

**WSR 08-04-015**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed January 25, 2008, 9:37 a.m., effective January 25, 2008, 9:37 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is proposing the amendment of chapter 388-310 WAC, WorkFirst, to comply with the federal law changes under Deficit Reduction Act of 2005 (DRA), Public Law 109-171.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-0400, 388-310-0500, 388-310-0600, 388-310-0900, 388-310-1000, 388-310-1050, 388-310-1100, 388-310-1400, 388-310-1500, and 388-310-1700.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, and 74.08.090.

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 extension of the emergency filing of these amendments will allow the department to continue to comply with the Deficit Reduction Act of 2005 (DRA), Public Law 109-171 while completing the regular filing of the CR-102 under WSR 07-24-034 (November 30, 2007). The department is also adding to this emergency rule filing WAC 388-310-0400 in order to update a cross reference in the WAC. This rule filing extends the emergency rule filed as WSR 07-20-070.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 10, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: January 14, 2008.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-08-044, filed 3/30/06, effective 6/1/06)

**WAC 388-310-0400 WorkFirst—Entering the WorkFirst program as a mandatory participant. (1) What happens when I enter the WorkFirst program as a mandatory participant?**

If you are a mandatory participant, you must follow instructions as written in your individual responsibility plan (see WAC 388-310-0500), which is written after you have

participated in a comprehensive evaluation of elements related to your employability. If you have been identified as someone who needs necessary supplemental accommodation (NSA) services (defined in chapter 388-472 WAC) your case manager will first develop an accommodation plan to help you access WorkFirst services. The case manager will use the accommodation plan to help develop your IRP with you. If you have been identified as a victim of family violence (defined in WAC 388-61-001), you and your case manager will develop an IRP to help you with your situation, including referrals to appropriate services.

If you are a mandatory participant, your case manager will refer you to WorkFirst activities unless any of the following applies to you:

(a) You work thirty-two or more hours a week. **"Work"** means to engage in any legal, income generating activity which is taxable under the United States tax code or which would be taxable with or without a treaty between an Indian Nation and the United States;

(b) You work sixteen or more hours a week in the federal or state work study program and you attend a Washington state community or technical college at least half time;

(c) You work twenty or more hours a week in unsubsidized employment and attend a Washington state community or technical college at least half time;

(d) You are under the age of eighteen, have not completed high school, GED or its equivalent and are in school full time;

(e) You are eighteen or nineteen years of age and are attending high school or an equivalent full time;

(f) You are pregnant or have a child under the age of twelve months, and are participating in other pregnancy to employment activities. See WAC 388-310-1450;

(g) Your situation prevents you from looking for a job and you are conducting activities identified on your IRP to help you with your situation. (For example, you may be unable to look for a job while you have health problems or you are homeless); or

(h) Your situation prevents you from looking for work because you are a victim of family violence and you are conducting activities on your IRP to help you with your situation.

**(2) How will I know what my participation requirements are?**

(a) Your individual responsibility plan will describe what you need to do to be able to enter job search or other WorkFirst activities and then find a job (see WAC 388-310-0500 and 388-310-0700).

(b) If you enter the pregnancy to employment pathway (described in WAC ((~~388-310-1450(2))~~) 388-310-1450(3)), you must take part in an assessment.

**(3) What happens if I do not follow my WorkFirst requirements?**

If you do not participate in creating an individual responsibility plan, job search, or in the activities listed in your individual responsibility plan, and you do not have a good reason, the department will follow the sanction rules in WAC 388-310-1600.

AMENDATORY SECTION (Amending WSR 06-08-044, filed 3/30/06, effective 6/1/06)

**WAC 388-310-0500 WorkFirst—Individual responsibility plan. (1) What is the purpose of my individual responsibility plan?**

The purpose of your individual responsibility plan is to give you a written statement that describes:

- (a) What your responsibilities are; and
- (b) Which WorkFirst activities you are required to participate in; and
- (c) What services you will receive so you are able to participate.

**(2) What is included in my individual responsibility plan?**

Your individual responsibility plan includes the following:

(a) What WorkFirst activities you must do and the participation requirements for those activities including the amount of time you will spend doing the activities, a start and end date for each activity and the requirement to participate fully.

(b) Any other specific requirements that are tied to the WorkFirst work activity. For example, you might be required to learn English as part of your work experience activity or to provide proof of your employment hours.

(c) What services we will provide to help you participate in the activity. For example, you may require support services (such as help with paying for transportation) or help with paying childcare.

(d) Your statement that you recognize the need to become and remain employed as quickly as possible.

**(3) How is my individual responsibility plan developed?**

You and your case manager will work together and use information gathered from your comprehensive evaluation (see WAC 388-310-0700) to develop your individual responsibility plan and decide what activities will be included in it. Then, your case manager will assign you to specific WorkFirst activities that will help you find employment.

**(4) What happens after my individual responsibility plan is completed?**

Once your individual responsibility plan is completed:

(a) You will sign and get a copy of your individual responsibility plan.

(b) You and your case manager will review your plan as necessary over the coming months to make sure your plan continues to meet your employment needs. You will sign and get a copy of your individual responsibility plan every time it is reviewed and changed.

**(5) What should I do if I cannot go to a required WorkFirst appointment or activity because of a temporary situation outside of my control?**

If you cannot participate because of a temporary situation outside of your control, you must call the telephone number shown on your individual responsibility plan on the same day you were to report to explain your situation. You will be given an excused absence. Some examples of excused absences include:

- (a) You, your children or other family members are ill;

(b) Your transportation or child care arrangements break down and you cannot make new arrangements in time to comply;

(c) A significant person in your life died; or

(d) A family violence situation arose or worsened.

**(6) What happens if I don't call in on the same day I am unable to attend to get an excused absence?**

If you do not call in on the same day you are unable to attend to get an excused absence, it will be considered an unexcused absence.

If you exceed the number of unexcused absences allowed on your individual responsibility plan, without good cause, your case manager will begin the sanction process. (See WAC 388-310-1600 for more details.)

AMENDATORY SECTION (Amending WSR 06-08-044, filed 3/30/06, effective 6/1/06)

**WAC 388-310-0600 WorkFirst—Job search. (1) What is job search?**

Job search is an opportunity to learn and use skills you need to find and keep a job. Job search may include:

(a) Classroom instruction; and/or

(b) Structured job search that helps you find job openings, complete applications, practice interviews and apply other skills and abilities with a job search specialist or a group of fellow job-seekers(~~(c) and/or~~

~~(c) Preemployment training; and/or~~

~~(d) High-wage/high-demand training.~~

~~(2) What is preemployment training?~~

~~Preemployment training helps you learn skills you need for an identified entry level job that pays more than average entry level wages.~~

~~(a) Preemployment training is an acceptable job search activity when an employer or industry commits to hiring or giving hiring preference to WorkFirst participants who successfully complete preemployment training.~~

~~(b) You can find out about current preemployment training opportunities by asking your job service specialist, your case manager or staff at your local community and technical college.~~

~~(3) What is high-wage/high-demand training?~~

~~(a) There are two types of high-wage/high-demand (HWHD) full-time training options for TANF recipients to complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:~~

~~(i) Information technology, health care or other professional-technical programs: This option allows you to start and finish a one-year or shorter state community or technical college training program in the information technology, health care fields or other professional-technical programs that meet high-wage high-demand criteria; and/or~~

~~(ii) Certificate/degree completion: This option allows you to finish up the last year of any certificate or degree program in a high-wage/high-demand field on an exception basis. The high-wage/high-demand criteria for this option is based on median income and high-demand occupations within the local labor market as determined by employment security department.~~

~~(b) For both types of HWHD training, the training can be approved one time only (barring an approved exception to policy). There is no work requirement with either option for the twelve months of training time.~~

~~(c) To qualify for HWHD training, you must also:~~

~~(i) Meet all of the prerequisites for the course;~~

~~(ii) Obtain the certificate or degree within twelve calendar months;~~

~~(iii) Participate full time in the training program and make satisfactory progress;~~

~~(iv) Work with colocated ESD staff during the last quarter of training for job placement; and~~

~~(v) Return to job search once you complete the educational program if still unemployed).~~

~~((4)) **(2) Who provides me with job search?**~~

~~You get job search from the employment security department or another organization under contract with WorkFirst to provide these services.~~

~~((5)) **(3) How long do I stay in job search?**~~

~~Periods of job search will start with a review of the work skills assessment portion of your comprehensive evaluation and may last up to twelve continuous weeks. Job search specialists will monitor your progress. By the end of the first four weeks, a job search specialist will determine whether you should continue in job search. Job search will end when:~~

~~(a) You find a full-time job; or~~

~~(b) You become exempt from WorkFirst requirements (see WAC 388-310-0300); or~~

~~(c) Your situation changes and the case manager changes the activities on your IRP to fit your new circumstances (see WAC 388-310-0400); or~~

~~(d) After fully participating in job search, and based on your experience in looking for work in the local labor market, it is determined that you need additional skills and/or experience to find a job; or~~

~~(e) You have not found a job at the end of the job search period.~~

~~((6)) **(4) What happens at the end of job search if I have not found a job?**~~

~~At the end of each job search period, you will be referred back to your case manager who will, at a minimum, review and update the DSHS portion of your comprehensive evaluation if you have not found a job. You and your case manager will also modify your individual responsibility plan.~~

AMENDATORY SECTION (Amending WSR 06-08-048, filed 3/30/06, effective 5/1/06)

**WAC 388-310-0900 WorkFirst—Basic education. (1) What is basic education?**

Basic education is high school completion, classes to prepare for general equivalency diploma (GED), testing to acquire GED certification, adult basic education (ABE) or English as a second language (ESL) training. Basic education also includes supervised homework and study activities associated with the educational activity.

**(2) When do I participate in basic education as part of WorkFirst?**

You may participate in basic education as part of WorkFirst under any of the following circumstances:

(a) You are twenty years of age or older and your comprehensive evaluation shows you need this education to become employed or get a better job and:

(i) You are ~~((enrolled in an approved WorkFirst work activity for at least))~~ participating the equivalent of twenty hours or more per week in job search, vocational education, issue resolution, paid work or unpaid work that meets the federal definition of core activities; or

(ii) You have ~~((fully participated in job search without finding a job))~~ limited-English proficiency and you lack language skills that are needed to qualify for entry level jobs.

(b) You may be required to participate if you are a mandatory participant, a parent eighteen or nineteen years of age, you do not have a high school diploma or GED certificate and you need this education in order to find employment.

(c) You will be required to be in high school or a GED certification program if you are a mandatory participant, sixteen or seventeen years old and you do not have a high school diploma or GED certificate.

~~(d) ((Employment security department (ESD) has determined that you are a seasonal worker (that is, your usual pattern of employment is based on recurring cycle of seasonal employment). Under WorkFirst, seasonal workers qualify for full-time education and training during the off-season.~~

~~((e))~~ You are enrolled in the pregnancy to employment pathway and your comprehensive evaluation shows basic education would help you find and keep employment. (See WAC 388-310-1450.)

AMENDATORY SECTION (Amending WSR 06-08-048, filed 3/30/06, effective 5/1/06)

**WAC 388-310-1000 WorkFirst—Vocational education. (1) What is vocational education?**

Vocational education is training that leads to a degree or certificate in a specific occupation, not to result in a baccalaureate or advanced degree unless otherwise indicated below, and is offered by an accredited:

(a) Public and private technical college or school;

(b) Community college; ~~((or))~~

(c) Tribal college; or

(d) For customized job skills training (formerly known as pre-employment training), community based organizations.

(2) Vocational education may include:

(a) Customized job skills training;

(b) High-wage/high-demand training;

(c) Supervised homework and study activities associated with the educational activity; and/or

(d) Remedial/developmental education, prerequisites, basic education and/or English-as-a-Second Language training deemed a necessary part of the vocational education program.

**(3) What is customized job skills training?**

Customized job skills training helps you learn skills you need for an identified entry level job that pays more than average entry level wages.

(a) Customized job skills training is an acceptable activity when an employer or industry commits to hiring or giving

hiring preference to WorkFirst participants who successfully complete customized job skills training.

(b) You can find out about current customized job skills training opportunities by asking your employment services counselor, your case manager or staff at your local community and technical college.

**(4) What is high-wage/high-demand training?**

(a) There are two types of high-wage/high-demand (HWHD) full-time training options for TANF recipients to complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:

(i) Information technology, health care or other professional-technical programs: This option allows you to start and finish a one-year or shorter state community or technical college training program in the information technology, health care fields or other professional-technical programs that meet high-wage/high-demand criteria; and/or

(ii) Certificate/degree completion: This option allows you to finish up the last year of any certificate or degree program, not to exceed a baccalaureate degree, in a high-wage/high-demand field on an exception basis. The high-wage/high-demand criteria for this option is based on median income and high-demand occupations within the local labor market as determined by employment security department.

(b) For both types of HWHD training, the training can be approved one-time only (barring an approved exception to policy).

(c) To qualify for HWHD training, you must also:

(i) Meet all of the prerequisites for the course;

(ii) Obtain the certificate or degree within twelve calendar months;

(iii) Participate full time in the training program and make satisfactory progress;

(iv) Work with WorkFirst staff during the last quarter of training for job placement; and

(v) Return to job search once you complete the educational program if still unemployed.

**((2)) (5) When can vocational education be included in my individual responsibility plan?**

We may add vocational education to your individual responsibility plan for up to twelve months if:

(a) Your comprehensive evaluation shows you need this education to become employed or get a better job and you participate full time in vocational education or ~~((by combining))~~ combine vocational education with any approved WorkFirst work activity; or

(b) ~~((Employment security department (ESD) has determined that you are a seasonal worker (that is, your usual pattern of employment is based on a recurring cycle of seasonal employment). Under WorkFirst, seasonal workers qualify for full-time education and training during the off-season; or~~

~~((e))~~ You are in an internship or practicum for up to twelve months that is paid or unpaid and required to complete a course of vocational training or to obtain a license or certificate in a high demand ~~((field, as determined by the employment security department))~~ program; or

~~((d))~~ (c) You have limited English proficiency and you lack job skills that are in demand for entry level jobs in your area; and the vocational education program is the only way that you can acquire ~~((the job))~~ these skills ~~((you need to~~

~~qualify for entry level jobs in your area))~~ (because there is no available work experience, ~~((preemployment training))~~ community service or on-the-job training that can teach you these skills); or

~~((e))~~ (d) You are in the pregnancy to employment pathway and your comprehensive evaluation shows vocational education would help you find and keep employment. (See WAC 388-310-1450.)

**((2)) (6) Can I get help with paying the costs of vocational education?**

WorkFirst may pay for the costs of your vocational education, such as tuition or books, for up to twelve months, if vocational education is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

AMENDATORY SECTION (Amending WSR 02-15-067, filed 7/11/02, effective 8/1/02)

**WAC 388-310-1050 WorkFirst—~~((Job skills))~~ Skills Enhancement training. (1) What is ~~((job))~~ skills enhancement training?**

~~((Job skills))~~ Skills enhancement training ~~(formerly known as job skills training)~~ is training ~~((in specific skills directly related to employment, but not tied to a specific occupation. Job skills training programs are generally short term, but differ in what skills are taught and who provides the training-))~~ or education for job skills required by an employer to provide a person with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Skills enhancement training may include:

(a) Customized training programs to meet the needs of a specific employer;

(b) General education and training that prepares a person for employment to include vocational education and courses explicitly required for program entry;

(c) Basic education and English as a second language training when such instruction is focused on skills needed for employment, combined in a unified whole with job training or needed to enable the person to perform a specific job or engage in a specific job training program;

(d) Four-year bachelor degree programs at any state-certified college or university; and

(e) Supervised homework and study activities.

**(2) Who may provide skills enhancement training?**

The training may be offered by the following types of organizations that meet the WorkFirst program's standards for service providers:

(a) Community based organizations;

(b) Businesses;

(c) Tribal governments; or

(d) Public and private community and technical colleges.

**((2)) (3) When can ~~((job))~~ skills enhancement training be included in my individual responsibility plan?**

We may add ~~((job))~~ skills enhancement training in your individual responsibility plan if~~((:~~

~~((a))~~ you are ~~((working))~~ participating the equivalent of twenty or more hours a week in job search, vocational educa-

tion, issue resolution, paid (~~(unsubsidized)~~) work or unpaid work(~~(-or~~

(b) You are working sixteen or more hours per week in a federal or state work study position; or

(c) You are working in a subsidized job, like a community jobs position, at least twenty hours per week; or

(d) Employment security department (ESD) has determined that you are a seasonal worker (that is, your usual pattern of employment is based on a recurring cycle of seasonal employment). Under WorkFirst, seasonal workers qualify for full-time education and training during the off season; or

(e) You lack job skills that are in demand for entry level jobs in your area, and the job skills training is short term and is combined with job search)) that meets the federal definition of core activities.

~~((3))~~ (4) **Can I get help with paying the costs of ((job)) skills enhancement training?**

WorkFirst may pay your costs, such as tuition or books, if ((job)) skills enhancement training is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

AMENDATORY SECTION (Amending WSR 99-10-027, filed 4/28/99, effective 5/29/99)

**WAC 388-310-1100 WorkFirst—Work experience.**

(1) **What is work experience?**

Work experience (sometimes called WEX) is an activity for mandatory participants that will teach you the basics of holding down a job and give you a chance to practice or expand your work skills. Work experience teaches you these skills by assigning you to unpaid work with:

- (a) A private, nonprofit organization;
- (b) A community or technical college; (~~(or)~~)
- (c) A federal, state, local or tribal government or district;

or

(d) Any entity providing an internship or practicum as described in WAC 388-310-1000 (2)(b).

(2) **What happens when I am enrolled in a work experience activity?**

When you are enrolled in a work experience activity:

(a) The organization, government or district that is supervising your work experience position must comply with all applicable state and federal health and safety standards while you are working there.

(b) You may be required to look for work on your own and must accept any paid employment you find that meets the criteria in WAC 388-310-1500.

(3) **How long does a work experience assignment last?**

Your case manager must review your work experience assignment if it lasts longer than six months. This review will determine whether you need more time to learn the skills and abilities that the work experience assignment was set up to teach you.

AMENDATORY SECTION (Amending WSR 05-13-030, filed 6/3/05, effective 7/4/05)

**WAC 388-310-1400 WorkFirst—Community service. (1) What is community service?**

Community service (~~(includes two types of activities for mandatory participants:~~

(a)) is unpaid work (such as the work performed by volunteer workers) that you perform for a charitable nonprofit organization, federal, state, local or tribal government or district(~~(-or~~

(b) An activity approved by your case manager which benefits you, your family, your community or your tribe. These activities may include)), including traditional activities that perpetuate tribal culture and customs.

(2) **What ((type of community service(s)) other activities may be approved, even though they are not considered community service, because they benefit me, my family, my community or my tribe and might be included in my individual responsibility plan?**

The following types (~~(of community service))~~ activities may be approved, even though they are not considered community service, because they benefit you, your family, your community or your tribe and might be included in your individual responsibility plan:

- (a) Caring for a disabled family member;
- (b) Caring for a child, if you are fifty-five years old or older and receiving TANF or SFA assistance for the child as a relative (instead of as the child's parent);
- (c) Providing childcare for another WorkFirst participant who is doing community service;
- (d) Actively participating in a drug or alcohol assessment or treatment program which is certified or contracted by the state under chapter 70.96A RCW;
- (e) Participating in family violence counseling or drug or alcohol treatment that will help you become employable or keep your job (this is called "specialized services" in state law);
- (f) Participating in the pregnancy to employment pathway; and/or
- (g) Job preparation.

AMENDATORY SECTION (Amending WSR 04-05-010, filed 2/6/04, effective 3/8/04)

**WAC 388-310-1500 WorkFirst—Employment conditions. (1) If I am a mandatory participant, are there any limitations on the type of paid or unpaid employment I must accept?**

If you are a mandatory participant, you must accept paid or unpaid employment (including any activity in which an employer-employee relationship exists) unless the employment:

- (a) Is not covered by industrial insurance (described in state law under Title 51 RCW) unless you are employed by a tribal government or a tribal private for-profit business;
- (b) Is available because of a labor dispute;
- (c) Has working hours or conditions that interfere with your religious beliefs or practices (and a reasonable accommodation cannot be made);

(d) Does not meet federal, state or tribal health and safety standards; or

(e) Has unreasonable work demands or conditions, such as working for an employer who does not pay you on schedule.

**(2) Are there any additional limitations on when I can be required to accept paid employment?**

You must accept paid employment unless the job or the employer:

(a) Pays less than the federal, state, or tribe minimum wage, whichever is higher;

(b) Does not provide unemployment compensation coverage (described in state law under Title 50 RCW) unless you:

(i) Work for a tribal government or tribal for-profit business; or

(ii) Are a treaty fishing rights related worker (and exempt under section 7873 of the Internal Revenue code);

(c) Requires you to resign or refrain from joining a legitimate labor organization; or

(d) Does not provide you benefits that are equal to those provided to other workers employed in similar jobs.

**(3) How many hours of unpaid employment can I be required to perform?**

You can be required to work a set number of hours of unpaid employment each month. The number of hours required will not be more than your TANF, SFA or GA-S cash grant plus Basic Food benefits, divided by the state (~~or federal~~) minimum wage (~~(, whichever is higher)~~).

**(4) What safeguards are in place to make sure I am not used to displace currently employed workers?**

The following safeguards are in place to make sure you are not used to displace currently employed workers:

(a) You cannot be required to accept paid or unpaid employment which:

(i) Results in another employee's job loss, reduced wages, reduced hours of employment or overtime or lost employment benefits;

(ii) Impairs existing contracts for services or collective bargaining agreements;

(iii) Puts you in a job or assignment, or uses you to fill a vacancy, when:

(A) Any other person is on lay off from the same (or very similar) job within the same organizational unit; or

(B) An employer ends the job of a regular employee (or otherwise reduces its workforce) so you can be hired.

(iv) Reduces current employees' opportunities for promotions.

(b) If a regular employee believes your subsidized or unpaid work activity (such as a community jobs or work experience position) violates any of the rules described above, this employee (or his or her representative) has the right to:

(i) A grievance procedure (described in WAC 388-426-0005); and

(ii) A fair hearing (described in chapter 388-02 WAC).

**(5) What other rules apply specifically to subsidized or on-the-job training positions?**

If you are in a subsidized or on-the-job training position:

(a) WorkFirst state agencies must stop paying your wage or on-the-job training subsidy to your employer if your employer's worksite or operation becomes involved in a strike, lockout or bona fide labor dispute.

(b) If your wage subsidy or on-the-job training agreement is ended (and we stop paying any subsidies to your employer) because you were used to displace another employee, it will be up to you and the employer to decide whether you can (or want to) keep working there.

AMENDATORY SECTION (Amending WSR 02-15-067, filed 7/11/02, effective 8/1/02)

**WAC 388-310-1700 WorkFirst—Self-employment.**

**(1) What is self-employment?**

When you work for yourself and do not have an employer, you are self-employed.

**(2) When can I be deferred from job search to pursue self-employment?**

(a) To be deferred from job search for self-employment, you must meet all the conditions below:

(i) You must be working at least thirty-two hours a week at your business;

(ii) Your business must generate income for you that is equal to the federal minimum wage (~~((state or federal, whichever is higher)))~~) times thirty-two hours per week after your business expenses are subtracted.

(iii) Your case manager will refer you to a local business resource center, and they must approve your self-employment plan;

(b) If you do not meet all these conditions, you can still be self-employed, but you will also need to participate in job search or other WorkFirst activities.

**(3) What self-employment services can I get?**

If you are a mandatory participant and have an approved self-employment plan in your individual responsibility plan, you may get the following self-employment services:

(a) A referral to community resources for technical assistance with your business plan.

(b) Small business training courses through local community organizations or technical and community colleges.

(c) Information on affordable credit, business training and ongoing technical support.

**(4) What support services may I receive?**

If you have an approved self-employment plan in your individual responsibility plan all support services are available.

**(5) Can I get childcare?**

Childcare is available if you have an approved self-employment plan in your individual responsibility plan. (See chapter 388-290 WAC for working connections child care rules.)

**WSR 08-05-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-21—Filed February 6, 2008, 2:54 p.m., effective February 6, 2008, 2:54 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000S; 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: Pot limit changes for the commercial crab fishery in the Puget Sound licensing district require the department to maintain commercial harvest allocation plans. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, 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: February 6, 2008.

Phil Anderson  
for Jeff Koenings  
Director

NEW SECTION

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

1) Effective immediately until further notice, no commercial crab pots are allowed to be set, pulled or fished west of the longitude line 123°7.0' projected from the southern shoreline of Dungeness Spit due south to the shore of Dungeness Bay.

2) Effective immediately until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license, per buoy tag number, in Crab Management Region 1 (which includes Marine Fish Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B).

3) Effective immediately until further notice, the following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

a. 30 pots in Marine Fish-Shellfish Management and Catch Reporting Area 25E.

b. 30 pots in all waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Travis Spit on Miller Peninsula.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04000S	Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (08-03)
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**WSR 08-05-006**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 08-22—Filed February 7, 2008, 1:23 p.m., effective February 10, 2008, 6:00 a.m.]

Effective Date of Rule: February 10, 2008, 6:00 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed. Prohibition of all diving from licensed sea cucumber harvest vessels within a day of scheduled openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: February 7, 2008.

J. P. Koenings  
Director

#### NEW SECTION

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

(1) Effective 6:00 a.m. February 10, 2008, until further notice, sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1, 2 and 5 on Sunday through Friday of each week.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed, effective 6:00 a.m. February 10, 2008:

WAC 220-52-07100J Sea cucumbers. (07-261)

**WSR 08-05-035  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-26—Filed February 13, 2008, 8:50 a.m., effective February 15, 2008, 6:00 p.m.]

Effective Date of Rule: February 15, 2008, 6:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 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: This closure complies with state/treaty management agreements for harvest allocation and to reduce fishing mortality in areas that do not meet the hardshell criteria. Bait possession prevention prevents pot rebaiting and further handling of soft shell crab. There is insufficient time to promulgate permanent rules.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: February 13, 2008.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-52-04600R Puget Sound crab fishery—Seasons and areas.** Notwithstanding the provisions of WAC 220-52-046, effective 7:00 p.m. on February 19, 2008, until further notice, it will be unlawful to fish for Dungeness Crab for commercial purposes in those waters of Marine Fish Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A-East (Crab Management Region 2 East). Bait may not be aboard the designated crab vessel after 6:00 p.m. February 15, 2008.

#### **WSR 08-05-036**

**EMERGENCY RULES  
SECRETARY OF STATE**

[Filed February 13, 2008, 8:56 a.m., effective February 13, 2008, 8:56 a.m.]

Effective Date of Rule: Immediately.

Purpose: To provide consistency in the administration of the 2008 presidential primary.

Citation of Existing Rules Affected by this Order: Amending WAC 434-219-210, 434-219-240, and 434-219-250.

Statutory Authority for Adoption: RCW 29A.04.611, 29A.56.050.

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 2008 presidential primary is scheduled in one week. The adoption of these emergency amendments are necessary to ensure the proper administration of the primary.

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 3, Repealed 0.

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

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

Date Adopted: February 13, 2008.

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07)

**WAC 434-219-210 Issuing polling place ballots.** (1) Polling place voters who make a political party declaration shall be issued either that party's separate ballot or a consolidated ballot (~~(marked to match the party declaration)~~).

(2) Polling place voters who do not make a political party declaration shall be presented either a separate nonpartisan ballot, or a consolidated ballot (~~(that is marked to indicate no party affiliation)~~).

(3) Precinct election officers shall verbally remind voters how to properly vote the ballot consistent with the party declaration made.

(4) Following the election, a notation of political party must be made in the voter registration files of those polling place voters who made a political party declaration.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07)

**WAC 434-210-240 Canvassing consolidated ballots that include a party checkbox.** If a county auditor issues consolidated ballots that include a party checkbox on the ballot, the following canvassing protocols must be followed for mail and absentee ballots:

(1) If a voter:  
 (a) Signs a party declaration on the return envelope;  
 (b) Checks the party box on the consolidated ballot for the same party declared on the return envelope; and  
 (c) Votes for candidates of the same party declared on the return envelope, the votes shall be counted.

(2) If a voter:  
 (a) Signs a party declaration on the return envelope;  
 (b) Checks the party box on the consolidated ballot for the same party declared on the return envelope; and  
 (c) Votes for candidates of a different party than declared on the return envelope, the partisan votes shall not be counted.

(3) If a voter:  
 (a) Signs a party declaration on the return envelope;  
 (b) Checks the party box on the consolidated ballot for a different party than declared on the return envelope; and

(c) Votes for candidates of the same party declared on the return envelope, the votes shall be counted.

(4) If a voter:

(a) Signs a party declaration on the return envelope;

(b) Checks a party box on the consolidated ballot for a different party than declared on the return envelope; and

(c) Votes for candidates of a different party than declared on the return envelope, the partisan votes shall not be counted.

(5) If a voter:

(a) Signs a party declaration on the return envelope;

(b) Fails to check a party box on the consolidated ballot; and

(c) Votes for candidates of the same party declared on the return envelope, the votes shall be counted.

(6) If a voter:

(a) Signs a party declaration on the return envelope;

(b) Fails to check a party box on the consolidated ballot; and

(c) Votes for candidates of a different party than declared on the return envelope, the partisan votes shall not be counted.

(7) If a voter:

(a) Signs a party declaration on the return envelope;

(b) Checks more than one party box on the consolidated ballot; and

(c) Votes for candidates of the same party declared on the return envelope, the votes shall be counted.

(8) If a voter:

(a) Signs a party declaration on the return envelope;

(b) Checks more than one party box on the consolidated ballot; and

(c) Votes for candidates of a different party than declared on the return envelope, the partisan votes shall not be counted.

(9) If a voter:

(a) Signs a party declaration on the return envelope;

(b) Checks the party box on the consolidated ballot for the same party declared on the return envelope; and

(c) Votes for candidates of more than one party, the partisan votes shall not be counted.

(10) If a voter:

(a) Signs a party declaration on the return envelope;

(b) Checks the party box on the consolidated ballot for a different party than declared on the return envelope; and

(c) Votes for candidates of more than one party, the partisan votes shall not be counted.

(11) If a voter:

(a) Signs a party declaration on the return envelope;

(b) Fails to check a party box on the consolidated ballot; and

(c) Votes for candidates of more than one party, the partisan votes shall not be counted.

(12) If a voter:

(a) Signs a party declaration on the return envelope;

(b) Checks more than one party box on the consolidated ballot; and

(c) Votes for candidates of more than one party, the partisan votes shall not be counted.

(13) If a voter signs a party declaration on the return envelope for more than one party, the partisan votes shall not be counted.

(14) If a voter fails to sign a party declaration on the return envelope, the partisan votes shall not be counted.

**Reviser's note:** The above section, filed by the agency as an amendment of WAC 434-210-240, appears to be an amendment of WAC 434-219-240, there being no WAC 434-210-240 in existence. Pursuant to RCW 34.08.040, the section is published in the same form as filed by the agency.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07)

**WAC 434-219-250 Canvassing separate party ballots and consolidated ballots that do not include a party checkbox.** If a county auditor issues either separate party ballots or consolidated ballots that do not include a party checkbox on the ballot, the following canvassing protocols must be followed for mail and absentee ballots:

- (1) If a voter:
  - (a) Signs a party declaration on the return envelope; and
  - (b) Votes for candidates of the same party declared on the return envelope, the votes shall be counted.
- (2) If a voter:
  - (a) Signs a party declaration on the return envelope; and
  - (b) Votes for candidates of a different party than declared on the return envelope, the partisan votes shall not be counted.
- (3) If a voter:
  - (a) Signs a party declaration on the return envelope; and
  - (b) Votes for candidates of more than one party, the partisan votes shall not be counted.
- (4) If a voter signs a party declaration on the return envelope for more than one party, the partisan votes shall not be counted.
- (5) If a voter fails to sign a party declaration on the return envelope, the partisan votes shall not be counted.

**WSR 08-05-080  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 08-25—Filed February 13, 2008, 3:45 p.m., effective February 16, 2008]

Effective Date of Rule: February 16, 2008.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: 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: The 2007/2008 wild winter steelhead run for the Skagit River system is forecasted to be 84% of wild steelhead escapement requirements. Selective

gear rules will allow harvestable hatchery steelhead to be caught and kept. 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: February 13, 2008.

Phil Anderson  
for Jeff Koenings  
Director

NEW SECTION

**WAC 232-28-61900B Exceptions to statewide rules—Skagit River, Sauk River, Cascade River, and Fisher Slough** Notwithstanding the provisions of WAC 232-28-619, effective February 16, 2008 it is unlawful to violate the following provisions in the following waters:

(1) Skagit River:

- From mouth upstream to the Memorial Highway Bridge (Highway 536 at Mt. Vernon) effective 12:01 a.m. February 16, 2008 until 11:59 p.m. February 29, 2008. Selective gear rules apply, except it is lawful to fish from a floating device equipped with an internal combustion motor. All species: Release all fish except up to two hatchery steelhead may be retained.
- From Memorial Highway Bridge (Highway 536 at Mt. Vernon) upstream to Gilligan Creek: effective 12:01 a.m. February 16, 2008 until 11:59 p.m. March 15, 2008. Selective gear rules apply, except it is lawful to fish from a floating device equipped with an internal combustion motor. All species: Release all fish, except up to two hatchery steelhead may be retained.
- From Gilligan Creek to Dalles Bridge at Concrete River effective 12:01 a.m. February 16, 2008 until 11:59 p.m. March 15, 2008. Selective gear rules apply, except it is lawful to fish from a floating device equipped with an internal combustion motor. All species: Release all fish, except up to two hatchery steelhead may be retained.
- From the Dalles Bridge at Concrete to the Highway 530 Bridge at Rockport effective 12:01 a.m. February 16, 2008 until 11:59 p.m. March 31, 2008. Selective gear rules apply, except it is lawful to fish from a floating device equipped with an internal

combustion motor. All species: Release all fish, except up to two hatchery steelhead may be retained. Closed to all fishing April 1, 2008 through April 30, 2008.

- From the Highway 530 Bridge at Rockport to the Cascade River effective 12:01 a.m. February 16, 2008 until 11:59 p.m. March 31, 2008. Selective gear rules apply, except it is lawful to fish from a floating device equipped with an internal combustion motor. Unlawful to fish from a floating device while under power. All species: Release all fish except up to two hatchery steelhead may be retained. Closed to all fishing April 1, 2008 to April 30, 2008.
- From Cascade River to Gorge Powerhouse (Dam) effective 12:01 a.m. February 16, 2008 until 11:59 p.m. March 15, 2008. Selective gear rules apply, except it is lawful to fish from a floating device equipped with an internal combustion motor. Unlawful to fish from a floating device while under power. All species: Release all fish except up to two hatchery steelhead may be retained per day.

(2) Sauk River

- From mouth to the Darrington Bridge effective 12:01 a.m. February 16, 2008 until 11:59 p.m. March 31, 2008. Selective gear rules apply. All species: Release all fish except up to two hatchery steelhead may be retained per day. Closed to all fishing April 1, 2008 to April 30, 2008.
- From the Darrington Bridge to Whitechuck River effective 12:01 a.m. February 16, 2008 until 11:59 p.m. February 29, 2008. Selective gear rules apply. All species: Release all fish except up to two hatchery steelhead may be retained per day.

(3) Cascade River

- From mouth upstream (entire river) effective 12:01 a.m. February 16, 2008 until 11:59 p.m. February 29, 2008. Selective gear rules apply. All species: Release all fish except up to two hatchery steelhead may be retained per day.

(4) Fisher Slough

- From mouth to Highway 530 Bridge effective 12:01 a.m. February 16, 2008 until 11:59 p.m. May 31, 2008. Selective gear rules apply. All species: Release all fish except up to two hatchery steelhead may be retained per day.

waiver as set forth by the Centers for Medicare and Medicaid Services (CMS) for the state of Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 388-532-050, 388-532-100, 388-532-110, 388-532-120, 388-532-520, 388-532-530, 388-532-700, 388-532-710, 388-532-720, 388-532-730, 388-532-740, 388-532-750, 388-532-760, 388-532-780, and 388-532-790.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.800.

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: This emergency rule adoption is necessary while the permanent rule-making process is being completed because the current rules are out of compliance with special terms and conditions of the new family planning/TAKE CHARGE waiver set forth by the CMS for the state of Washington. The waiver was signed August 31, 2006, and is retroactive effective July 1, 2006. Immediate adoption of this emergency rule is required to prevent loss of 90% federal match funds for the family planning/TAKE CHARGE program.

This continues the emergency rule that is currently in effect under WSR 07-21-105 while the department completes the permanent rule-making process. The department has filed the proposed rule as WSR 08-05-095. There will be a public hearing on April 8, 2008.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 15, 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 15, Repealed 0.

Date Adopted: February 6, 2008.

Stephanie E. Schiller  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-06 issue of the Register.

**WSR 08-05-096**

**EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed February 15, 2008, 11:42 a.m., effective February 16, 2008]

Effective Date of Rule: February 16, 2008.

Purpose: The department is codifying new special terms and conditions in the new family planning/TAKE CHARGE

**WSR 08-05-100**

**EMERGENCY RULES**

**DEPARTMENT OF TRANSPORTATION**

[Filed February 15, 2008, 2:38 p.m., effective February 15, 2008, 2:38 p.m.]

Effective Date of Rule: Immediately.

Purpose: SSB 6794 is emergency legislation authorizing the new construction of small auto ferries. The legislation

was signed into law on February 14, 2008, and took effect immediately. These WAC rule revisions modify the financial prequalification requirements for this new ferry procurement. The rule changes are required in order to promote the competitive process by increasing the number of potential bidders thereby maximizing competition.

Citation of Existing Rules Affected by this Order: Amending WAC 468-310-020 and 468-310-050.

Statutory Authority for Adoption: Chapter 47.56 RCW, RCW 47.60.680 and 47.60.690.

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: SSB 6794 is new emergency legislation. The procurement resulting from the legislation is scheduled to begin on February 15, 2008. The proposed revisions to WAC 468-310-020 and 468-310-050 will implement such legislation by maximizing shipyard competition for the construction of the new ferries. The subject WAC rule revisions must take effect immediately in order to timely commence the prequalification and bid process to maximize the number of shipbuilders who can bid for this project.

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

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

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

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

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

Date Adopted: February 15, 2008.

Stephen T. Reinmuth  
Interim Assistant Secretary  
Chief of Staff

AMENDATORY SECTION (Amending WSR 04-11-004, filed 5/5/04, effective 6/5/04)

**WAC 468-310-020 Contents of standard prequalification questionnaire and financial statement.** The standard prequalification questionnaire and financial statement shall be transmitted to the director of Washington state ferries. The contractor shall provide the following information:

(1) The name, address, phone number, contractor registration number and type of organization (corporation, copartnership, individual, etc.) of the contractor seeking prequalification.

(2) The contract size in dollars and the class or classes of work for which the contractor seeks prequalification (such as

vessel dry-docking and hull repairs, vessel electrical repairs, etc.) as enumerated in WAC 468-310-050(6).

(3) Ownership of the contractor and if a corporation, the name of the parent corporation (if any) and any affiliated companies or subsidiaries.

(4) An accurate and complete record of the fifteen largest contracts in excess of ten thousand dollars performed by the contractor in whole or in part within the preceding three years both in Washington and elsewhere, including subcontracts, giving the contract amount, the date completed, the class of work, the name, address and phone number of the owner/agency representative, and any liquidated damages assessed against the contractor by an owner arising out of the performance of the contract.

(5) The principal officers and key employees showing the number of years each engaged in the class or classes of work for which the contractor seeks prequalification. The department may require resumes of such personnel as deemed proper for making its determination.

(6) Except as otherwise provided in this section or WAC 468-310-050(8), a contractor requesting prequalification certification to perform work in excess of ten million dollars shall submit copies of its audited annual statements for the previous three years as audited by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The financial statement shall not be more than twelve months old when submitted. Any wholly owned subsidiary corporation may file the latest consolidated financial statement of its parent corporation in lieu of a financial statement prepared solely for such subsidiary providing the financial statement otherwise meets the requirements of the preceding two sentences. If a consolidated financial statement is filed on behalf of a subsidiary corporation, a bid of the subsidiary corporation will be considered only if there is on file with the department a letter from the parent corporation guaranteeing performance by the subsidiary corporation of its contract with the department of transportation in an amount at least equal to the amount of the bid. A letter of guarantee by a parent corporation may cover a specific contract bid by its subsidiary or all contracts bid by its subsidiary within a stated period of time.

(7) A list of all major items of equipment to be used in those classes of work for which prequalification certification is requested including the original cost, age, location and condition of such equipment. The schedule shall show whether the equipment is owned, leased or rented. All major items of useful equipment should be listed even though fully depreciated but no obsolete or useless equipment should be included. In the event the contractor seeks prequalification certification to perform work on ferry vessels, the schedule shall also describe plant facilities of the contractor including shipyards, dry docks, repair facilities and other plant facilities.

(8) Such other information as may be required by the prequalification questionnaire.

(9) Notwithstanding the provisions of this section, a contractor who wishes to prequalify for the department's procurement of new auto ferries for the Port Townsend/Key-

stone ferry route, pursuant to the department's 2008 invitation for bids, shall submit an audited financial statement for at least one year in the previous three years, plus annual financial statements for two additional years in the previous three years. The audited financial statement shall be prepared by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The form and quantity of financial statements shall be specified in the department's invitation for bids and is subject to modification by addendum during the bid process. This subsection applies in lieu of the form and quantity of audited financial statements specified in subsection (6) of this section for the Port Townsend/Keystone vessel procurement only. It does not replace or modify any other provisions in this chapter or governing prequalification statutes that authorize the department to evaluate a contractor's financial ability to perform the contract.

AMENDATORY SECTION (Amending WSR 04-11-004, filed 5/5/04, effective 6/5/04)

**WAC 468-310-050 Classification and capacity rating.** (1) Except as otherwise specified in this section, each contractor seeking prequalification under these rules will be classified for one or more of the classes of work listed in subsection ((8)) (6)(a) of this section and will be given a maximum capacity rating in accordance with its financial ability, the adequacy of its equipment and plant facilities to perform the class or classes of work for which it has sought prequalification, the extent of the contractor's experience in performing contracts of the class or classes for which prequalification is sought, and the adequacy of the experience and capability of the contractor's officers and key employees in performing contracts of the class or classes for which prequalification is sought. The maximum capacity rating will limit the quantity of uncompleted work which the contractor shall have under contract at any one time either as a prime contractor or a sub-contractor.

(2) Except as provided in subsections (7) through (9) of this section, the maximum capacity rating for a contractor applying for a rating in excess of fifty thousand dollars will be ten times the contractor's net worth as set forth in the standard prequalification questionnaire and financial statement. A properly executed letter of credit from an acceptable financial institution may be considered as an asset increasing the contractor's maximum capacity rating by the amount of the credit, but without the use of a multiplier. The maximum capacity rating for a contractor not submitting an audited financial statement as provided in WAC 468-310-020(6) will be ten million dollars: Provided, That in all cases the contractor's maximum capacity rating may be reduced to an amount considered by the department to be within the contractor's actual capacity based upon its organization, personnel, equipment and plant, and experience.

(3) Consideration will be given to raising, by an amount not to exceed fifty percent, the maximum capacity rating of a contractor who qualifies with respect to actual capacity based upon organization, personnel, equipment and plant facilities,

and experience, upon receipt of evidence of a current bonding capacity of such additional amount with a corporate surety. Such evidence shall be in the form of a letter of commitment executed by an officer of the surety who is authorized to bind the surety. Notwithstanding the provisions of this subsection, the maximum capacity rating for a contractor not submitting an audited financial statement as provided in WAC 468-310-020(6) will be ten million dollars.

(4) The certificate of prequalification issued by the department will establish a contractor's maximum capacity rating which will be subject to reduction by the total value of its current uncompleted work regardless of its location and with whom it may be contracted to determine the contractor's bidding capacity at the particular time.

(5) Notwithstanding the provisions of this section, a contractor will be allowed to submit a bid for an amount up to \$50,000 on a class or classes of work for which it is prequalified without regard to any financial maximum capacity rating or financial current capacity rating: Provided, That the contractor's current capacity may be reduced to an amount considered by the department to be within the contractor's actual capacity based upon its organization, personnel, equipment and plant facilities, and experience.

(6)(a) Construction, repair and maintenance work on ferry vessels for which prequalification certification under these rules may be granted are classified as follows:

Class 81	Vessel construction and renovation;
Class 82	Dry-docking and hull repairs;
Class 83	Vessel metal fabrication repairs;
Class 84	Vessel electrical repairs;
Class 85	Vessel miscellaneous repairs;

(b) A contractor currently prequalified under RCW 47.28.070 to perform those classes of work required in the construction, improvement and repair of ferry terminal facilities will initially be deemed prequalified under these rules to perform such classes of work with the same capacity rating as approved by the department for highway related work.

(7) Notwithstanding the provisions of this section, proposers who wish to prequalify for the department's construction of new 130-auto ferries, pursuant to the department's 2003 request for proposals, must submit evidence of their ability, if awarded the contract, to obtain contract security in the amount of thirteen million dollars. The department estimates such amount to be adequate to protect one hundred percent of the department's estimated exposure to loss on the vessel construction contract, as calculated by the department prior to issuance of the request for proposals. Such amount shall be specified in the project request for proposals and is subject to modification by addendum during the request for proposals process. The actual contract security amount for the project construction contract will be a percentage of the successful proposer's total bid price. Such percentage shall be specified in the construction contract within the request for proposals. For the new 130-auto ferries contract, this provision applies in lieu of the maximum capacity rating formula specified in subsection (2) of this section.

(8) Notwithstanding the provisions of this section or WAC 468-310-020, proposers who wish to prequalify for the department's construction of new 130-auto ferries, pursuant

to the department's 2003 request for proposals, shall, in addition to the evidence of contract security required in subsection (7) of this section, submit an audited financial statement for at least one year in the previous three years, plus annual financial statements for two additional years in the previous three years. The audited financial statement shall be performed by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The form and quantity of financial statements shall be specified in the project request for proposals and is subject to modification by addendum during the request for proposals process. For the new 130-auto ferries contract, this provision applies in lieu of the quantity of audited financial statements specified in WAC 468-310-020.

(9) This subsection shall apply to the Port Townsend/Keystone vessel procurement only and shall be used in lieu of the requirements of subsections (1) through (5) of this section. It does not replace or modify any other provisions in this chapter or governing prequalification statutes. The department may prequalify a contractor under a Class 81 classification to bid on the Port Townsend/Keystone vessel procurement pursuant to this section based on the department's evaluation of the following criteria:

(a) Whether the contractor has adequate equipment and plant facilities available to accomplish the work;

(b) Whether the contractor has trained personnel available to perform the work;

(c) Whether the contractor has demonstrated experience in the type of work;

(d) Whether the contractor has an organization and technical staff with the size, training, experience and capability to accomplish the work;

(e) Whether the contractor has adequate financial resources to perform the type and size of work, or the ability to timely secure such resources. In evaluating such financial resources, the department may consider the contractor's overall financial condition including, but not limited to:

(i) Level of capitalization;

(ii) Cash flow;

(iii) Level of business activity;

(iv) Credit history;

(v) Debts;

(vi) Assets; and

(vii) Ability to obtain financing, including but not limited to, irrevocable lines of credit, and parent company guarantees.

A contractor does not have adequate financial resources when, based upon the totality of the circumstances, it lacks the financial resources reasonably expected of a contractor capable of performing the work on time and without interruption.

## WSR 08-05-121

### EMERGENCY RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 19, 2008, 4:37 p.m., effective February 19, 2008, 4:37 p.m.]

Effective Date of Rule: Immediately.

Purpose: The division of developmental disabilities is proposing this emergency rule to amend WAC 388-828-5080 to be consistent with the DDD assessment application.

Citation of Existing Rules Affected by this Order: Amending WAC 388-828-5080.

Statutory Authority for Adoption: RCW 71A.12.30 [71A.12.030].

Other Authority: Title 71A RCW.

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

Reasons for this Finding: This emergency rule will amend WAC 388-828-5080 to accurately reflect the protective supervision age-based score adjustment made by the DDD assessment application when determining the protective supervision support level. The DDD assessment application is correctly calculating the protective supervision support level. Without this rule, clients may incorrectly be found eligible or ineligible for services or benefits.

This emergency rule replaces the previous emergency rule filed on October 24, 2007, as WSR 07-21-145.

The department filed a preproposal statement of inquiry (WSR 07-15-081) on July 18, 2007, to make amendments, clarifications and corrections necessary to chapter 388-828 WAC. This rule was formally proposed on February 15, 2008, as WSR 08-05-097.

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

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

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

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

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

Date Adopted: February 19, 2008.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-5080 How does DDD determine your adjusted protective supervision acuity score?** DDD determines your adjusted protective supervision acuity score by applying the following age-based score adjustments to your level of monitoring score for question number one in WAC 388-828-5060:

If you are:	Then your age-based score adjustment is:
18 years or older	Score is equal to your level of monitoring score
16-17 years of age	Subtract <del>((+))</del> <u>2</u> from your level of monitoring score
12-15 years of age	Subtract <del>((2))</del> <u>3</u> from your level of monitoring score
8-11 years of age	Subtract <del>((3))</del> <u>4</u> from your level of monitoring score
5-7 years of age	Subtract <del>((4))</del> <u>5</u> from your level of monitoring score
0-4 years of age	Subtract <del>((5))</del> <u>6</u> from your level of monitoring score
If your adjusted level of monitoring score is a negative number, your adjusted protective supervision acuity score is zero.	

Example: If you are fifteen years old and "close proximity, (e.g., 1-2 hours, structured)" is identified as your level of monitoring score, your adjusted protective supervision acuity score is: Your close proximity score of four minus age-based score adjustment of ~~((two))~~ three. For age twelve through fifteen, this equals an adjusted protective supervision score of ~~((two))~~ one.