 13, 2006, 3:47 p.m., effective December 15, 2006, 12:01 a.m.]

Effective Date of Rule: December 15, 2006, 12:01 a.m.

Purpose: Amend commercial fishing rules.

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

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 coastal crab fishery opening was delayed by a work stoppage and severe weather onset near the scheduled opening, thus gear that should have been set was not. This rule provides for safety in setting gear, and provides for the economic well being of the industry. 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: December 13, 2006.

J. P. Koenings  
Director

NEW SECTION

**WAC 220-52-04000F Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts.** (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice it is unlawful

for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, Washington coastal or adjacent waters of the Pacific Ocean through January 31, 2007 from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel hold inspection certificates dated November 30, 2006 to December 30, 2006 are only valid in Willapa Bay and the coastal waters south of 46°33.00.

(b) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through January 31, 2007.

(2) Notwithstanding the provisions of WAC 220-52-040, it is lawful for a vessel not designated on a Dungeness crab coastal fishery license to transport or deploy up to 250 pots at any one time for deployment in the coastal crab fishery through December 22, 2006. The primary operator of the vessel associated with the pots being transported must be aboard the vessel while they are being deployed. All other provisions of the permanent rule remain in effect.

(3) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice it is unlawful for person participating in the Columbia River, Coastal waters or Willapa Bay commercial Dungeness crab fishery to:

(a) deploy or operate more than 400 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500

(b) deploy or operate more than 250 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300

(c) fail to maintain onboard any participating vessel the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished.

(4) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participated in the coastal Dungeness crab fishery from Klipsan Beach (46°28.00 North Latitude) to Point Arena CA, Including Willapa Bay and the Columbia River may possess crab for delivery into Washington ports south of 47°00.00 N. Lat. provided the crab were taken south of Klipsan (46°28.00 N. Lat.).

(b) The vessel does not enter the area north of 47°00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife and provides a vessel hold inspection if requested by Fish and Wildlife officers prior to entering this area. Prior to entering the area north of 47°00.00 N. Lat., the vessel operator calls 360-249-4628 extension 253 and reports the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time and location of delivery 24 hours prior to entering the area.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. December 15, 2006:

WAC 220-52-04000E Commercial crab fishery.  
Lawful and unlawful gear,  
methods and other unlawful  
acts. (06-297)

**WSR 07-01-043**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-303—Filed December 13, 2006, 3:49 p.m., effective December 13, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend wildlife rules.

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: Weather conditions have forced deer and elk to lower elevations, where harassment by dogs have been observed. In order to protect deer and elk, it is necessary to allow officers to take dogs into custody, and if necessary destroy dogs. 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: December 13, 2006.

J. P. Koenings  
Director

NEW SECTION

**WAC 232-12-31500R Emergency for custody or destruction of dogs harassing deer or elk.** Effective immediately until further notice, an emergency is declared in the following Washington State Counties and it is lawful for Fish and Wildlife Officers to take into custody or destroy, if nec-

essary, any dog that is pursuing, harassing, attacking or killing deer or elk.

- (1) Chelan County
- (2) Douglas County
- (3) Ferry County
- (4) Kitittas County
- (5) Lincoln County
- (6) Okanogan County
- (7) Pend Oreille County
- (8) Spokane County
- (9) Stevens County
- (10) Yakima County

**WSR 07-01-044**

**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-299—Filed December 13, 2006, 3:50 p.m., effective December 13, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Hatchery escapement is expected to be met and harvestable numbers of steelhead are available. 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: December 13, 2006.

J. P. Koenings  
Director

NEW SECTION

**WAC 232-28-61900H Exceptions to statewide rules—Cowlitz River and Blue Creek.** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective immediately through January 31, 2007, in those waters of Blue Creek from the mouth to Spencer Road, it is lawful to retain up to six adult steelhead in the daily limit.

(2) Effective immediately through January 31, 2007, in those waters of the Cowlitz River from boundary markers at mouth to Mayfield Dam, it is lawful to retain up to six adult steelhead in the daily limit.

(3) Fishing is allowed from the mouth up to the posted markers located 100' below Cowlitz Salmon Hatchery barrier dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 1, 2007:

WAC 232-28-61900H	Exceptions to statewide rules—Cowlitz River and Blue Creek.
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**WSR 07-01-058**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-305—Filed December 15, 2006, 1:52 p.m., effective December 15, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300F and 220-52-07100D; and amending WAC 220-52-073.

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 red and green sea urchins exist in the areas described. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly fishery. Prohibition of all diving from licensed sea urchin harvest vessels within two days of scheduled sea urchin openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. The sea cucumber/sea urchin advisory board has recommended that commercial non-Indian sea

cucumber harvest be suspended until January 2007, when a planned winter fishery will be initiated. 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: December 14, 2006.

Loreva M. Preuss  
for Jeff Koenings  
Director

NEW SECTION

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

(1) Green sea urchins: Sea Urchin Districts 1, 2, 3, 6 and 7 are open only on December 17, 18, 19, 20 and 21, 2006. Sea Urchin District 4 is open only on December 19, 20 and 21, 2006. The minimum size for green sea urchins is 2.25 inches (size in largest test diameter exclusive of spines).

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on December 17, 18, 19, 20, 21, 22 and 23, 2006. Sea Urchin District 4 is open only on December 19, 20 and 21, 2006. In Sea Urchin Districts 1 and 2 it is unlawful to harvest red sea urchins smaller than 4.0 inches or larger than 5.5 inches (size in largest test diameter exclusive of spines). In Sea Urchin District 4 it is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel in Sea Urchin District 3 when the vessel has red sea urchins on-board.

(4) Red and green sea urchins harvested in Sea Urchin Districts 1 and 2 must be landed in Sea Urchin Districts 1 and 2.

(5) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel on December 15, 16, 24 and 25, 2006, except by written permission from the Director.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 15, 2006:

WAC 220-52-07300F Sea urchins. (06-295)

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100D Sea cucumbers. (06-257)

**WSR 07-01-059**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 06-306—Filed December 15, 2006, 4:15 p.m., effective December 15, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-35400E and 232-28-35400F; and amending WAC 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: Adding additional permits to Mudflow C is necessary to minimize habitat damage on the Mt. St. Helens Wildlife Area. Recent surveys indicated an excessive number of elk in the vicinity. The hunting season needs to occur soon and there is insufficient time to promulgate rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, 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: December 15, 2006.

J. P. Koenings  
Director

NEW SECTION

**WAC 232-28-35400F 2006 Elk special permits.** Notwithstanding the provisions of WAC 232-28-354, effective immediately through December 31, 2006, establish a special elk permit hunt called Mudflow C, for persons of disability, for antlerless only, with any elk tag, within Elk Area 5099, for a total of up to 25 permits. The department will determine individual hunter access timeframes.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-35400E 2006 Elk special permits.

The following section of the Washington Administrative Code is repealed effective January 1, 2007:

WAC 232-28-35400F 2006 Elk special permits.

**WSR 07-01-067**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed December 18, 2006, 11:39 a.m., effective December 18, 2006]

Effective Date of Rule: Immediately.

Purpose: Amend WAC 170-296-0020, 170-296-0450 and 170-296-0520 to bring department rules into compliance with an oral ruling in *DeLaO v. Arnold-Williams and Fernandez v. DSHS* requiring the department to place limits on the times of inspection and areas that can be inspected in licensed family home child care.

Citation of Existing Rules Affected by this Order: Amending WAC 170-296-0450 and 170-296-0520.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Other Authority: *Oral ruling in DeLaO v. Arnold-Williams and Fernandez v. DSHS.*

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: A Federal District Court ruling will invalidate portions of chapter 74.15 RCW and chapter 170-296 WAC unless these limits on time and area are not placed into rule immediately. This would affect the ability of the department to perform the inspections that ensure the health, safety, and general welfare of children in licensed child care.

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 3, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: December 18, 2006.

Jone M. Bosworth  
Executive Director

**AMENDATORY SECTION** (Amending WSR06-15-075, filed 7/13/06, effective 7/13/06)

**WAC 170-296-0020 What definitions do I need to know to understand this chapter?** For the purpose of this chapter:

**"Accessible to children"** means areas of the facility and materials that children can easily get to on their own.

**"Age appropriate"** means the developing stages of growth typical of children within a given age group.

**"American Indian child"** means any unmarried person under the age of eighteen who is:

(1) A member of or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut or other Alaska Native and a member of an Alaskan native regional Corporation or Alaska Native Village;

(2) Determined or eligible to be found to be Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood;

(3) Considered to be Indian by a federally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

**"Antibias"** is an approach that recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, sexual orientation, gender, class, religion, creed, disability, or age.

**"Assistant"** means a person fourteen years or older (whether a volunteer or an employee) who assists a licensed home provider in the operation of the family home child care and is not solely responsible for the supervision of children.

**"Capacity"** means the highest number of children you can care for at any time, as written on your license.

**"Character, competence, and suitability assessment"** means a determination of whether an applicant should be allowed access to vulnerable people if that applicant has a conviction record, pending charges and/or findings of abuse, neglect, exploitation or abandonment of a child or vulnerable adult and child protective services(CPS) adverse referral history.

**"Child"** means a person who has not yet reached the age of twelve years.

**"Child care"** means the developmentally appropriate care, protection and supervision of children that is designed

to promote positive growth and educational experiences for children outside of their home for periods of less than twenty-four hours a day.

**"Child abuse and neglect"** means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child by any person indicating that the child's health, welfare, and safety is harmed.

**"Communicable disease"** means an illness that can be spread from one person to another, in the child care setting, by either direct or indirect contact.

**"Conditions of the license"** means what you must do to keep a license.

**"Confidentiality"** means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

**"Corporal punishment"** means the infliction of pain by any means for the purpose of punishment, correction, discipline, instruction or any other reason.

**"Cultural relevancy"** means an environment in which the learning experiences, play materials and activities are meaningful, inclusive and respectful for the participating children, their families and the community at large.

**"Department," "we," "us," or "our"** refers to and means the state department of social and health services (DSHS), including but not limited to the division of child care and early learning (DCCEL).

**"Department of health"** means the state department of health.

**"Developmentally appropriate"** means activities and interactions that recognize and address how children learn and what they can do at each stage of development - socially, emotionally, cognitively, and physically.

**"Discipline"** means a process of guiding children to develop internal, positive social behaviors through methods that include consistent use of the following: Modeling appropriate behavior, positive reinforcement, active listening, limit setting, redirecting and modifying the environment.

**"Division" or "DCCEL"** means the division of child care and early learning within the department of social and health services (DSHS).

**"Facility licensing compliance agreement"** means a written notice of rule violations and the intention to initiate enforcement, including a corrective action plan.

**"Family home"** means a single dwelling unit and accessory buildings occupied for living purposes by a family which provides permanent provisions for living, sleeping, eating, cooking, and sanitation.

**"Family home child care"** means a facility licensed to provide direct care, supervision and early learning opportunities for twelve or fewer children, in the home of the licensee where the licensee resides and is the primary provider.

**"Family home child care provider"** means a person who provides direct care, supervision, behavior management, and early learning opportunities for twelve or fewer children in their family home living quarters for periods of less than twenty-four hours.

**"I," "you," and "your"** refer to and mean the licensee or applicant for a child care license.

**"Inaccessible to children"** means areas kept or items stored in a manner that makes it impossible for children to



reach, enter, or use potentially hazardous items or areas. Examples of how this can be accomplished are through the use of locks, gates, or other means that are effective to prevent access by the children in your care.

**"Infant"** means a child birth through eleven months of age.

**"License"** means an official document that certifies you have been granted permission by the department to operate a family home child care in compliance with the rules.

**"Licensed space,"** means the indoor and outdoor space approved by the department as useable space where children in care may be present, or space that is otherwise accessible to children.

**"Licensee"** means the person or persons named on the license as having been issued the license and who are responsible for maintaining compliance with the regulations.

**"Licensor"** means the person with authority to grant licenses.

**"Parent"** means a child's parent or legal guardian.

**"Premises"** means the buildings where the home is located and the adjoining grounds (at the same address) over which the licensee has control.

**"Preschool age child"** means a child thirty months through five years of age not attending kindergarten or elementary school.

**"Primary staff person"** means a person who has been approved by the department, age eighteen years or older, who has responsibilities for the operation of the program and the direct supervision, behavior management and care of children.

**"Provider"** means the same as licensee.

**"Repeatedly"** means a violation of a licensing regulation that is written on a facility licensing compliance agreement that occurs more than once during a twelve-month time frame.

**"Reportable communicable disease"** means an illness that can be spread from one person to another by either direct or indirect contact, and is of the type that is required by law to be reported to the department of health. Examples include Hepatitis, measles, smallpox, and tuberculosis.

**"Revocation"** means the formal act of closing your child care business and taking your license from you due to your failure to follow the rules.

**"Sanitize"** means a surface must be clean and the number of germs reduced to a level where disease transmissions by that surface are unlikely.

**"Staff"** means a child care giver or group of child care givers employed by the licensee to assist with or supervise children served at the family home child care.

**"STARS"** (Washington state training and registry system) means the entity approved by the department to determine the classes, courses, and workshops that licensees and staff may take to satisfy training requirements.

**"Summary suspension"** means the formal act of immediately stopping your license for a certain time because the health, safety or well being of a child is at risk.

**"Supervision of children,"** means the knowledge of and responsibility for the activity and whereabouts of each child in care and assuring immediate intervention of staff to safeguard a child from harm.

**"Terms of the license"** means the address, number and ages of children, and the beginning and ending dates listed on the license issued by the department.

**"Toddler"** means a child twelve months through twenty-nine months of age.

**"Unsupervised access"** means not in the absence of the licensed child care provider or primary staff person. (Anyone sixteen years or older who lives at the same address as the provider must pass a complete criminal history background check.)

**"Useable space"** means the space actually available for children to engage in developmentally appropriate activities, that has been inspected and approved by the department for providing child care.

**"Weapons"** means an instrument or device of any kind that is designed to be used to inflict harm on another person. For example, BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, shotguns, knives.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

**WAC 170-296-0450 When will my license be denied, suspended or revoked?** (1) When you demonstrate that you cannot provide the required care for children in a way that promotes their safety, health and well-being we must deny, suspend or revoke your license.

(2) We must deny, suspend or revoke your license if you:

(a) Have been disqualified by your background check (see DSHS secretary's list of disqualifying convictions for ESA at [http://www1.dshs.wa.gov/esa/dccel/pdf/Crime\\_and\\_Backg\\_Chex.pdf](http://www1.dshs.wa.gov/esa/dccel/pdf/Crime_and_Backg_Chex.pdf));

(b) Have been found to have committed or have allowed others to commit child abuse, child neglect or exploitation, or you or others you supervise treat, permit or assist in treating children in your care with cruelty, or indifference;

(c) Fail to report instances of alleged child abuse, child neglect and exploitation to children's administration intake or law enforcement when an allegation of abuse, neglect or exploitation is reported to you;

(d) Or anyone residing at the same address as you had a license denied or revoked by an agency that provided care to children or vulnerable adults;

(e) Try to get or keep a license by deceitful means, such as making false statements or leaving out important information on the application;

(f) Commit, permit or assist in an illegal act at the address of your child care business;

(g) Use illegal drugs, or excessively use alcohol or abuse prescription drugs;

(h) Knowingly allow employees or volunteers with false statements on their applications to work at your facility;

(i) Repeatedly lack the required number of qualified staff to care for the number and types of children under your care;

(j) Repeatedly fail to provide the required level of supervision for a child in care;

(k) Repeatedly care for more children than your license allows;

(l) Refuse to allow our authorized staff and inspectors requested information or access to your licensed space (~~and premises~~), child and program files, or staff and children in care during times when licensed activities are conducted; or

(m) Are unable to manage the property, fiscal responsibilities, or staff in your facility.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

**WAC 170-296-0520 How long must I keep child records and what am I required to document while operating my business?** (1) A child's presence in the child care must be documented, on a daily basis, by the child's parent or guardian or an authorized person by using the sign-in and sign-out procedure for each child in attendance. The parent, guardian or authorized person must use their full signature when signing the child in and out of the child care.

(2) When the school age child arrives at or leaves the child care home due to school or off-site activities as authorized by the parent, you or your staff must sign out the child, and sign in the child on return to the home.

(3) Daily attendance records, listing the dates and hours of attendance of each child must be kept up-to-date and maintained in the licensed space of the family home child care for five years.

(4) When a child is no longer enrolled, the date of the child's withdrawal must be recorded in the child's file. You must maintain the child's file for at least five years from the child's last date of attendance. After five years the file may be destroyed or returned to the parent. The child's file must be made available for review by the child's parents and us during this period.

(5) You must call and report, within twenty-four hours to:

(a) Children's administration intake an incident or injury that required the services of a medical professional, including a dentist, that occurred while the child was in attendance.

(b) DCCEL and to animal control any incident where a child is bitten by an animal while in attendance.

(c) DCCEL any fire on your premises that required the use of a fire extinguisher or the services of a fire department.

(6) You must submit a written incident report to the child's parent and to your licensor within two working days of the same incident or injury as described in subsection (3) of this section.

(7) You must acquire written parental permission for field trips. You must notify parents in advance when you plan to use vehicles to transport children. Parents may grant general authorization for walking field trips.

(8) You must maintain all records and reports required by these regulations in an up-to-date manner (~~(at)~~) in the licensed space of the facility. The records and reports are subject to inspection and you must allow us access to them (~~(at the time we request them)~~) during all hours in which licensed activities are conducted.

## WSR 07-01-074

### EMERGENCY RULES DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 18, 2006, 3:37 p.m., effective December 18, 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 (P.L. 109-171) in order for the state to remain eligible for federal Medicaid funding. This filing continues the emergency rule filed as WSR 06-18-021 while the department completes adoption of permanent rules initiated under WSR 06-10-020. Permanent rules have been drafted and will be circulated for review in January 2007.

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: December 15, 2006.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

### 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. Transfer of asset penalties do not apply to Hospice or PACE services.

(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 require-

ment 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.

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.

**WSR 07-01-099**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed December 19, 2006, 2:17 p.m., effective December 19, 2006]

Effective Date of Rule: Immediately.

Purpose: DSHS is amending WAC 388-513-1350 to:

- Clarify the rules, increase the spousal resource maximum from \$41,000 to \$41,943 effective July 1, 2005, increase the community spousal share maximum to \$99,540 effective January 1, 2006, and to \$101,640 effective January 1, 2007.
- Clarify 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.)

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: Repealing WAC 388-513-1360; and 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 immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: 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. Other revisions are needed to protect the health and welfare of clients by assuring that correct long-term care eligibility determinations are made, and that clients receive the services for which they are eligible. A public hearing on the proposed rule was held on November 21, 2006. The permanent rule has been filed, as WSR 07-01-073 and when effective will replace this emergency rule.

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

Date Adopted: December 18, 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))~~ resource standard and determining resource~~((s-availability))~~ eligibility for long-term care (LTC) services.** This section describes how the department defines the resource standard and available or excluded 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))~~ (8) through ~~((8))~~ (11) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection ~~((2))~~ (3) of this section 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))~~ When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(3) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(4) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligi-

ble, then the department applies (a)(b) of this section for a couple.

(5) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(6) 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; ~~and~~

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

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

~~((4)) (7) For LTC services the department determines a client's nonexcluded resources as follows:~~

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

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

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

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

~~(e) 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).) The department determines available resources for SSI-related clients as described in WAC 388-475-0350 through WAC 388-475-0550 and resources excluded by federal law with the exception of:~~

~~(i) WAC 388-475-0550(16);~~

~~(ii) WAC 388-475-0350 (1)(b) Clients who have submitted an application 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. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver.~~

~~(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.~~

~~(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.~~

~~(ii) Vehicles not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.~~

~~(c) For a SSI-related client, the department adds together the available resources of both spouses if subsections (2), (5), (6), (7) and (8)(a) or (b) apply, but not if subsection (3) or (4) apply.~~

~~(d) For an SSI-related client, excess resources are reduced in an amount equal to medical expenses incurred by~~

~~the client (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:~~

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

~~(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan with the exception of the deduction for medical and remedial care expenses that were incurred during a transfer of asset penalty established per WAC 388-513-1363, WAC 388-513-1364 or WAC 388-515-1365; and~~

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

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

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

~~(e) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.~~

~~(8) 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)) (9) If subsection ((5)) (8)(b) of this section 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. Effective January 1, 2007, the maximum allocation is one hundred one thousand six hundred and forty dollars. (this standard increases annually on January 1st based on the consumer price index); 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)) (9)(a) of this section; or~~

~~(ii) The state spousal resource standard of ((forty thousand)) forty-one thousand nine-hundred forty-three dollars~~

effective July 1, 2005 (this standard increases every odd year on July 1st).

~~((7))~~ (10) The amount of the spousal share described in ~~((6))~~ (9)(b)(i) ~~((is))~~ can be determined ~~((sometime))~~ anytime 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))~~ is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

~~((8))~~ (11) The amount of allocated resources described in subsection ~~((6))~~ (9) of this section 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))~~ (12) 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))~~ (13)(a), (b), or (c) of this section applies.

~~((10))~~ (13) A redetermination of the couple's resources as described in subsections ~~((4)(b) or (e))~~ (7) 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))~~ (8)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections ~~((6))~~ (9) or ~~((8))~~ (11) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

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

**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 388-513-1360	Determining excluded resources for long-term care (LTC) services.
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## **WSR 07-01-102 EMERGENCY RULES SECRETARY OF STATE**

(Elections Division)

[Filed December 19, 2006, 2:47 p.m., effective December 19, 2006]

Effective Date of Rule: Immediately.

Purpose: Implementation of voter registration procedures 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 U.S. 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: December 19, 2006.

Steve Excell  
Assistant Secretary of State

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 photocopy of identification must be provided in order for the bal-

lot 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 the voter's name and address, other than a voter registration card.

(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.

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~~

((~~and~~)) (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 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 applicants'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:

Dear Voter:

[date]

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.**

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
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- 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.

**WSR 07-01-108  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 06-309—Filed December 20, 2006, 8:51 a.m., effective January 5, 2007, 8:00 a.m.]

Effective Date of Rule: January 5, 2007, 8:00 a.m.  
Purpose: Amend commercial use fishing rules.  
Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000F and 220-52-04600U; and amending WAC 220-52-040 and 220-52-046.  
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 coastal crab fishery opening north of Destruction Island is delayed. This rule provides for the economic well being of the industry. This meets the crab management plan agreement with tribal entities. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 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: December 19, 2006.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 220-52-04000G Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts.** (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice it is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, Washington coastal or adjacent waters of the Pacific Ocean through January 31, 2007 from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel hold inspection certificates dated November 30, 2006 to December 30, 2006 are only valid in Willapa Bay and the coastal waters south of 46°33.00.

(b) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through January 31, 2007.

(2) Notwithstanding the provisions of WAC 220-52-040, it is lawful for a vessel not designated on a Dungeness crab coastal fishery license to transport or deploy up to 250 pots at any one time for deployment in the coastal crab fishery through January 10, 2007 at 12:01 a.m. The primary operator of the vessel associated with the pots being transported must be aboard the vessel while they are being deployed. All other provisions of the permanent rule remain in effect.

(3) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participate in the coastal Dungeness crab fishery from Destruction Island to the WA/OR border may possess crab for delivery into Washington ports south of 47°58.00 N. Lat. provided the crab were taken south of Destruction Island.

(b) The vessel does not enter the area south of 47°58.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife and provides a vessel hold inspection if requested by Fish and Wildlife officers prior to entering this area. Prior to entering the area north of 47°00.00 N. Lat., the vessel operator calls 360-249-4628 extension 253 and reports the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time and location of delivery 24 hours prior to entering the area.

#### [NEW SECTION]

**WAC 220-52-04600V Coastal crab season.** Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice it is unlawful to commercially fish for Dungeness crab in Washington coastal waters of the Pacific Ocean, including Grays Harbor, Willapa Bay, and the Columbia River except as provided for in this section.

(1) The coastal waters from Destruction Island (47°40.50) to the WA/OR border (46°15.00), including the Columbia River, Willapa Bay, and Grays Harbor are open to fishing for Dungeness crab.

(2) The Quinalt primary special management area (QIN SMA) is closed to fishing for Dungeness crab: The QIN SMA includes the coastal waters shoreward of a line approximating the 25-fathom depth curve from Raft River to Copalis River as described by the following coordinates

- Northeast Corner: 47°28.00 N Lat. - 124°20.70 W Lon.
- Northwest Corner: 47°28.00 N Lat. - 124.33.00 W. Lon.
- Southwest Corner: 47°08.00 N. Lat. - 124°23.50 W. Lon.
- Southeast Corner: 47°08.00 N. Lat. - 124°11.20 W. Lon.

(3) Crab gear may be set in the open area from Destruction Island (47°40.50) to Klipsan Beach (46°28.00) beginning at 8:00 a.m., January 5, 2007 and pulled no sooner than 12:01 a.m., January 8, 2007.

(4) Vessels that have deployed gear in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California to Klipsan Beach, Washington (46°28.00) including the Columbia River and Willapa Bay prior to 8:00 a.m., January 5, 2007 are prohibited from:

- Fishing in the area between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 8:00 a.m. January 15, 2007.
- Fishing in the area between Oysterville (46°33.00) and the U.S. Canadian border until 8:00 a.m. February 4, 2007.

(5) All other provisions of the permanent rule remain in effect.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**Reviser's note:** The spelling 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 effective 8:00 a.m. January 5, 2007:

WAC 220-52-04000F      Commercial crab fishery.  
Lawful and unlawful gear,  
methods and other unlawful  
acts. (06-304)

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m., January 5, 2007:

WAC 220-52-04600U      Coastal crab seasons. (06-  
293)