WSR 09-23-110
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed November 18, 2009, 7:46 a.m., effective November 20, 2009]

Effective Date of Rule: November 20, 2009.

Purpose: The Washington legislature adopted SSB 5166 (chapter 408, Laws of 2009) regarding license suspension for noncompliance with child support orders. The division of child support (DCS) adopted emergency rules to implement this legislation, which took effect on July 26, 2009. The emergency rules were filed as WSR 09-15-183 and will expire on November 19, 2009.

DCS has filed the CR-102, Notice of proposed rule making, published as WSR 09-23-068, and the public rule-making hearing is scheduled for January 5, 2010. DCS cannot file the CR-103, Permanent rule-making order, until the day after the rule-making hearing, and the final rules will be effective thirty-one days after the CR-103 is published.

DCS began the rule-making process by filing a CR-101, Preproposal notice of inquiry, as WSR 09-14-073, but is unable to complete the regular adoption process by the date the first emergency rules will expire. This second set of emergency rules is exactly the same as the first set of emergency rules. The proposed rules in the CR-102 make some changes to the emergency rules.

Amending WAC 388-14A-4500 What is the division of child support's license suspension program?, 388-14A-4505 The notice of noncompliance and intent to suspend licenses, 388-14A-4510 Who is subject to the DCS license suspension program?, 388-14A-4515 How do I avoid having my license suspended for failure to pay child support?, 388-14A-4520 Signing a ((~~repayment~~)) payment agreement may avoid certification for noncompliance, 388-14A-4525 How to obtain a release of certification for noncompliance and 388-14A-4530 ((~~Administrative hearings~~)) What happens at an administrative hearing regarding license suspension ((~~are limited in scope.~~))?; and new sections WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension?, 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension?, 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended?, and 388-14A-4540 When is a DCS conference board available regarding license suspension issues?

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-4500, 388-14A-4505, 388-14A-4510, 388-14A-4515, 388-14A-4520, 388-14A-4525, and 388-14A-4530.

Statutory Authority for Adoption: SSB 5166 (chapter 408, Laws of 2009); RCW 34.05.060, 43.20A.550, 74.04.055, 74.04.057, 74.20A.310, 74.20A.320(10), 74.20A.350(14).

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: Chapter 408, Laws of 2009 (SSB 5166) had an effective date of July 26, 2009. Although DCS has begun the regular rule-making process to adopt rules under this bill, we were unable to complete the adoption process by the effective date of the statutory changes, so we adopted emergency rules as WSR 09-15-183. The emergency rules will expire on November 19, 2009. DCS cannot adopt final rules that would be effective by that date. DCS continues the regular rule-making process and plans to adopt final rules as soon as possible.

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 4, Amended 7, 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 4, Amended 7, Repealed 0.

Date Adopted: November 13, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4500 What is the division of child support's license suspension program? (1) RCW 74.20A.320 and sections 2 through 4 of SSB 5166 (chapter 408, Laws of 2009) provide((~~s~~)) that, in some circumstances, the division of child support (DCS) may certify for license suspension a noncustodial parent (NCP) who is not in compliance with a child support order. These statutes call((~~s~~)) the NCP "the responsible parent."

(a) "Certify" means to notify the department of licensing or other state licensing entities that the NCP is not in compliance with a child support order and to ask them to take appropriate action against licenses held by the NCP. Before DCS can certify an NCP, DCS serves a notice on the NCP as described in WAC 388-14A-4505 and 388-14A-4510. This notice is called the notice of noncompliance and intent to suspend licenses, and is sometimes called the notice of noncompliance.

(b) "Responsible parent" is defined in 388-14A-1020. The responsible parent is also called the "noncustodial parent."

(2) "Noncompliance with a child support order" is defined in RCW 74.20A.020(18) and in WAC 388-14A-4510(3).

(3) When DCS certifies the NCP, the department of licensing or other licensing entities take action to deny, suspend, or refuse to renew the NCP's license, according to the

terms of RCW 74.20A.320 (((~~(8) and (12)~~))) (4) and section 3 of SSB 5166 (chapter 408, Laws of 2009).

(4) This section and sections WAC 388-14A-4505 through 388-14A-4530 cover the DCS license suspension program.

(5) DCS may certify an NCP who is not in compliance with a child support order to the department of licensing or any appropriate licensing entity. In determining which licensing entity receives the certification, DCS considers:

(a) The number and kind of licenses held by the parent; and

(b) The effect that suspension of a particular license will have in motivating the parent to pay support or to contact DCS to make appropriate arrangements for other relief.

(6) DCS may certify a parent to any licensing agency through which it believes the parent has obtained a license. DCS may certify a parent to as many licensing agencies as DCS feels necessary to accomplish the goals of the license suspension program.

(7) In certain circumstances spelled out in WAC 388-14A-4510 (2) and (3), DCS may serve the notice of noncompliance on a noncustodial parent but may stay the commencement of the ((~~twenty-day~~)) objection period in WAC 388-14A-4505 (4)(b).

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses. (1) Before certifying a noncustodial parent (NCP) for noncompliance, the division of child support (DCS) must serve the NCP with a notice of noncompliance and intent to suspend licenses. This notice tells the NCP that DCS intends to submit the NCP's name to the department of licensing and any other appropriate licensing entity as a licensee who is not in compliance with a child support order.

(2) DCS must serve the notice by certified mail, return receipt requested. If DCS is unable to serve the notice by certified mail, DCS must serve the notice by personal service, as provided in RCW 4.28.080.

(3) The notice must include a copy of the NCP's child support order and must contain the address and phone number of the DCS office which issued the notice.

(4) The notice must contain the information required by RCW 74.20A.320(2), ((~~telling the NCP that~~)) including:

(a) ((~~The NCP may request an administrative hearing, but that the hearing is limited in scope (see WAC 388-14A-4530).~~)) The address and telephone number of DCS office that issued the notice;

(b) ((~~DCS will certify the NCP unless the NCP makes a request for hearing within twenty calendar days of the date of service of the notice, except when a longer period of time is given, as provided in WAC 388-14A-4510 (2) or (3);~~

~~(c) The NCP may avoid certification by agreeing to make timely payments of current support and agreeing to a reasonable payment schedule on the support debt;~~

~~(d) Certification by DCS will result in suspension or nonrenewal of the NCP's license by the licensing entity until DCS issues a release stating that the NCP is in compliance with the child support order;~~

~~(e) Suspension of a license may affect the NCP's insurance coverage, depending on the terms of any policy;~~

~~(f) Filing a petition to modify the support obligation may stay (or put a hold on) the certification process; and~~

~~(g) Even after certification, the NCP may obtain a release from certification by complying with the support order~~)) That in order to prevent DCS from certifying the NCP's name to the department of licensing or other licensing entity, the NCP has twenty days from receipt of the notice, or sixty days after receipt if the notice was served outside the state of Washington, to contact the department and:

(i) Pay the overdue support amount in full;

(ii) Request a hearing as provided in WAC 388-14A-4527;

(iii) Agree to a payment schedule as provided in WAC 388-14A-4520; or

(iv) File an action to modify the child support order with the appropriate court or administrative forum, in which case DCS will stay the certification process up to six months.

(c) That failure to contact DCS within twenty days of receipt of the notice (or sixty days if the notice was served outside of the state of Washington) will result in certification of the NCP's name to the department of licensing and any other appropriate licensing entity for noncompliance with a child support order. Upon receipt of the notice:

(i) The licensing entity will suspend or not renew the NCP's license and the department of licensing (DOL) will suspend or not renew any driver's license that the NCP holds until the NCP provides DOL or the other licensing entity with a release from DCS stating that the NCP is in compliance with the child support order;

(ii) The department of fish and wildlife will suspend a fishing license, hunting license, occupational licenses (such as a commercial fishing license), or any other license issued under chapter 77.32 RCW that the NCP may possess. In addition, suspension of a license by the department of fish and wildlife may also affect the NCP's ability to obtain permits, such as special hunting permits, issued by the department. Notice from DOL that an NCP's driver's license has been suspended shall serve a notice of the suspension of a license issued under chapter 77.32 RCW.

(d) That suspension of a license will affect insurability if the NCP's insurance policy excludes coverage for acts occurring after the suspension of a license; and

(e) If the NCP subsequently comes into compliance with the child support order, DCS will promptly provide the NCP and the appropriate licensing entities with a release stating the NCP is in compliance with the order.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4510 Who is subject to the DCS license suspension program? (1) The division of child support (DCS) may serve a notice of noncompliance on a noncustodial parent (NCP) who is not in compliance with a child support order ((~~when:~~)).

(a) ((~~The NCP is required to pay child support under a court order or administrative order;~~

~~(b) The NCP is at least six months in arrears; and~~

~~(c) The NCP is not currently making payments to the Washington state support registry under a wage withholding action issued by DCS.~~

~~(2)~~)) DCS may serve a notice of noncompliance on an NCP who meets the criteria of ((~~subsection (1) above~~)) this section, even if the NCP is in jail or prison. Unless the NCP has other resources available while in jail or prison, DCS stays the commencement of the ((~~twenty-day~~)) objection period in WAC 388-14A-4505 (4)(b) until the NCP has been out of jail or prison for thirty days.

(((~~3~~))) (b) DCS may serve a notice of noncompliance on an NCP who meets the criteria of ((~~subsection (1) above~~)) this section, even if the NCP is a public assistance recipient. DCS stays the commencement of the ((~~twenty-day~~)) objection period in WAC 388-14A-4505 (4)(b) until the thirty days after the NCP's cash assistance grant is terminated.

(((~~4~~))) (2) Compliance with a child support order for the purposes of the license suspension program means the NCP owes less than six months' worth of child support.

(3) ((")) Noncompliance with a child support order((")) for the purposes of the license suspension program means an NCP has:

(a) An obligation to pay child support under a court or administrative order; and

(b) Accumulated a support debt, also called an ((~~arrearage or~~)) arrears or arrearage, totaling more than six months' worth of child support payments; and

(((~~b~~))) (c) Failed to do one of the following:

(i) Make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments; or

(ii) Make payments to the Washington state support registry under a written agreement with DCS toward((~~s a~~)) current support ((~~debt in an amount that is more than six months' worth of payments~~)) and arrearages((~~; or~~

~~(c) Failed to make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments~~)).

(((~~(5) There is no minimum dollar amount for the six months of arrears. The following are examples of when a NCP is at least six months in arrears:~~

~~(a) The child support order requires monthly payments of five hundred dollars. The NCP has not made a single payment since the order was entered seven months ago. This NCP is at least six months in arrears;~~

~~(b) The child support order requires monthly payments of one hundred dollars. The NCP has paid for the last few months, but owes a back debt of over six hundred dollars. This NCP is at least six months in arrears;~~

~~(c) The NCP owes a support debt according to a judgment, which requires payments of one hundred dollars per month. The NCP has not made payment for eight months. This NCP is at least six months in arrears; or~~

~~(d) The child support order required monthly payments of two hundred dollars, but the child is over eighteen so no current support is owed. However, the NCP has a debt of over twelve hundred dollars. This NCP is at least six months in arrears.~~

~~(6) For the purposes of the license suspension program, a NCP is in compliance with the child support order when the amount owed in arrears is less than six months' worth of support~~)).

(4) There is no minimum dollar amount for the six months of arrears. Some cases where an NCP fits the criteria for license suspension are:

Example 1. Assume the child support order sets current support at one hundred dollars per month: The NCP has not made a single payment since the order was entered seven months ago. This NCP is at least six months in arrears.

Example 2. Assume the child support order sets current support at one hundred dollars per month: The NCP has paid for the last few months, but owes arrears of over six hundred dollars. This NCP is at least six months in arrears.

Example 3. Assume the child support order sets current support at one hundred dollars per month: The child is over eighteen, and no more current support is owed. However, the NCP has a debt of over one thousand two hundred dollars. This NCP is at least six months in arrears.

Example 4. Judgment of three thousand dollars entered by the court: The order requires the NCP pay fifty dollars per month towards his arrears. The NCP has not made payments toward this obligation for eight months. This NCP is at least six months in arrears.

NEW SECTION

WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension? The division of child support (DCS) may certify a noncustodial parent (NCP) as being in noncompliance with a support order and may request the department of licensing (DOL) or any other licensing entity to suspend the NCP's license if:

(1) The NCP has failed to make a timely objection to a notice of noncompliance served under WAC 388-14A-4505. A timely objection must be filed within twenty days of receipt of the notice, or within sixty days of receipt if the notice was served outside of the state of Washington;

(2) The NCP has failed to file a motion with the appropriate court or administrative forum to modify the child support obligation within twenty days of service of the notice of noncompliance served under WAC 388-14A-4505 (or within sixty days if the notice was served outside of the state of Washington);

(3) The NCP has failed to comply with a payment agreement entered into under WAC 388-14A-4520;

(4) A hearing results in a final administrative order which determines that the NCP is not in compliance with a child support order and has not made a good faith effort to comply;

(5) The court enters a judgment on a petition for judicial review upholding an administrative order that determined that the NCP is not in compliance with a child support order and did not made a good faith effort to comply;

(6) The NCP has failed to comply with a payment schedule ordered by an administrative law judge (ALJ) under WAC 388-14A-4530; or

(7) The NCP failed to make satisfactory progress toward modification of the support order after a stay was granted under WAC 388-14A-4515(2).

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4515 How do I avoid having my license suspended for failure to pay child support? (1) After service of the notice of noncompliance, the division of child support (DCS) stays (delays) certification action if the noncustodial parent (NCP) takes one of the following actions within twenty days of service ((~~of the notice~~)), or within sixty days of service if the notice was served outside of Washington:

(a) Contacts DCS and makes arrangements to pay the support debt in full;

(b) Requests an administrative hearing ((~~under WAC 388-14A-4530~~)) as provided in WAC 388-14A-4527; ((~~or~~))

(((~~(b)~~))) (c) Provides proof that the NCP receives TANF, GAU, GAX or SSI;

(d) Provides proof that the NCP is currently incarcerated at a state or federal correctional facility;

(e) Provides proof that NCP has filed a proceeding to modify the support order; or

(f) Contacts DCS to negotiate ((~~a reasonable payment schedule on~~)) and sign a written payment agreement that addresses timely payments of current support and the arrears ((~~and agrees to make timely payments of current support~~)).

(i) A reasonable payment schedule is described in WAC 388-14A-4520;

(ii) The stay for negotiation and obtaining signatures may last a maximum of thirty calendar days ((~~after~~)) from when the NCP contacts DCS; and

(((~~(ii)~~))) (iii) If no written payment ((~~schedule~~)) agreement has been ((~~agreed to in writing after~~)) signed within thirty calendar days ((~~have passed~~)) from the date NCP contacted DCS, DCS ((~~may~~)) proceeds with certification of noncompliance((~~:~~

~~(iii) A reasonable payment schedule is described in WAC 388-14A-4520, below; and~~

~~(iv) The NCP may request a conference board review under WAC 388-14A-6400 if the NCP feels that DCS has not negotiated in good faith~~)).

(2) If the NCP files a court or administrative action to modify the child support obligation, DCS stays the certification action.

(((~~(3)~~))) (a) The stay for modification action may not exceed six months unless DCS finds good cause to extend the stay.

(((~~(4)~~))) (b) The NCP must notify DCS that a modification proceeding is pending and must provide a copy of the motion or request for modification to DCS.

(((~~(5)~~))) (3) A stay of certification does not require DCS to withdraw the notice of noncompliance.

(4) A stay of certification granted because the NCP is incarcerated, or because the NCP receives TANF, GAU, GAX or SSI is lifted thirty days after the justification no longer applies to the NCP.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4520 Signing a ((~~repayment~~)) payment agreement may avoid certification for noncompliance. (1) If a noncustodial parent (NCP) signs a ((~~repayment~~)) payment agreement, the division of child support (DCS) stays the certification action. ((~~The NCP must agree to pay current support in a timely manner and make regular payments on the support debt.~~))

(2) The signing of a payment agreement does not require DCS to withdraw the notice of noncompliance.

(3) The ((~~repayment~~)) payment agreement must state that if the NCP fails to make payments under the terms of the agreement, DCS may resume certification action.

(((~~(3) The signing of a repayment agreement does not require DCS to withdraw the notice of noncompliance.~~)))

(4) In ((~~setting the repayment amount~~)) proposing or approving a payment agreement, DCS must take into account:

(a) The amount of the arrearages.

(b) The amount of the current support order.

(c) The ((~~financial situation of the NCP and the~~)) earnings of the NCP.

(d) The needs of all children who rely on the NCP for support. ((~~The NCP must supply sufficient financial information to allow DCS to analyze and document the NCP's financial situation and requirements, including normal living expenses and emergencies.~~))

(e) Any documented factors which make the NCP eligible for a monthly arrears payment less than the amount suggested in the table in subsection (6) of this section, including but not limited to:

(i) Special needs children; or

(ii) Uninsured health care expenses.

(f) Any documented factors which make the NCP eligible for an arrears payment higher than the amount suggested in the table in subsection (6) of this section, including but not limited to the factors listed in RCW 26.19.075 for deviation from the standard calculation for child support obligations.

(g) If the NCP does not supply sufficient financial information and documentation to allow DCS to analyze and document the NCP's current financial situation and requirements, DCS may not be able to tailor a repayment plan to the individual circumstances of the NCP.

(5) The payment agreement must require timely payments of current support and on the arrears, but may in appropriate circumstances:

(a) Provide for the payment of less than the current monthly support obligation for a reasonable time without requiring any payment on the arrears; and

(b) Require a reasonable payment schedule on the arrears once the NCP is paying the entire current monthly support obligation.

(6) The payment agreement may, in appropriate cases, require the NCP to engage in employment-enhancing activities to attain a satisfactory payment level. These employ-

ment-enhancing activities must be tailored to the individual circumstances of the NCP.

(7)(a) A reasonable monthly arrears payment is defined as a percentage of the NCP's "adjusted net income," which is the NCP's net monthly income minus any current support obligation. Documented factors as specified in subsection (4) of this section may be the basis for adjustments to the amounts on this table in order to develop a payment agreement which is tailored to the individual financial circumstances of the NCP.

(b) The following table sets forth the suggested monthly payments on arrears:

Monthly adjusted net income (ANI)	Monthly arrears payment = Percentage of ANI
$1,000 or less	2%
$1,001 to $1,200	3%
$1,201 to $1,500	4%
$1,501 to $1,900	5%
$1,901 to $2,400	6%
$2,401 to $3,000	7%
$3,001 or more	8%

(((~~(6)~~))) (c) Examples of how to calculate the arrears payment are as follows:

(a) Monthly net income	=	$1,500
Current support	=	$300
Adjusted net income (ANI)	=	$1,200
Arrears payment = 3% of ANI (((~~$1,200~~)))	=	$36
(b) Monthly net income	=	$3,100
Current support	=	$-0-
Adjusted net income (ANI)	=	$3,100
Arrears payment = 8% of ANI (((~~$3,100~~)))	=	$248

~~(((7) The NCP must document any factors which make the NCP eligible for an arrears payment less than the amount shown in the table in subsection (5). Such factors include, but are not limited to:~~

~~(a) Special needs children, or~~

~~(b) Uninsured medical expenses.~~

~~(8) The custodial parent and/or DCS must document any factors which make the NCP eligible for an arrears payment higher than the amount shown in the table in subsection (5). Such factors include, but are not limited to the factors listed in RCW 26.19.075 for deviation from the standard calculation for child support obligations.~~

~~(9) If the NCP signs a repayment agreement under this section under the circumstances spelled out in WAC 388-14A-4510 (2) or (3), the NCP may make voluntary payments but DCS does not resume certification action until thirty days after NCP is released or stops receiving public assistance~~))

(8) If the NCP and DCS are unable to agree to a payment plan, DCS schedules the matter for an administrative hearing.

(9) If the NCP fails to make payments under the terms of the agreement, DCS may resume certification action with no further notice to the NCP.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4525 How to obtain a release of certification for noncompliance. (1) After the division of child support (DCS) has certified a noncustodial parent (NCP) to a licensing entity, the NCP may obtain a release from DCS ((~~by taking the following actions~~)) if one of the following occurs:

(a) ((~~Paying~~)) NCP pays the support debt in full, in which case DCS withdraws the notice of noncompliance; ((~~or~~))

(b) ((~~Signing~~)) NCP enters into a ((~~repayment~~)) payment agreement under WAC 388-14A-4520 ((~~and paying the first installment due under the agreement. Signing a repayment agreement does not require DCS to withdraw the notice of noncompliance~~));

(c) DCS confirms that the NCP receives GAU, GAX, TANF or SSI;

(d) DCS confirms that the NCP is currently incarcerated at a state or federal correctional facility;

(e) The prosecuting attorney determines that the NCP is substantially complying with a contempt repayment agreement and recommends release;

(f) DCS receives any type of recurring payment, including but not limited to:

(i) Employer payments;

(ii) Unemployment compensation;

(iii) Labor and industries benefits;

(iv) Social security benefits;

(v) Retirement account garnishments;

(g) DCS believes that release of the certification for noncompliance will facilitate the NCP seeking employment, modification of the child support order(s), or compliance with the current order(s);

(h) DCS certified the NCP because the NCP failed to make a timely objection to the notice of noncompliance and:

(i) The NCP filed a late request for hearing; and

(ii) The final administrative order entered under WAC 388-14A-4530 contains a finding that the NCP made a good faith effort to comply with the order and establishes a payment schedule.

(2) If the NCP believes that DCS is not negotiating in good faith when trying to reach a payment agreement that would lead to release of the certification, the NCP may request a conference board under WAC 388-14A-6400.

(3) By signing a payment agreement with DCS, the NCP waives the administrative hearing right associated with any notice of noncompliance under WAC 388-14A-4505 which was served before the agreement was signed.

(4) DCS retains the right to reinstate the suspension action if the NCP meets the conditions of reinstatement but:

(a) Fails to follow through in a timely fashion with any verbal or written agreement made with DCS; or

(b) Fails to comply with the payment schedule contained in an administrative order entered under WAC 388-14A-4530.

(5) DCS may reinstate the suspension action at any time after releasing the certification, as long as the NCP's case still meets qualifications for certification.

(6) Unless the NCP pays the support debt in full, DCS is not required to withdraw the notice of noncompliance.

(7) DCS must provide a copy of the release to any licensing entity to which DCS has certified the NCP.

((~~(3)~~)) (8) The NCP must comply with any requirements of the licensing entity to get the license reinstated or reissued.

NEW SECTION

WAC 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension? (1) After service of a notice of noncompliance and intent to suspend licenses under WAC 388-14A-4505, the noncustodial parent (NCP) may request an administrative hearing, also known as an adjudicative proceeding, under chapter 34.05 RCW.

(2) A hearing request may be made in writing or orally, and may be made in person or by phone.

(3) A timely request for hearing must be received by the division of child support (DCS) within twenty days of service of the notice of noncompliance, or within sixty days if the notice was served outside of the state of Washington.

(4) The effective date of a written request for hearing is the day the request is received by DCS. A written request for hearing must include:

(a) The NCP's current mailing address; and

(b) The NCP's daytime phone number, if available.

(5) The NCP may make an oral request for hearing under WAC 388-14A-6100:

(a) The request must contain sufficient information for DCS to identify the NCP, the DCS action objected to, and the case or cases involved in the hearing request.

(b) The effective date of an oral request for hearing is the date that the NCP makes a complete oral request for hearing, to any DCS representative in person or by leaving a message on the automated voice mail system of any DCS field office.

(6) If the NCP makes a timely request for hearing, DCS stays (delays) the certification process until a final administrative order is entered.

(7) If the NCP makes a late request for hearing after DCS has already certified the NCP to a licensing agency which has suspended a license, DCS schedules the matter for hearing with the office of administrative hearings, as provided in WAC 388-14A-4535.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4530 ((~~Administrative hearings~~)) What happens at an administrative hearing regarding license suspension ((~~are limited in scope.~~))? (1) An administrative hearing on a notice of noncompliance under WAC 388-14A-4505 is limited to the following issues:

(a) Whether the person named in the child support order is the noncustodial parent (NCP);

(b) Whether the NCP is required to pay child support under a child support order; ((~~and~~))

(c) Whether the NCP is at least six months in arrears; and

(d) Whether the NCP has made a good faith effort to comply with the order.

(2) If the administrative law judge (ALJ) finds that the NCP is not in compliance with the support order, but has made a good faith effort to comply, the ALJ must formulate a payment schedule after considering:

(a) The amount of the arrearages owed;

(b) The amount of the current support order;

(c) The earnings of the NCP; and

(d) The needs of all children who rely on the NCP for support.

(3) The ALJ must:

(a) Consider the individual financial circumstances of the NCP in evaluating the parent's ability to pay; and

(b) Establish a fair and reasonable payment schedule tailored to the NCP's individual circumstances.

(4) The payment schedule may:

(a) Include a graduated payment plan as described in WAC 388-14A-4520(5);

(b) Require the NCP to engage in employment-enhancing activities in order to attain a satisfactory payment level; and

(c) May be for the payment of less than current monthly support for a reasonable time.

(8) Unless the NCP shows an ability to pay immediately, the payment schedule is not required to include a lump sum payment for the amount of the arrears.

(9) The administrative order must contain a provision stating that, if the NCP does not comply with the payment schedule, DCS may proceed with the certification process with no further notice to the NCP.

(10) The administrative law judge (ALJ) is not required to calculate the outstanding support debt beyond determining whether the NCP is at least six months in arrears. Any debt calculation shall not be binding on the department or the NCP beyond the determination that there is at least six months of arrears.

((~~(3) If the NCP requests a hearing on the notice, DCS stays the certification process until the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP.~~

~~(4)~~)) (11) If the NCP requests a hearing on the notice of noncompliance under the circumstances spelled out in WAC 388-14A-4510 ((~~(2) and (3)~~)) (1)(a) or (b), DCS asks the office of administrative hearings to schedule a hearing. If the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP, DCS stays the certification process until thirty days after the NCP is released or stops receiving cash public assistance.

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

NEW SECTION

WAC 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended? (1) The noncustodial parent (NCP) may file a late request for hearing if the division of child support (DCS) has certified the noncustodial parent (NCP) because of failure to object to the notice of noncompliance as provided in WAC

388-14A-4512(1), even if the department of licensing (DOL) or other licensing entity has suspended the NCP's license.

(2) When an NCP files a late request for hearing, DCS does not release the certification until:

(a) The NCP pays the back support debt in full;

(b) DCS and the NCP sign a payment agreement under WAC 388-14A-4520;

(c) There is a final administrative order entered establishing a payment schedule because the NCP made a good faith effort to comply with the order; or

(d) There is a final administrative order entered determining that the NCP did not owe more than six months worth of support and that license suspension was not appropriate at the time of the certification.

(3) If the late request for hearing is filed within one year of the date the notice was served, DCS schedules the matter for administrative hearing under WAC 388-14A-4530.

(4) If the late request for hearing is filed more than one year after the date the notice was served, DCS schedules the matter for administrative hearing under WAC 388-14A-4530.

(a) The NCP must show good cause for the late request for hearing.

(b) The administrative law judge (ALJ) must find that the NCP has made a showing of good cause before granting relief in an administrative order.

(5) DCS and the NCP may negotiate and sign a payment agreement under WAC 388-14A-4520 at any time during this process.

NEW SECTION

WAC 388-14A-4540 When is a DCS conference board available regarding license suspension issues? (1) A noncustodial parent (NCP) may request a conference board under WAC 388-14A-6400 to resolve any complaints and problems concerning a division of child support (DCS) case.

(2) If the NCP feels that DCS is not acting in good faith when negotiating a payment agreement to avoid license suspension or to get a license reinstated, NCP may request a conference board at any time during the process except during the time period between the service of a notice of noncompliance under WAC 388-14A-4505 and the entry of a final administrative order under WAC 388-14A-4530.

WSR 09-24-005
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 09-257—Filed November 19, 2009, 2:46 p.m., effective November 19, 2009, 2:46 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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 remaining pot limit restrictions are needed to achieve state/treaty allocation objectives that comply with state/treaty management agreements. There is insufficient time to adopt 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: November 19, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-04000K Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040, 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 Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B).

The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection in Crab Management Region 1.

REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

WAC 220-52-04000J	Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (09-222)

WSR 09-24-010

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed November 20, 2009, 9:55 a.m., effective November 20, 2009, 9:55 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amendments to WAC 192-30-035 implement HB 1338 (chapter 83, Laws of 2009), effective July 26, 2009. The new law broadens the authority of the commissioner of the employment security department to waive application of the higher ta [tax] rate for delinquent taxpayers if the employer acted in good faith and application of the higher rate would be inequitable. The WAC provides standards for the commissioner to apply in determining whether to waive the higher rate.

Citation of Existing Rules Affected by this Order: Amending WAC 192-320-035.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.29.010.

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 amendments to RCW 50.29.010 in HB 1338 took effect July 26, 2009, and specifically refer to the commissioner adopting rules to determine if an employer acted in good faith and if applying the delinquent tax rate would be inequitable. Adoption of consistent standards for the commissioner's determination is necessary for the general welfare, including maintenance of the unemployment insurance trust fund. The timelines for adoption of permanent rules precluded adoption of a permanent rule by July 26, 2009. The CR-103P has been filed but the permanent rules will not take effect for thirty-one days. The emergency rules are adopted to cover the period between adoption and effective date of the 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 1, Repealed 0.

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

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

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

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

Paul Trause

Deputy Commissioner

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports? (1) An employer that has not submitted by September 30 all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1 of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1. These minimum amounts only apply to taxes, interest, and penalties, not to failure to submit required reports.

(3)(a) This section does not apply ((~~to services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority~~)) if the otherwise qualified ((~~domestic~~)) employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the commissioner, recognizing that the delinquent tax rate only applies after the employer has already received a grace period of not less than two months beyond the normal due date for reports and taxes due. The commissioner's decision shall be subject to administrative review only under the arbitrary and capricious standard and shall be reversed in administrative proceedings only for manifest injustice based on clear and convincing evidence.

(b) Except for services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the commissioner will not find in the usual course of business that application of the rate for delinquent taxes would be inequitable:

(i) If the employer has been late with filing or with payment in more than one of the last eight consecutive quarters immediately preceding the applicable period;

(ii) If the delinquency was due to absences of key personnel and the absences were because of business trips, vacations, personnel turnover, or terminations;

(iii) If the delinquency was due to adjusting by more than two quarters the liable date when the employer first had employees; or

(iv) If the employer is a successor, the rate for delinquent taxes is based on the predecessor, and the successor could or should have determined the predecessor's tax status at the time of the transfer.

(c) Examples of when the commissioner may find that application of the rate for delinquent taxes would be inequitable include if the delinquency results from:

(i) An employer reducing its tax payment by the amount specified as a credit on the most recent account statement from the department, when the credit amount is later determined to be inaccurate;

(ii) Taxes due which are determined as the result of a voluntary audit;

(iii) Resolution of a pending appeal and any amounts due are paid within thirty days of the final resolution of the

amount due or the department approves a deferred payment contract within thirty days of the final resolution of the amount due;

(iv) The serious illness or death of key personnel or their family that extends throughout the period in which the tax could have been paid prior to September 30 and no reasonable alternative personnel were available and any amounts due are paid no later than December 31 of such year; or

(v) An employee or other contracted person committing fraud, embezzlement, theft, or conversion, the employer could not immediately detect or prevent the wrongful act, the employer had reasonable safeguards or internal controls in place, the employer filed a police report, and any amounts due are paid within thirty days of when the employer could reasonably have discovered the illegal act.

(d) When determining whether an employer acted in good faith and that application of the rate for delinquent taxes would be inequitable, the following factors are considered neutral and neither support nor preclude waiver of the rate for delinquent taxes:

(i) The harshness of the burden on the employer caused by application of the rate for delinquent taxes;

(ii) Lack of knowledge by the employer, bookkeepers, accountants, or other financial advisors about application of the law or the potential harshness of the rate;

(iii) Delay by the employer or its representative in opening mail or receiving other notice from the department; or

(iv) Error by a payroll, bookkeeping, or accounting service on behalf of an employer.

(4) The department shall provide notice to the employer or employer's agent that ((~~he or she~~)) the employer may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert or statement in July, August, or September billing statements or in a letter or notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice. No notice need be provided to an employer that is not currently registered and active.

(5) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, unless the department approves a deferred payment contract with the employer by September 30 of the previous rate year. If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than in rate class 40.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40.

(7) Assignment of the rate for delinquent taxes is not considered a penalty which is subject to waiver under WAC 192-310-030.

(8) The amendments to this section effective July 26, 2009, apply only to tax rates assigned after that date.

WSR 09-24-013

EMERGENCY RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed November 23, 2009, 7:47 a.m., effective November 23, 2009, 7:47 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending WAC 388-832-0145 on an emergency basis to revise eligibility for respite services for individuals participating in the individual and family services program as directed by the legislature.

Citation of Existing Rules Affected by this Order: Amending WAC 388-832-0145.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040, 71A.12.161.

Other Authority: SB 5547, chapter 312, Laws of 2009, PV 61st legislature; chapter 34.05 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; 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: The department was directed to implement, effective July 26, 2009 (SB 5547), changes to eligibility for respite for individuals participating in the individual and family services program. It is necessary to file the emergency rule to prevent clients or potential clients from being wrongly found ineligible for services or benefits. A CR-101 has been filed and the CR-102 process is concurrently being completed with this emergency rule so that the department has ample time to receive stakeholder input. This extends the first emergency filed as WSR 09-16-020.

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

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

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

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

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

Date Adopted: November 16, 2009.

Stephanie E. Vaughn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0145 Who is eligible to receive respite care? You are eligible to receive respite care if you are approved for IFS program services and:

(1) You live in your family home and no one living with you is paid to be your caregiver((~~.~~));

(2) You ((~~live~~)) are an adult living in your family home with a ((~~paid caregiver who is your natural, step, or adoptive~~)) parent who provides personal care for you; or

(3) You are an adult living with a family member who has replaced your parent as your primary caregiver and who provides personal care to you.

WSR 09-24-048
EMERGENCY RULES
DEPARTMENT OF COMMERCE

[Filed November 24, 2009, 11:30 a.m., effective November 24, 2009, 11:30 a.m.]

Effective Date of Rule: Immediately.

Purpose: Guidelines for implementation of three federal bond programs: Qualified energy conservation bonds, recovery zone economic development bonds, and recovery zone facility bonds. To establish definitions, procedures and standards for state and local government planning and compliance with the new bonding programs and new provisions of existing programs.

Citation of Existing Rules Affected by this Order: Amending chapter 365-135 WAC.

Statutory Authority for Adoption: Chapter 39.86 RCW and Executive Order 09-06.

Other Authority: Federal American Recovery and Reinvestment Act of 2009 and Section 301(a) of Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Division C of Pub. L. 110-343.

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: Federal law contains deadlines for issuance of the bonds that might not be met if rules are not adopted immediately for administering the bond allocations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 3, Amended 6, 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 3, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 3, Amended 6, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 23, 2009.

Rogers Weed
Agency Director

AMENDATORY SECTION (Amending WSR 97-02-093, filed 1/2/97, effective 2/2/97)

WAC 365-135-010 Purpose. The federal Tax Reform Act of 1986 imposes an annual ceiling on each state limiting the dollar volume of certain private activity bonds that can be issued. In addition, Congress from time-to-time enacts volume ceilings on other types of bonds. To allocate ((~~this~~)) the bond volume ceilings among eligible issuers in Washington state, chapter 297, Laws of 1987 as amended has been enacted. In accordance with the statute, the department of ((~~community, trade, and economic development~~)) commerce will allocate the state's ((~~private activity~~)) bond ceilings and establish by rule a fee schedule. The department will carry out such functions through the bond cap allocation program (BCAP).

AMENDATORY SECTION (Amending WSR 00-02-061, filed 1/3/00, effective 2/3/00)

WAC 365-135-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly provides otherwise.

Allocation fee: The total fee paid by the issuer to the department for receiving allocation from the BCAP. It is assessed by the department based on multiplying the requested allocation amount by ((~~the following figures:~~

~~December 31, 1999, through June 30, 2000~~	~~.00026~~
~~July 1, 2000, through June 30, 2001~~	~~.000269~~
~~July 1, 2001, and thereafter~~))	.000277((~~;~~))

or five hundred dollars, whichever is greater. The allocation fee, which includes the nonrefundable five hundred dollar filing fee, is due from the issuer upon filing an application.

Department: The Washington state department of ((~~community, trade, and economic development~~)) commerce.

Extension fee: The fee the department may assess when an issuer requests and is granted an extension for issuing the allocation or carryforward of the allocation. The amount of the fee will not exceed two hundred fifty dollars and is nonrefundable.

Filing fee: The nonrefundable five hundred dollar portion of the allocation fee.

Reallocation: The assignment of an unused portion of the state ceiling from one bond use category or issuer to another or the provision of a certificate of approval to any issuer for an allocation amount which previously had been returned to the department.

Statute: Chapter 39.86 RCW.

Originally awarded locality: A city or county that has been allocated qualified energy conservation bond, recovery zone economic development bond or recovery zone facility bond authority by a formula contained in federal law.

Original allocation: The amount of qualified energy conservation bond, recovery zone economic development bond or recovery zone facility bond issuing authority awarded to an originally awarded locality by a formula in federal law.

AMENDATORY SECTION (Amending Order 87-18, filed 9/16/87)

WAC 365-135-030 Initial allocations. Initial allocations shall be made in accordance with provisions of the statute and federal code. ((~~In addition, until September 1 of each calendar year, at least twenty-five percent of the initial allocation for the small issue bond use category shall be reserved for the community economic revitalization board's umbrella bond program, except that this amount may be reduced if the board indicates that a reduced amount is appropriate.~~))

AMENDATORY SECTION (Amending WSR 97-02-093, filed 1/2/97, effective 2/2/97)

WAC 365-135-035 Reallocations. (1) Housing programs and projects will be given priority for the first fifty percent of the annual tax exempt private activity bond cap available after September 1 each year because of the need for affordable housing, the program's ability to serve lower-income households, its contribution to and support of economic development and long-term benefits that may be achieved.

(2) Bond cap will consider other categories of applications including industrial development bonds, exempt facilities, public utility districts, and student loans for allocation from the remaining bond cap available after September 1.

(a) The program will consider and then evaluate and balance the public benefits listed in statute and in rule in making allocation decisions. Allocations will be based upon the likelihood of a project achieving the highest overall public purposes and the degree to which a project:

(i) Provides an economic boost to an economically distressed community (based on the three-year unemployment figures from employment security);

(ii) Creates or retains jobs that pay higher than the median wage for the county in which it is located, in sustainable industries, particularly for lower-income persons;

(iii) Retains or expands the local tax base;

(iv) Encourages and facilitates the provision of student loans for institutions of higher education;

(v) Reduces environmental pollution;

(vi) Facilitates investments in new manufacturing technologies enabling Washington industries to stay competitive;

(vii) Diverts solid waste from disposal and manufactures it into value-added products;

(viii) Encourages the environmentally sound handling of solid waste using best management's practices; or

(ix) Produces competitively priced energy for use in the state.

(b) The criteria in this section and other applicable criteria otherwise established in statute and rule shall not be considered as ranked in any particular order but shall be weighed and balanced for each application and among applications in making allocation decisions.

(3) For the purposes of qualified energy conservation bonds, the federal code and U.S. Department of Treasury guidance contained in IRS Notice 2009-29 allow formula allocations to be reallocated to the state and passed on by the state to other issuers. The following procedures will apply to qualified energy conservation bond reallocations:

(a) An originally awarded locality that intends to use its original allocation or intends to designate another issuer within the jurisdiction of the originally awarded locality to use the original allocation must file a *Notice of Intent* form with the department by January 1, 2010.

(b) An originally awarded locality that has chosen to decline its original allocation may affirmatively reallocate to the state by submitting an appropriately marked *Notice of Intent* form.

(i) The form must be signed by the official(s) of the jurisdiction authorized to execute the form pursuant to a resolution declining the allocation adopted by the jurisdiction's governing body; and

(ii) The form and the resolution declining the allocation must be delivered to the department by January 1, 2010.

(c) An originally awarded locality that has used the *Notice of Intent* form to express its intent to use its original allocation may amend the *Notice of Intent* at a later time if it is determined that the locality is unable to use the allocation and has decided to reallocate to the state.

(d) An originally awarded locality intending to use its original allocation must provide the department with project information and supporting documents by February 1, 2010. Supporting documents include *Bond Counsel* and *Underwriter Statement of Intent* forms and a certified copy of an inducement resolution by the governing board. A locality may request an extension if filed by February 1, 2010.

(e) If an originally awarded locality has not provided the department with the documents required by subsections (1), (2) or (4) of this section or has not issued bonds or requested an extension by June 1, 2010, the department may issue a *Notice of Intent to Reallocate*, informing the locality of the intent to reallocate the original allocation to another locality.

(f) An originally awarded locality will have fifteen days from receipt of a *Notice of Intent to Reallocate* to respond to the department with the required documentation or to ask the department to reconsider the reallocation determination.

(g) The department will respond to a request to reconsider a reallocation determination within ten business days with a decision by the assistant director of the local government division or designee to grant an extended time in which the issuing jurisdiction must demonstrate progress toward a qualified energy conservation bond issuance, or a decision to go forward with reallocation of the authority. The length of the time extension shall be determined at the discretion of the assistant director.

(4) For the purposes of recovery zone economic development bond and recovery zone facility bond allocations, an originally awarded locality may designate other issuing localities within the jurisdiction of the originally awarded locality to use all or a portion of its original allocation by any procedure mutually acceptable to both parties, on condition that the originally awarded locality provides documentation of the designation to the department within thirty days of making

the designation and ensures that all other department requests for documentation are met.

If an originally awarded locality is not able to or chooses not to use its original allocation or to offer it to another issuer within the jurisdiction of the originally awarded locality, the authority may be waived. Waived recovery zone economic development bond or recovery zone facility bond authority may be reallocated by the department to other issuing localities. In addition, if an originally awarded locality does not respond to the department's requests for information regarding its intent to use its original allocation or progress in moving toward issuance by the federal deadline, the department may deem the allocation to have been waived.

In such cases, federal code provisions and U.S. Department of Treasury guidance in IRS Notice 2009-50 allow original allocations to be waived then reallocated by the state to other issuing localities. The following procedures will apply to any reallocations of waived recovery zone economic development bond or recovery zone facility bond authority:

(a) An originally awarded locality that intends to use its original allocation or intends to designate another issuer within the jurisdiction of the originally awarded locality to use the original allocation must file a Notice of Intent form with the department by January 1, 2010.

(b) An originally awarded locality that has chosen to decline its original allocation may affirmatively waive the allocation for reallocation by the state by submitting an appropriately marked *Notice of Intent* form.

(i) The form must be signed by the official(s) of the jurisdiction authorized to execute the form pursuant to a resolution declining the allocation adopted by the jurisdiction's governing body; and

(ii) The form and the resolution declining the allocation must be delivered to the department by January 1, 2010.

(c) An originally awarded locality that has used the *Notice of Intent* form to express its intent to use its original allocation may amend the *Notice of Intent* at a later time if it is determined that the locality is unable to use its original allocation and has decided to waive the allocation for reallocation by the state.

(d) An originally awarded locality intending to use its original allocation must provide the department with project information and supporting documents by February 1, 2010. Supporting documents include *Bond Counsel* and *Underwriter Statement of Intent* forms and a certified copy of an inducement resolution by the governing board. A locality may request an extension if filed by February 1, 2010.

(e) If an originally awarded locality has not provided the department with the documents required by subsections (1), (2) or (4) of this section or has not issued bonds or requested an extension by June 1, 2010, the department may issue a *Notice of Intent to Reallocate*, informing the locality of the intent to deem the original allocation to have been waived and to reallocate it to another locality.

(f) An originally awarded locality will have fifteen days from receipt of a *Notice of Intent to Reallocate* to respond to the department with the required documentation or to ask the department to reconsider its waiver and reallocation determination.

(g) The department will respond to the request to reconsider its waiver and reallocation determination within ten business days with a decision by the assistant director of the local government division to grant an extended time in which the issuing jurisdiction must demonstrate progress toward a recovery zone economic development bond or recovery zone facility bond issuance, or a decision to go forward with waiver and reallocation of the authority. The length of the time extension shall be determined at the discretion of the assistant director.

(h) All recovery zone bonds must be issued by the deadlines established in the code.

AMENDATORY SECTION (Amending WSR 97-02-093, filed 1/2/97, effective 2/2/97)

WAC 365-135-040 Procedure for obtaining an allocation, reallocation, extension, or carryforward. No issuer may receive an allocation, or reallocation, of the state ceiling without a certificate of approval from the department.

Issuers may apply for a certificate of approval by submitting a completed allocation request form to the department and paying an allocation fee. An allocation request form will be available from the department.

The department will respond to any such completed request in accordance with the statute. If an issuer does not issue ((~~private activity~~)) bonds or mortgage credit certificates in the amount and by the date for which it has received a certificate of approval, the unused amount shall revert to the department for reallocation, unless an extension or carryforward is granted.

An issuer may apply for an extension or carryforward of its allocation by submitting its request to the department and supplying any additional information required by the department. The department will promptly notify the issuer if any fees are due and respond to the request for extension or carryforward in a timely manner.

The housing category will be given priority for carryforward allocations of the annual tax exempt private activity bond ceiling.

AMENDATORY SECTION (Amending WSR 97-02-093, filed 1/2/97, effective 2/2/97)

WAC 365-135-050 Fees. (1) A fee schedule is hereby established, which will consist of:

(a) An allocation or reallocation fee, due at the time a request is filed with the department of ((~~community, trade, and economic development~~)) commerce; and

(b) In certain cases, an extension or carryforward fee.

If an issuer's allocation or reallocation request is denied, the allocation fee, less the five hundred dollar filing fee, will be refunded.

Annually, the department will determine if an adjustment of the fees is warranted by reviewing the account of BCAP revenues and expenses for the preceding fiscal year and by considering BCAP budget projections for the following fiscal year.

(2) Payment of the fees will occur as indicated by the schedule below.

(a) Filing. Upon filing an allocation request, the issuer must submit the total allocation fee, of which the five hundred dollar filing fee is nonrefundable.

(b) Extensions and carryforwards. The department may assess an extension fee, not to exceed two hundred fifty dollars, upon any request for extension or carryforward. The extension fee must be paid prior to the extension being granted. However, if the BCAP administrator determines that an issuer's allocation fee included a sufficient amount to pay for the additional administrative expenses associated with granting or denying such a request, the additional fee shall be waived.

(c) Refunds. If a requesting issuer pays any fee greater than the amount assessed by the department, that amount shall be refunded by the department.

If the allocation request is denied or a partial allocation is approved, the issuer will receive either a full or partial refund of the allocation fee, less the five hundred dollar filing fee. Once the allocation amount is approved, the allocation fee is not refundable, even if the issuer does not issue all or any of the approved allocation.

NEW SECTION

WAC 365-135-080 Criteria for state allocation and reallocation of qualified energy conservation bonds. The following criteria will be used by the department to prioritize allocation and reallocation requests. Not all criteria need to be demonstrated in a single project:

(1) The extent to which the project demonstrates the potential to directly conserve energy.

(2) The extent to which the project supports the development or implementation of innovative energy conservation technology.

(3) The extent to which the project uses renewable resources to produce energy.

(4) The number of citizens benefiting from the project.

(5) The number of jobs created or retained by the project and the amount of qualified energy conservation bond authority per job created or retained.

(6) The readiness of the project to proceed.

(7) The likelihood that the issuer will use the allocation within the timelines.

(8) The amount of other public and private funding leveraged by the qualified energy conservation bond allocation.

(9) The amount of local community support for the project.

NEW SECTION

WAC 365-135-090 Criteria for reallocation of recovery zone economic development bonds. In accordance with the intent of the code and state priorities, the following criteria will be used to prioritize reallocation requests by the department:

(1) The relative level of economic distress in the local community.

(2) The number of citizens benefiting from the project.

(3) The estimated positive economic impact of the project on the state or the local community.

(4) The number of jobs created or retained by the project and the amount of recovery zone economic development bond authority per job created or retained.

(5) The readiness of the project to proceed.

(6) The likelihood that the issuer will use the allocation within the timelines.

(7) The amount of other public and private funding leveraged by the recovery zone economic development bond allocation.

(8) The amount of local community support for the project.

NEW SECTION

WAC 365-135-100 Criteria for state allocation and reallocation for recovery zone facility bonds. In accordance with the intent of the code and state priorities, the following criteria will be used to prioritize reallocation requests by the department:

(1) The relative level of economic distress in the local community.

(2) The number of citizens benefiting from the project.

(3) The estimated positive economic impact of the project on the state or the local community.

(4) The number of jobs created or retained by the project and the amount of recovery zone facility bond authority per job created or retained.

(5) The readiness of the project to proceed.

(6) The likelihood that the issuer will use the allocation within the timelines.

(7) The amount of other public and private funding leveraged by the recovery zone facility bond allocation.

(8) The amount of local community support for the project.

WSR 09-24-054
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 09-258—Filed November 24, 2009, 4:27 p.m., effective November 24, 2009, 4:27 p.m.]

Effective Date of Rule: Immediately.

Purpose: Commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047, 77.04.020, and 77.70.430.

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: Mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The stepped opening periods/areas will also provide for fair start provisions. Pot limits will reduce

the crowding effect in this restricted area. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 24, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-04000L 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, or Washington coastal or adjacent waters of the Pacific Ocean through January 31, 2010, from any vessel unless:

(a) A valid Washington crab vessel-hold inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from November 30, 2009, to December 25, 2009, are only valid for the area south of 46°28.00 N. Lat.

(b) The vessel-hold inspection certificate numbers are recorded on all shellfish tickets completed for Coastal Dungeness crab landings through January 31, 2010.

(2) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for persons participating in the Columbia River, Coastal, 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 Dungeness 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.

(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 participated in the Coastal Dungeness crab fishery from Klipsan Beach (46º28.00 North Latitude) to Point Arena, CA, including Willapa Bay and the Columbia River, may possess crab for delivery into Washington ports south of 47º00.00 N. Lat., provided the crab were taken south of Klipsan (46º28.00 N. Lat.).

(b) The vessel does not enter the area north of 47º00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife at the phone number below and allows a vessel-hold inspection if requested by Fish and Wildlife officers prior to entering this area. Prior to entering the area north of 47º00.00 N. Lat., the vessel operator must call 360-581-3337, and report 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 220-52-04600K Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) Open area: The area from Klipsan Beach (46º28.00) to the WA/OR border (46º15.00), and Willapa Bay.

(2) For the purposes of this order, the waters of Willapa Bay are defined to include the marine waters east of a line connecting 46º44.76 N, 124º05.76 W and 46º38.93 N, 124º04.33 W.

(3) Crab gear may be set beginning at 8:00 a.m., November 28, 2009.

(4) It is permissible to pull crab gear beginning at 12:01 a.m., December 1, 2009.

(5) Vessels that participate in the Coastal Dungeness commercial crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46º28.00), including Willapa Bay, before the area north of Klipsan Beach (46º28.00) opens, are prohibited from:

a. Fishing in the area between Klipsan Beach (46º28.00) and Oysterville (46º33.00) until 8:00 a.m., January 12, 2009.

b. Fishing in the area between Oysterville (46º33.00) and Destruction Island until 8:00 a,m., February 6, 2009.

c. Fishing in the area between Destruction Island and the U.S. Canadian border until 8:00 a.m., February 6, 2009.

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

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

WSR 09-24-066
EMERGENCY RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed November 25, 2009, 10:43 a.m., effective November 25, 2009, 10:43 a.m.]

Effective Date of Rule: Immediately.

Purpose: To provide adequate time for pilot trainees to complete initial evaluations and local knowledge exams.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-078.

Statutory Authority for Adoption: Chapter 88.16 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: As it is currently written, the existing timeline for completion of the initial evaluation period of the pilot training program may, because of technical timing issues, jeopardize a pilot trainee's entire training program and eligibility for licensure. If not modified, the current timeline would compel the termination of the training program after eight months if a trainee is unable to successfully complete the specified local knowledge examination. An extension of time for the administration of this examination is necessary so that a trainee is not eliminated from training. Unless these changes are made, three trainees would be terminated this month and a fourth terminated next month. Losing trainees due to a premature cutoff currently required under WAC 363-116-078 would severely impact the board's goal of assuring the timely licensure of new pilots and maintenance of the proper number of licensed pilots in the Puget Sound pilotage district. Failure to maintain the proper number of licensed pilots in the district has the potential to impact the safe and timely movement of vessels both now and in the future.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: November 12, 2009.

Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

WAC 363-116-078 Training program. After passing the written examination and simulator evaluation, pilot applicants pursuing a pilot license must enter and successfully complete a training program specified by the board.

(1) Notification. Pilot applicants on the list waiting to enter the training program shall provide the board with a current address to be used for notification for entry into the training program. Such address shall be a place at which mail is delivered. In addition, a pilot applicant may provide the board with other means of contact such as a phone number, fax number, and/or an e-mail address. The mailing address will, however, be considered the primary means of notification by the board. It will be the responsibility of the pilot applicant to ensure that the board has a current mailing address at all times. If a pilot applicant cannot personally receive mail at the address provided to the board for any period of time, another person may be designated in writing with a notarized copy to the board as having power of attorney specifically to act in the pilot applicant's behalf regarding such notice. If notice sent to the address provided by the pilot applicant is returned after three attempts to deliver, that pilot applicant will be skipped and the next pilot applicant on the list will be contacted for entry into the training program. A person so skipped will remain next on the list. A pilot applicant or his/her designated attorney in fact shall respond within fifteen calendar days of receipt of notification to accept, refuse, or request a delayed entry into the training program.

(2) Entry. At such time that the board chooses to start a pilot applicant in the training program, notification shall be given to the first person on the list. Pilot applicants shall be eligible in the order of their total combined scores on the written examination and simulator evaluation or as otherwise may be determined by the board. A pilot applicant who refuses entry into the program will be removed from the waiting list with no further obligation by the board to offer a position in the training program to such pilot applicant. A pilot applicant who is not able to start the training program on the date the board sets for that pilot applicant's entry into the training program may, with written consent of the board, delay entry into the training program for up to two months. The board will then give notice to the next pilot applicant on the list to enter the training program. The pilot applicant who delays entry, shall remain eligible for the next position in the training program, provided that the next position becomes available within the earlier of:

(a) Four years from the pilot applicant's taking the written examination; or

(b) The date scheduled for the next pilotage examination. Pilot applicants not able to start in the training program within two months of the date the board sets for that pilot applicant's entry into the training program and who do not obtain the board's written consent to delay entry into the training program shall no longer be eligible for the training program without retaking the examination provided in WAC 363-116-076 and the simulator evaluation provided in WAC 363-116-077.

(3) Training license. Prior to receiving a training license pilot applicants must pass a physical examination by a board-designated physician and in accordance with the requirements of WAC 363-116-120 for initial pilot applicants. A form provided by the board must be completed by the physician and submitted to the board along with a cover letter indicating the physician's findings and recommendations as to the pilot applicant's fitness to pilot. The physical examination must be taken not more than ninety days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within ninety days prior to the anniversary date of that license. Training license physical examinations will be at the expense of the pilot applicant. All training licenses shall be signed by the chairperson or his/her designee and shall have an expiration date. Training licenses shall be surrendered to the board upon completion or termination of the training program.

(4) Development. As soon as practical after receiving notification of eligibility for entry into the training program as set forth in this section, the pilot applicant shall meet with the trainee evaluation committee for the purpose of devising a training program for that pilot applicant. The training program shall be tailored to the ability and experience of the individual pilot applicant and shall consist of observation trips, training trips in which the pilot applicant pilots the vessel under the supervision of licensed pilots, ship assist tug trips, and such other forms of learning and instruction that may be designated. The trainee evaluation committee shall recommend a training program for adoption by the board. After adoption by the board, it will be presented to the pilot applicant. If the pilot applicant agrees in writing to the training program, the board shall issue a training license to the pilot applicant, which license shall authorize the pilot applicant to take such actions as are contained in the training program. If the pilot applicant does not agree to the terms of the training program in writing within fifteen business days of it being received by the pilot applicant, that pilot applicant shall no longer be eligible for entry into the training program and the board may give notice to the next available pilot applicant that he/she is eligible for the training program.

(5) Initial evaluation.

(a) The trainee evaluation committee shall create an initial evaluation at the beginning of each pilot applicant's training program subject to approval by the board. The goal of the initial evaluation is to, as soon as practical after adequate observation trips, have the pilot trainee involved in hands-on piloting and ship handling under the supervision of licensed pilots and subject to the evaluation of training pilots. To this end the trainee evaluation committee shall devise an initial evaluation of a specified length not to exceed ((~~six~~)) eleven months or within such time frame as may be established by the board if the pilot trainee is on stipend and ((~~nine~~)) fifteen months if not on stipend. The initial evaluation shall:

(i) Afford the pilot trainee early and concentrated exposure to a commonly navigated waterway, channel or tributary within the pilotage district and the main ship channel routes between such area and the seaward boundary of the pilotage district;

(ii) Except for pilot trainees taking an examination prior to July 1, 2008, provide the pilot trainee the opportunity to study for and pass any local knowledge examinations provided by the board as to the conditions found in such waterway, channel or tributary;

(iii) Specify a number of training trips in which the pilot trainee pilots vessels under the supervision of licensed pilots; and

(iv) Specify a number of training trips in which the pilot trainee pilots vessels under the supervision of training pilots and the pilot members of the trainee evaluation committee.

(b) As a condition of completing the initial evaluation, the pilot trainee shall:

(i) Pass any required local knowledge examinations given by the board covering the routes described in (a)(i) of this subsection. This examination can be repeated as necessary, provided that it may not be taken more than once in any ((~~thirty~~)) seven day period and further provided that it must be successfully passed before the expiration date of the initial evaluation; and

(ii) Possess a first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in at least one route in the pilotage district in which the pilot applicant seeks a license.

(c) After completion of the initial evaluation, the trainee evaluation committee shall make a recommendation to the board and the board shall determine, whether the pilot trainee has demonstrated the potential for superior piloting and ship handling and has demonstrated the ability to assimilate and retain the local knowledge necessary to pilot. Unless the board finds that such superior potential exists, it shall terminate the pilot trainee's participation in the training program.

(6) Specification of trips. To the extent possible, the training program shall provide a wide variety of assignments, observation and training trips. The training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, sequence of trips, weather conditions, day or night, stern or bow first, draft, size of ship and any other relevant factors. The board may designate specific trips or specific numbers of trips that shall be made with training pilots or with the pilot members of the trainee evaluation committee or with pilots of specified experience. In the Puget Sound pilotage district, pilot applicants taking an examination before July 1, 2008, shall complete a minimum of one hundred thirty trips. After July 1, 2008, all Puget Sound pilotage district pilot applicants shall complete a minimum of one hundred fifty trips. The board shall set from time to time the minimum number of trips for pilot applicants in the Grays Harbor pilotage district. The board will ensure that during the training program the pilot trainee will get significant review by training pilots and the pilot members of the trainee evaluation committee.

(7) Local knowledge. The training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. This education program shall be developed by the trainee evaluation committee and recommended to the board for adoption and shall be tailored to the needs of the individual pilot trainee. It shall be the responsi-

bility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the district for which he/she is applying. Prior to the completion of the training program, the board, or its designee, may give such local knowledge examination(s) as it deems appropriate to the pilot trainees who shall be required to pass such examination(s) before completing the training program. The trainee evaluation committee may require a pilot trainee to sit for a local knowledge examination provided the trainee evaluation committee informs the pilot trainee in writing sixty days in advance of the scheduled date of the examination. Failure to sit for the examination on the date scheduled may constitute cause for removal from the training program. The trainee evaluation committee may also establish in writing such interim performance requirements as it deems necessary. These local examinations can be repeated as necessary, except that an examination for the same local area may not be taken more than once in any ((~~thirty~~)) seven day period and all required local ((~~know~~)) knowledge examinations must be successfully passed before the expiration date of the training program. The local knowledge required of a pilot trainee and the local knowledge examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

(a) Area geography;

(b) Waterway configurations including channel depths, widths and other characteristics;

(c) Hydrology and hydraulics of large ships in shallow water and narrow channels;

(d) Tides and currents;

(e) Winds and weather;

(f) Local aids to navigation;

(g) Bottom composition;

(h) Local docks, berths and other marine facilities including length, least depths and other characteristics;

(i) Mooring line procedures;

(j) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;

(k) Vessel traffic system;

(l) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;

(m) Air draft and keel clearances;

(n) Submerged cable and pipeline areas;

(o) Overhead cable areas and clearances;

(p) Bridge transit knowledge - signals, channel width, regulations, and closed periods;

(q) Lock characteristics, rules and regulations;

(r) Commonly used anchorage areas;

(s) Danger zone and restricted area regulations;

(t) Regulated navigation areas;

(u) Naval operation area regulations;

(v) Local ship assist and escort tug characteristics;

(w) Tanker escort rules - state and federal;

(x) Use of anchors and knowledge of ground tackle;

(y) Applicable federal and state marine and environmental safety law requirements;

(z) Marine security and safety zone concerns;

(aa) Harbor safety plan and harbor regulations;

(bb) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the examination notice is published pursuant to WAC 363-116-076; and

(cc) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes.

(8) Length.

(a) In the Puget Sound pilotage district, for pilot applicants taking an examination before July 1, 2008, the minimum length of the training program shall be seven months. For pilot applicants who take an examination on or after July 1, 2008, the minimum length of the training program shall be eight months. The maximum length of the training program shall be thirty-six months if the pilot applicant elects to receive a stipend. The length of the training program shall be established by the board based on the recommendation of the trainee evaluation committee.

(b) In the Grays Harbor pilotage district, the length of the training program shall be set by the board based on the recommendation of the trainee evaluation committee.

(9) Rest. It is the pilot trainee's responsibility to provide adequate rest time so that he/she is fully able to pilot on training trips. Pilot trainees shall not take pilot training trips in which they will be piloting the vessel without observing the rest rules for pilots in place by federal or state law or regulation. For purposes of calculating rest required before a training trip in which the pilot trainee will be piloting after an observation trip in which the pilot trainee did not pilot the vessel, such observation trip shall be treated as though it had been a normal pilot training assignment. Nothing herein shall be construed as requiring any particular amount of rest before any observation trip in which the pilot trainee will not be piloting.

(10) Stipend.

(a) At the initial meeting with the trainee evaluation committee the pilot applicant shall indicate whether he/she wishes to receive a stipend during the training program. In the Puget Sound pilotage district, as a condition of receiving such stipend, pilot applicants will agree to forego during the training program other full- or part-time employment which prevents them from devoting themselves on a full-time basis to the completion of the training program. With the consent of the board and the restructuring of the training program, pilot trainees may elect to change from a stipend to nonstipend status, and vice versa, during the training program. The stipend paid to pilot trainees shall be six thousand dollars per month (or such other amount as may be set by the board from time to time), shall be contingent upon the board's setting of a training surcharge in the tariffs levied pursuant to WAC 363-116-185 and 363-116-300 sufficient to cover the expense of the stipend and shall be paid from a pilot training account as directed by the board and pursuant thereto shall be paid to pilot trainees as set forth below:

(i) Determinations as to stipend entitlement will be made on a full calendar month basis and documentation of trips will be submitted to the board by the fifth day of the following month. The stipend will be paid on an all or nothing basis for each month except that prorations shall be allowed at the rate of two hundred dollars per day (or such other amount as may

be set by the board from time to time), under the following circumstances:

(A) For the first and last months of the training program (unless the training program starts on the first or ends on the last day of a month); or

(B) For a pilot trainee who is deemed unfit for duty by a board-designated physician during a training month; or

(C) For a pilot trainee who requests a change from a nonstipend status to a stipend status, or from a stipend status to a nonstipend status as set forth in (a)(vi) of this subsection.

(ii) A certain minimum number of trips are required each month for eligibility to receive the stipend. This minimum number shall be specified in the training program and shall be the total number of trips required in the training program divided by the number of months in the training program. Only trips required by the training program can be used to satisfy this minimum. Trips will be documented at the end of each month.

(iii) It is the pilot trainee's responsibility to make all hard-to-get trips before the end of the training program. If a training program is extended due to a failure to get all of these trips, the board may elect not to pay the stipend if the missing trips were available to the pilot trainee but not taken.

(iv) The trainee evaluation committee with approval by the board may allocate, assign or specify training trips among multiple pilot trainees. Generally, the pilot trainee who finished the qualifying examination and simulator evaluation with the highest score has the right of first refusal of training trips provided that the trainee evaluation committee may, with approval by the board, allocate or assign training trips differently as follows:

(A) When it is necessary to accommodate any pilot trainee's initial evaluation program;

(B) When it is necessary to spread hard-to-get trips among pilot trainees so that as many as possible complete required trips on time. If a pilot trainee is deprived of a hard-to-get trip by the trainee evaluation committee, that trip will not be considered "available" under (a)(ii) of this subsection. However, the pilot trainee will still be required to complete the minimum number of trips for the month in order to receive a stipend, and the minimum number of trips as required to complete his/her training program;

(v) If a pilot trainee elects to engage in any full- or part-time employment, the terms and conditions of such employment must be submitted to the trainee evaluation committee for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (pilot trainees) from devoting themselves on a full-time basis to the completion of the training program."

(vi) If a pilot trainee requests to change to a nonstipend status as provided in this section such change shall be effective for a minimum nonstipend period of thirty days, provided that before any change takes effect the board and the pilot trainee must agree in writing on the terms of a revised training program.

(b) Any approved pilot association or other organization collecting the pilotage tariff levied by WAC 363-116-185 or 363-116-300 shall transfer the pilot training surcharge receipts to the board at least once a month or otherwise dispose of such funds as directed by the board. The board may set different training stipends for different pilotage districts. Receipts from the training surcharge shall not belong to the pilot providing the service to the ship that generated the surcharge or to the pilot association or other organization collecting the surcharge receipts, but shall be disposed of as directed by the board. Pilot associations or other organizations collecting surcharge receipts shall provide an accounting of such funds to the board on a quarterly basis or at such other intervals as may be requested by the board. Any audited financial statements filed by pilot associations or other organizations collecting pilotage tariffs shall include an accounting of the collection and disposition of these surcharges. The board shall direct the disposition of all funds in the account.

(11) Trainee evaluation committee. There is hereby created a trainee evaluation committee to which members shall be appointed by the board. The committee shall include at a minimum: Three active licensed Washington state pilots, who, to the extent possible, shall be from the district in which the pilot trainee seeks a license and at least one of whom shall be a member of the board; one representative of the marine industry from the relevant pilotage district (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and one other member of the board who is not a pilot. The committee may include such other persons as may be appointed by the board. The committee shall be chaired by a pilot member of the board and shall meet as necessary to complete the tasks accorded it. In the event that the trainee evaluation committee cannot reach consensus with regard to any issue it shall report both majority and minority opinions to the board.

(12) Training pilots. The board shall designate as training pilots those pilots with a minimum of seven years of piloting in the relevant district who are willing to undergo such training as the board may require and provide. The board may establish a lower experience level for the Grays Harbor pilotage district. Training pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of training pilots available for public inspection at all times. All pilot members of the trainee evaluation committee shall also be training pilots.

(13) Evaluation. When a pilot trainee pilots a vessel under the supervision of another pilot, the supervising pilot shall, to the extent possible, communicate with and give guidance to the pilot trainee in an effort to make the trip a valuable learning experience. After each such trip, the supervising pilot shall complete a form provided by the board evaluating the pilot trainee's performance. Evaluation forms prepared by licensed pilots who are not training pilots shall be used by the trainee evaluation committee and the board for assessing a pilot trainee's progress, providing guidance to the pilot trainee and for making alterations to the training program. All evaluation forms shall be delivered or mailed by the supervising pilot to the board. They shall not be given to the pilot trainee. The supervising pilot may show the contents of the form to the pilot trainee, but the pilot trainee has no right to see the form until it is filed with the board. The trainee evaluation committee shall review these evaluation

forms from time to time and the chairperson of the trainee evaluation committee shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the trainee evaluation committee may recommend, and the board may make, changes from time to time in the training program requirements applicable to a pilot trainee, including the length of the training program.

(14) Removal. A pilot trainee may be removed from the training program by the board if it finds any of the following:

(a) Failure to maintain the minimum federal license required by RCW 88.16.090;

(b) Conviction of an offense involving drugs or involving the personal consumption of alcohol;

(c) Failure to devote full time to training in the Puget Sound pilotage district if receiving a stipend;

(d) The pilot trainee is not physically fit to pilot;

(e) Failure to make satisfactory progress toward timely completion of the program or timely meeting of interim performance requirements in the training program;

(f) Inadequate performance on examinations or other actions required by the training program;

(g) Failure to demonstrate the superior skills required in the initial evaluation;

(h) Inadequate performance on training trips; or

(i) Violation of a training program requirement, law, regulation or directive of the board.

(15) Completion of the training program shall include the requirement that the pilot trainee:

(a) Successfully complete the requirements set forth in the training program;

(b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in all of the waters of the pilotage district in which the pilot applicant seeks a license; and

(c) Successfully complete any local knowledge examination(s) required by the board and specified in the training program.

WSR 09-24-068
EMERGENCY RULES
DEPARTMENT OF ECOLOGY

[Order 09-10—Filed November 25, 2009, 12:41 p.m., effective November 25, 2009, 12:41 p.m.]

Effective Date of Rule: Immediately.

Purpose: This sixth emergency rule establishes a partial withdrawal of groundwater within a portion of WRIA 39 in Kittitas County, Washington. The partial withdrawal and restrictions are designed to prevent new uses of water that negatively affect flows in the Yakima River and its tributaries. The withdrawal allows for continued development using the groundwater exemption or new permits when the new consumptive use is mitigated by one or more pre-1905 water rights held by ecology in the trust water right program of equal or greater consumptive quantity. Withdrawals of groundwater for structures for which building permit applications were vested prior to July 16, 2009, shall be allowed but shall be subject to curtailment. This emergency rule supersedes the one filed on July 16, 2009, WSR 09-15-107.

Statutory Authority for Adoption: RCW 90.54.050.

Other Authority: Chapter 43.27A 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: The Yakima Basin is one of the state's most water-short areas. Water rights with priority dates as old as 1905 were shut off during the 2001 and 2005 droughts, and during 2004 when USBR prorated May 10, 1905, water rights. The town of Roslyn's municipal supply and another one hundred thirty-three single domestic, group domestic, and municipal water systems throughout the basin are subject to curtailment when USBR prorates the May 10, 1905, water rights. Water supply in the Yakima Basin is limited and overappropriated. Western portions of Kittitas County are experiencing rapid growth and this growth is being largely served by exempt wells. Exempt wells in this area may negatively affect the flow of the Yakima River or its tributaries.

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 12, 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: November 25, 2009.

Ted Sturdevant
Director

Chapter 173-539A WAC

UPPER KITTITAS EMERGENCY GROUND WATER RULE

NEW SECTION

WAC 173-539A-010 Purpose. The purpose of this rule is to withdraw from appropriation all unappropriated ground water within upper Kittitas County during the pendency of a ground water study. New ground water withdrawals will be limited to those that are water budget neutral, as defined in this rule.

NEW SECTION

WAC 173-539A-020 Authority. RCW 90.54.050 provides that when lacking enough information to support sound

decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water management. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for permit-exempt wells where needed.

In 1999, ecology imposed an administrative moratorium on issuing any ground water permits for new consumptive uses in the Yakima basin, which includes Kittitas County. That moratorium did not apply to permit-exempt withdrawals. In 2007, ecology received a petition seeking unconditional withdrawal of all unappropriated ground water in Kittitas County until enough is known about potential effects from new permit-exempt wells on senior water rights and stream flows. Ecology consulted with standing committees of the Washington state legislature on the petition and proposed withdrawal. Ecology rejected the proposed unconditional withdrawal, and instead signed a memorandum of agreement (MOA) with Kittitas County. Ecology later invoked the dispute resolution process under the MOA.

NEW SECTION

WAC 173-539A-025 Applicability. This rule applies to new uses of ground water relying on the authority of the exemption from permitting found at RCW 90.44.050, as defined in WAC 173-539A-030, and to any new permit authorizing the withdrawal of public ground water within the upper Kittitas area boundaries issued on or after July 16, 2009.

NEW SECTION

WAC 173-539A-027 Advisory. All new withdrawals and existing withdrawals that commenced after May 10, 1905, may be subject to future curtailment due to conflicts with senior water rights, and all users without senior trust water rights are advised to obtain mitigation through senior trust water rights to avoid such curtailment.

NEW SECTION

WAC 173-539A-030 Definitions. The definitions provided below are intended to be used only for this chapter.

"Applicant" as used herein includes the owner(s) of parcels that are the subject of a land use application, a person making a request for water budget neutral determination, or a person requesting a permit to appropriate public ground water.

"Common ownership" means any type or degree of legal or equitable property interest held by an applicant in any proximate parcel. Common ownership also includes a joint development arrangement between an applicant and any owner of a proximate parcel. A joint development arrangement is defined as involving significant voluntary joint activity and cooperation between the applicant and the owner(s) of one or more proximate parcels with respect to the development of parcels in question. Joint activity and cooperation that is customary or required by land use or other legal requirements does not itself constitute a joint development arrangement. A joint development arrangement may be evidenced by, but is not limited to, agreements for coordinated development and shared use of services or materials for permitting, design, engineering, architecture, plat or legal documents, financing, marketing, environmental review, clearing or preparing land, and/or construction (including road construction), and agreements for common use of structures, facilities, lands, water, sewer, and/or other infrastructure, covenants, building materials, or equipment.

"Consumptive use" of a proposed withdrawal is the total depletion that the withdrawal has on any affected surface water bodies.

"Ecology" means the department of ecology.

"Exemption" or **"ground water exemption"** means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.

"Existing use of the ground water exemption" means a use of ground water under the authority of the exemption from permitting with the following attributes:

(a) Water was first beneficially used prior to July 16, 2009; and

(b) The water right is perfected within the five years following the first beneficial use. Water to serve a parcel that is part of a group use commenced within five years of the date water was first beneficially used on one or more parcels in the group is an existing use if the group use remains within the limit of the permit exemption.

"Group use" means use of the ground water exemption for two or more parcels. A group use includes use of the exemption for all parcels of a proposed development. It further includes use of the exemption for all parcels that are proximate and held in common ownership with a proposed new development. If a parcel that is part of a group use is later divided into multiple parcels more than five years following the first use, the new uses of the exemption on the resulting multiple parcels will be considered a separate group use distinct from the original group.

"Land use application" means an application to Kittitas County requesting:

- A subdivision;
- Short subdivision;
- Large lot subdivision;
- Administrative or exempt segregation;
- Binding site plan; or
- Performance based cluster plat.

"New use of the ground water exemption" means a use of ground water begun on or after July 16, 2009. Water to serve a parcel that is part of a group use commenced more than five years after the date water was first beneficially used on one or more parcels in the group is a new use of the ground water exemption.

"Parcel" means any parcel, land, lot, tract or other unit of land.

"Proximate" means all parcels that have at least one of the following attributes:

- Have any common boundary; or
- Are separated only by roads, easements, or parcels in common ownership; or
- Are within five hundred feet of each other at the nearest point.

"Proximate shortplat" means a shortplat that would be considered a group use with another subdivision or shortplat.

"Total water supply available" means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.

"Upper Kittitas County" is the area of Kittitas County delineated in WAC 173-539A-990.

"Water budget neutral project" means an appropriation or project where withdrawals of ground water of the state are proposed in exchange for discharge of water from other water rights that are placed into the trust water right program where such discharge is at least equivalent to the amount of consumptive use.

NEW SECTION

WAC 173-539A-040 Withdrawal of unappropriated water in upper Kittitas County. (1) Beginning on the effective date of this rule, all public ground waters within the upper Kittitas County are withdrawn from appropriation. No new appropriation or withdrawal of ground water shall be allowed, including those exempt from permitting, except:

(a) Uses of ground water for a structure for which a building permit is granted and the building permit application vested prior to July 16, 2009; and

(b) Uses determined to be water budget neutral pursuant to WAC 173-539A-050.

(2) The exception for water used at structures provided in subsection (1)(a) of this section shall not apply or shall cease to apply if the structure is not completed and a water system that uses the new appropriation is not operable within the time allowed under the building permit, which may not in any case exceed three years from the date the permit application vested. The exception does not reflect ecology's view on when the priority date for an exempt water right commences and is established only to avoid potential hardship.

(3) Water to serve a parcel that is part of a group use is not a new appropriation or withdrawal if the water use to serve such parcel commenced within five years of the date water was first beneficially used on one or more parcels in the group, if the first use was prior to July 16, 2009, and the group use remains within the limit of the permit exemption.

NEW SECTION

WAC 173-539A-050 Water budget neutral projects. (1) Persons proposing a new use of ground water shall apply to ecology for a permit to appropriate public ground water or, if seeking to rely on the ground water permit-exemption, shall submit to ecology a request for determination that the proposed exempt use would be water budget neutral.

(2) As part of a permit application to appropriate public ground water or a request for a determination of water budget neutrality, applicants or requestors shall include the following information:

(a) Identification of one or more water rights that would be placed into the trust water right program to offset the consumptive use (as calculated pursuant to subsection (3) of this section) associated with the proposed new use of ground water;

(b) A site map;

(c) The area to be irrigated (in acres);

(d) A soil report, if proposed discharge is to a septic system and the applicant or requestor proposes to deviate from the values in subsection (3) of this section;

(e) A property covenant that restricts or prohibits trees or shrubs over the septic drain field; and

(f) A copy of the sewer utility agreement, if the proposed wastewater discharge is to a sanitary sewer system.

(3) Consumptive use will be calculated using the following assumptions: Thirty percent of domestic in-house use on a septic system is consumptively used; ninety percent of outdoor use is consumptively used; twenty percent of domestic in-house use that is treated through a wastewater treatment plant which discharges to surface water is consumptively used.

(4) Applications for public ground water or requests for a determination of water budget neutrality will be processed concurrent with trust water right applications necessary to achieve water budget neutrality, unless:

(a) A suitable trust water right is already held by the state in the trust water right program; and

(b) The applicant or requestor has executed an agreement to designate a portion of the trust water right for mitigation of the applicant's proposed use.

(5) Applications to appropriate public ground water or requests for determination of water budget neutrality that do not include the information listed in subsection (2) of this section will be rejected and returned to the applicant.

(6) To the extent that ecology determines that the mitigation offered would not reliably mitigate to be water budget neutral, ecology may deny the request or limit its approval to a lesser amount.

NEW SECTION

WAC 173-539A-060 Expedited processing of trust water applications, and new water right applications or requests for a determination of water budget neutrality associated with trust water rights. (1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.

(2) Ecology may expedite the processing of an application for a new surface water right, a request for a determination of water budget neutrality, or a ground water right hydraulically related to the Yakima River, under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:

(a) The application or request must identify an existing trust water right or pending application to place a water right in trust, and that such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have

priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.

(b) The proposed use on the new application or request must be for domestic, group domestic, lawn or noncommercial garden, municipal water supply, stock watering, or industrial purposes of use within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water right.

(3) If an application for a new water right or a request for a determination of water budget neutrality is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.

(4) Upon determining that the application or request is eligible for expedited processing, ecology will do the following:

(a) Review the application or request to withdraw ground water to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.

(b) Condition the permit or determination to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant or requestor also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit or determination.

(c) Condition each permit or determination to ensure that the tie to the trust water right is clear, and that any constraints in the trust water right are accurately reflected.

(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."

NEW SECTION

WAC 173-539A-070 Measuring and reporting water use. (1) For residential uses (domestic use and irrigation of not more than 1/2 of noncommercial lawn and garden) of ground water within upper Kittitas County that commence after July 8, 2008, a meter must be installed for each residential connection or each source well that serves multiple residential connections in compliance with such requirements as prescribed in WAC 173-173-100.

(2) For all uses other than residential uses of ground water within upper Kittitas County that commence after November 25, 2009, including uses developed under the authority of the exemption from permitting, a meter must be installed for each source well in compliance with such requirements as prescribed in WAC 173-173-100.

(3) Metering data must be collected and reported within thirty days of the end of the recording period to ecology. The following table shows the recording periods and the due dates for each metering report:

Recording Period	Report Due No Later Than:
October 1 - March 31	April 30
April - June 30	July 30
July 1 - July 31	August 30
August 1 - August 31	September 30
September 1 - September 30	October 30

NEW SECTION

WAC 173-539A-080 Educational information, technical assistance and enforcement. (1) To help the public comply with this chapter, ecology may prepare and distribute technical and educational information on the scope and requirements of this chapter.

(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.

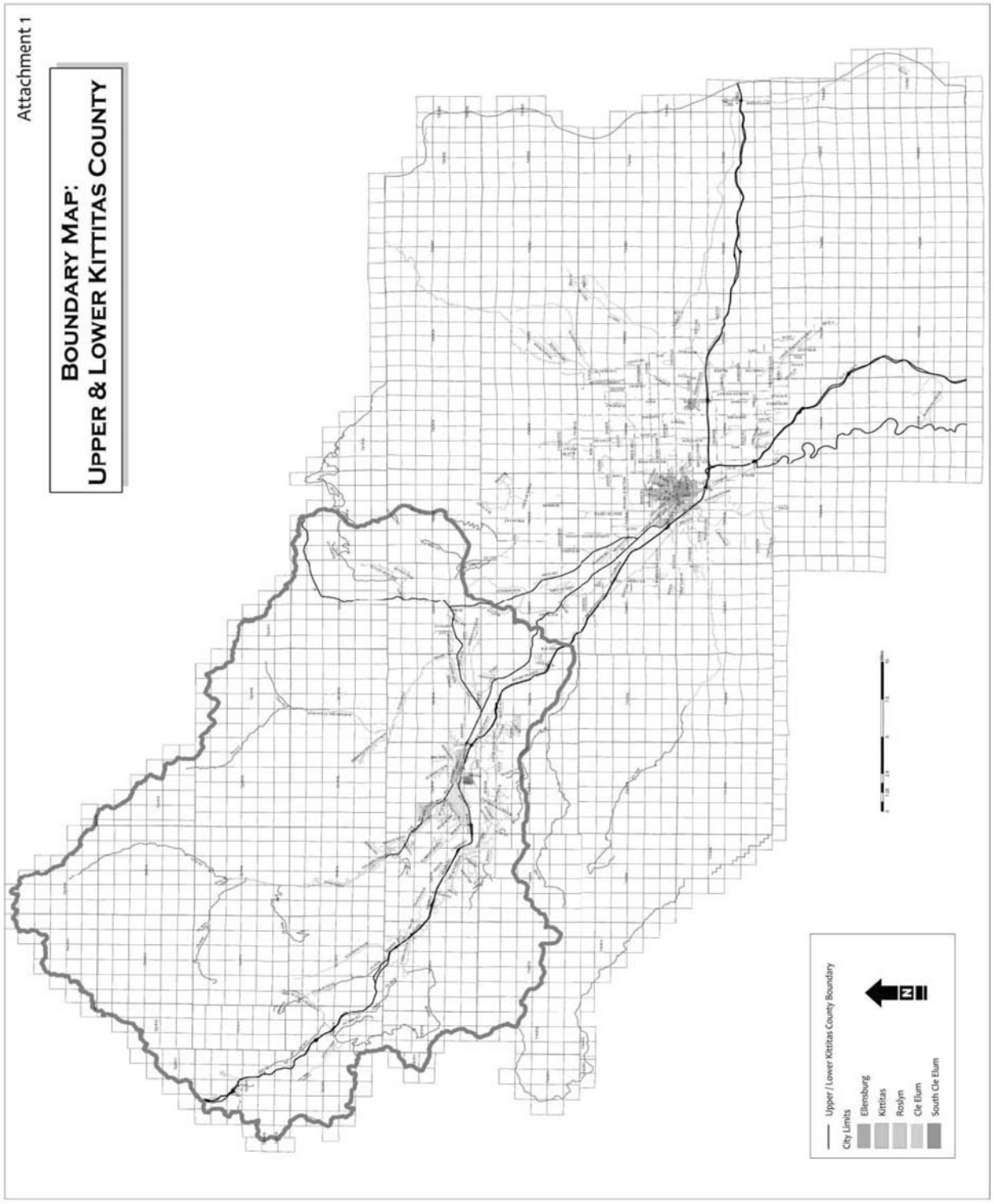
(3) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.

NEW SECTION

WAC 173-539A-090 Appeals. All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

WAC 173-539A-990 Appendix 1—Map of upper Kittitas County boundaries.



WSR 09-24-069
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 09-259—Filed November 25, 2009, 2:05 p.m., effective December 2, 2009, 12:01 p.m.]

Effective Date of Rule: December 2, 2009, 12:01 p.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000A; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt 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: November 25, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-56-36000A Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. December 2 through 11:59 p.m. December 2, 2009, and 12:01 p.m. December 4 through 11:59 p.m. December 5, 2009, razor clam digging is allowed in Razor Clam Area 1 Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. December 2 through 11:59 p.m. December 5, 2009, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. December 3 through 11:59 p.m. December 5, 2009, razor clam digging is allowed in and that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

4. Effective 12:01 p.m. December 4 through 11:59 p.m. December 5, 2009, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jefferson County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

5. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. December 6, 2009:

WAC 220-56-36000A	Razor clams—Areas and seasons.

WSR 09-24-070
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 09-260—Filed November 25, 2009, 2:08 p.m., effective November 25, 2009, 2:08 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This rule change is needed to close the waters above and below the adult fish trap where employees and volunteers operate the trap and handle migrating fish and to keep anglers a safe distance from the operating trap. There is insufficient time to adopt 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: November 25, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900F Exceptions to statewide rules—Salmon Creek (Clark Co.) Notwithstanding the provisions of WAC 232-28-619, effective immediately through March 15, 2010, it is unlawful to fish in the area 200 feet below and 200 feet above the trap on Salmon Creek.

REPEALER

The following section of the Washington Administrative Code is repealed effective March 16, 2010:

WAC 232-28-61900F	Exceptions to statewide rules—Salmon Creek (Clark Co.)