WSR 10-12-039
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed May 25, 2010, 3:07 p.m., effective May 26, 2010]

Effective Date of Rule: May 26, 2010.

Purpose: The division of child support (DCS) is filing this third emergency rule to maintain the status quo as we await the rule-making hearing for the adoption of final rules. **THESE RULES ARE EXACTLY THE SAME AS THE PRIOR EMERGENCY RULES.** This third set of emergency rules takes effect on May 28, 2010, and is identical in every respect to the prior emergency rules filed as WSR 09-20-030 and 10-04-037.

BASIS FOR ADOPTION OF EMERGENCY RULES: In the 2009 legislative session, the Washington state legislature adopted ESHB 1794 (chapter 84, Laws of 2009), which makes changes to chapter 26.19 RCW, the Washington state child support schedule, based on recommendations of the 2007 child support schedule workgroup which was convened under 2SHB 1009 (chapter 313, Laws of 2007) and SHB 1845 (chapter 476, Laws of 2009), regarding medical support obligations in child support orders. Both of these bills had an effective date of October 1, 2009.

DCS filed emergency rules under WSR 09-20-030 in order to implement this legislation by October 1, 2009. DCS filed the second emergency rules, identical to the first, under WSR 10-04-037 with an effective date of January 28, 2010. The second emergency rules expire May 27, 2010, and a third emergency filing is now necessary.

DCS began the regular rule-making process by filing a CR-101, Preproposal notice of inquiry, for each of the bills: The CR-101 for ESHB 1794 was filed as WSR 09-10-046, and the CR-101 for SHB 1845 was filed as WSR 09-14-075. Because both of the bills impact the establishment of child support obligations, DCS determined that it was necessary to adopt just one set of rules which covers both bills instead of two separate rule-making projects.

DCS has done a significant amount of redrafting and revising the rules from the form in which they were first proposed. After consulting with DCS staff, stakeholders and other partners, DCS intends to file the CR-102, Notice of proposed rule making, in June 2010.

Between the filing of the CR-102 and the public rule-making hearing, DCS will again work with DCS staff, stakeholders and other partners to incorporate more comments and feedback. While the third emergency rules are exactly the same as the first emergency rules, DCS anticipates that because of the complexity of these two bills the rules proposed in the CR-102 will differ from the emergency rules in several respects, as will the final rules. DCS hopes to have final rules adopted as soon as possible.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2035 Do I assign my rights to support when I receive public assistance?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-3140 What can happen at a hearing on a support establishment notice?, 388-14A-3205 How does DCS calculate my income?, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3312 The division of child support serves a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support to establish a fixed dollar amount owed under a child support order, 388-14A-3315 When DCS serves a notice of support debt ((~~or~~)), notice of support owed ((~~or~~)), notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support, we notify the other party to the child support order, 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?, 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312?, 388-14A-3320 What happens at a hearing on a notice of support owed?, 388-14A-3400 Are there limitations on how much of my income is available for child support?, 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children?, 388-14A-4110 If my support order requires me to provide ((~~health insurance~~)) medical support for my children, what do I have to do?, 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide ((~~health insurance coverage~~)) medical support?, 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance?, 388-14A-4120 DCS uses the national medical support notice to enforce an obligation to provide health insurance coverage, 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium?, 388-14A-4175 ((~~Is an employer~~)) Who is required to notify the division of child support when insurance coverage for the children ends?, 388-14A-4180 When must the division of child support communicate with the DSHS health and recovery services administration?, 388-14A-5002 How does DCS distribute support collections in a nonassistance case?, 388-14A-5003 How does DCS distribute support collections in an assistance case?, 388-14A-5004 How does DCS distribute support collections in a former assistance case?, 388-14A-5005 How does DCS distribute federal tax refund offset collections?, 388-14A-5006 How does DCS distribute support collections when the paying parent has more than one case?, 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case?, 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation, and 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation when the parents of a child in foster care are married and residing together?; and new section WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?

Statutory Authority for Adoption: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, 74.20A.055 (9) and (11).

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: ESHB 1794 (chapter 84, Laws of 2009) and SHB 1845 (chapter 476, Laws of 2009) both had an effective date of October 1, 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. DCS continues the regular rule-making process and will 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 1, Amended 28, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 28, Repealed 0.

Date Adopted: May 11, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Absence of a court order" means that there is no court order setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

"Accrued debt" means past-due child support which has not been paid.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by another state's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

(1) An order entered under chapter 34.05 RCW;

(2) An agreed settlement or consent order entered under WAC 388-14A-3600; and

(3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state. In Washington, this is DCS.

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or **"public assistance"** means cash assistance under the temporary assistance for needy families (TANF) program, the aid to families with dependent children (AFDC) program, federally funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Alternate recipient" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"Annual fee" means the twenty-five dollar annual fee charged between October 1 and September 30 each year, required by the federal deficit reduction act of 2005 and RCW 74.20.040.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and **"recipient"** means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Assistance unit" means a cash assistance unit as defined in WAC 388-408-0005. An assistance unit is the group of people who live together and whose income or resources the department counts to decide eligibility for benefits and the amount of benefits.

"Birth costs" means medical expenses incurred by the custodial parent or the state for the birth of a child.

"Cash medical support" is a term used in RCW 26.09.105 and certain federal regulations to refer to amounts paid by an obligated parent to the other parent or to the state in order to comply with the medical support obligation stated in a child support order.

"Conditionally assigned arrears" means those temporarily assigned arrears remaining on a case after the period of public assistance ends.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"Court order" means a judgment, decree or order of a Washington state superior court, another state's court of comparable jurisdiction, or a tribal court.

"Current support" or **"current and future support"** means the amount of child support which is owed for each month.

"Custodial parent or CP" means the person, whether a parent or not, with whom a dependent child resides the

majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

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

"Dependent child" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Disbursement" means the amount of child support distributed to a case that is paid to the family, state, other child support enforcement agency in another state or foreign country, Indian tribe, or person or entity making the payment.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Distribution" means how a collection is allocated or split within a case or among multiple cases.

"Earnings" means compensation paid or payable for personal service. Earnings include:

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;

(6) Gains from capital, labor, or a combination of the two; and

(7) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

(6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

"Family arrears" means the amount of past-due support owed to the family, which has not been conditionally, temporarily or permanently assigned to a state. Also called "nonassistance arrears."

"Family member" means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

(1) The representation of the existence or the nonexistence of a fact;

(2) The representation's materiality;

(3) The representation's falsity;

(4) The speaker's knowledge that the representation is false;

(5) The speaker's intent that the representation should be acted on by the person to whom it is made;

(6) Ignorance of the falsity on the part of the person to whom it is made;

(7) The latter's:

(a) Reliance on the truth of the representation;

(b) Right to rely on it; and

(c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health care costs" means medical expenses. Certain statutes in chapter 26.19 RCW refer to medical expenses as health care costs.

"Health insurance" means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy.

"Health insurance coverage" does not include medical assistance provided under chapter 74.09 RCW.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/me" means the person asking the question which appears as the title of a rule.

"Income" includes:

(1) All gains in real or personal property;

(2) Net proceeds from the sale or exchange of real or personal property;

(3) Earnings;

(4) Interest and dividends;

(5) Proceeds of insurance policies;

(6) Other periodic entitlement to money from any source; and

(7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

(1) Asserting liens under RCW 74.20A.060;

(2) Serving and enforcing liens under chapter 74.20A RCW;

(3) Issuing orders to withhold and deliver under chapter 74.20A RCW;

(4) Issuing notices of payroll deduction under chapter 26.23 RCW; and

(5) Obtaining wage assignment orders under RCW 26.18.080.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF.

"Medical expenses" for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means((:

-)) medical costs incurred on behalf of a child, which include:

• Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and

• Prescribed medical equipment and prescribed pharmacy products;

• Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;

• Dental and optometrical costs incurred on behalf of a child; and

• Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

"Medical support" means ((~~either or both~~)) any combination of the following:

(1) ((~~Medical expenses; and~~

~~(2)~~)) Health insurance coverage for a dependent child;

(2) Amounts owed by one parent to the other parent as a monthly payment toward the premium paid by the other parent for health insurance coverage for a dependent child;

(3) Amounts owed by a noncustodial parent to the state as a monthly payment toward the cost of managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment; and

(4) Amounts owed by one parent to the other parent as his or her proportionate share of uninsured medical expenses for a dependent child.

"Monthly payment toward the premium" means a parent's contribution toward:

• Premiums paid by the other parent for insurance coverage for the child; or

• Amounts paid for managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

This contribution is based on the obligated parent's proportionate share of the premium paid, but may not exceed twenty-five percent of the obligated parent's basic support obligation.

"National Medical Support Notice" or **"NMSN"** is a federally mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent or NCP" means the natural parent, adoptive parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Obligated parent" means a parent who is required under a child support order to provide health insurance coverage or to reimburse the other parent for his or her share of medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

"Other ordinary expense" means an expense incurred by a parent which:

(1) Directly benefits the dependent child; and

(2) Relates to the parent's residential time or visitation with the child.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Pass-through" means the portion of a support collection distributed to assigned support that the state pays to a family currently receiving TANF.

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or **"PSO"** means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrears" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Proportionate share" means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed on the worksheets when determining a parent's child support obligation under chapter 26.19 RCW.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

(1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;

(2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;

(3) Tracing activity such as:

(a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

(b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support" means a debt owed to the division of child support by anyone other than a noncustodial parent.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of another state's court of comparable jurisdiction.

"Support debt" means support which was due under a support order but has not been paid. This includes:

(1) Delinquent support;

(2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;

(3) A debt under RCW 74.20A.100 or 74.20A.270; or

(4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, enforcement of medical expenses, health insurance, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, medical expenses, birth costs, and child care or special child rearing expenses.

"Temporarily assigned arrears" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

"Temporary assistance for needy families," or "TANF" means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-D agency" or **"IV-D agency"** means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribal TANF" means a temporary assistance for needy families (TANF) program run by a tribe.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

"Uninsured medical expenses":

(((~~(1)~~))) For the purpose of establishing or enforcing support obligations ((~~under RCW 26.23.110,~~)) means:

(((~~(a)~~))) (1) Medical expenses not paid by insurance for medical, dental, prescription and optometrical costs incurred on behalf of a child; and

(((~~(b)~~))) (2) Premiums, copayments, or deductibles incurred on behalf of a child((~~; and~~

~~(2) Includes health insurance premiums that represent the only health insurance covering a dependent child when either:~~

~~(a) Health insurance for the child is not required by a support order or cannot be enforced by the division of child support (DCS); or~~

~~(b) The premium for covering the child exceeds the maximum limit provided in the support order~~)).

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"Unreimbursed medical expenses" means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

"WSSR" is the Washington state support registry.

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

WAC 388-14A-2035 Do I assign my rights to support when I receive public assistance? (1) When you receive public assistance you assign your rights to support to the state. This section applies to all applicants and recipients of cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

(2) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in subsection (3), any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance.

(3) Amounts assigned under this section may not exceed the lesser of the total amount of assistance paid to the family or the total amount of the assigned support obligation.

(4) When you receive medicaid or medical benefits, you assign your rights to medical support to the state. This applies to all recipients of medical assistance under the state program funded under Title XIX of the federal Social Security Act:

(a) If your children receive medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment and if your order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage, the division of child support (DCS) may serve a notice of support owed to establish the amount owed by the noncustodial parent as a monthly payment toward the premium paid for coverage by the state, as provided in WAC 388-14A-3312.

(b) Any amounts established under WAC 388-14A-3312 for periods while your children receive medicaid or other state-financed medical coverage are assigned to the state and are distributed as provided in WAC 388-14A-5011.

(c) Amounts assigned under this section may not exceed the lesser of the total amount of premiums paid by the state for your children or the total amount of the assigned monthly payment toward the premium.

(5) In addition to the assignment described in this section, there is an assignment of support rights under Title IV-E of the social security act when a child receives foster care services.

(a) The state provides foster care programs which may be federally-funded or state funded, or may place a child with a relative.

(b) As part of its state plan under Title IV-D of the social security act and 45 CFR 302.52, DCS provides child support enforcement services for foster care cases as required by 45 CFR 302.33, RCW 74.20.330 and 74.20A.030.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-2036 What does assigning my rights to support mean? (1) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in WAC 388-14A-2035(3):

(a) Any support owing to the family member or to any other person for whom the family member has applied for or

is receiving assistance if the family applied for cash public assistance before October 1, 2008.

(b) Support owing to the family member, or to any other person for whom the family member has applied for or is receiving cash public assistance, for any month during which the family receives assistance.

(2) While your family receives assistance, support is distributed and disbursed in accordance with WAC 388-14A-5000 through 388-14A-5015.

(3) After your family terminates from assistance, certain accrued arrears remain assigned to the state in accordance with the following rules:

(a) For assistance applications dated prior to October 1, 1997, you permanently assigned to the state all rights to support which accrued before the application date until the date your family terminated from assistance.

(b) For assistance applications dated on or after October 1, 1997, and before October 1, 2000:

(i) You permanently assigned to the state all rights to support which accrued while your family receives assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until October 1, 2000, or when your family terminated from assistance, whichever date is later.

(c) For assistance applications dated on or after October 1, 2000, and before October 1, 2008:

(i) You permanently assigned to the state all rights to support which accrued while the family received assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until the date your family terminated from assistance.

(d) For assistance applications dated on or after October 1, 2008, you permanently assign to the state all rights to support which accrue while the family receives assistance.

(4) When you assign your medical support rights to the state, you authorize the state on behalf of yourself and the children in your care to enforce the noncustodial parent's full duty to provide medical support.

(a) When you begin receiving medicaid or medical assistance, you do not assign to the state any accrued medical support arrears that may be owed to you by the noncustodial parent (NCP).

(b) If your support order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage, the division of child support (DCS) may serve a notice of support owed to establish the amount owed by the NCP as a monthly payment toward the premium paid for coverage by the state, as provided in WAC 388-14A-3312.

(c) After you terminate medicaid or medical assistance, any assigned medical arrears remain assigned to the state.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

WAC 388-14A-3140 What can happen at a hearing on a support establishment notice? (1) When a parent requests a hearing on a notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR), or notice and finding of medical responsibility (NFMR), the hearing is limited to resolving the ((~~NCP's~~)) current and future support obligation and the accrued support debt of the noncustodial parent (NCP), and to establishing the medical support obligations of both the NCP and the custodial parent (CP), if the CP is the legal or biological parent of the child(ren). The hearing is not for the purpose of setting a payment schedule on the support debt.

(2) The ((~~noncustodial parent (NCP) has~~)) NCP and the CP each have the burden of proving any defenses to their own liability. See WAC 388-14A-3370.

(3) ((~~Both~~)) The NCP and/or the custodial parent (CP) must show cause why the terms in the NFFR, NFPR, or NFMR are incorrect.

(4) The administrative law judge (ALJ) has authority to enter a support obligation that may be higher or lower than the amounts set forth in the NFFR, NFPR, or NFMR, including the support debt, current support, and the future support obligation.

(a) The ALJ may enter an order that differs from the terms stated in the notice, including different debt periods, if the obligation is supported by credible evidence presented by any party at the hearing, without further notice to any nonappearing party, if the ALJ finds that due process requirements have been met.

(b) Any support order entered by the ALJ must comply with the requirements of WAC 388-14A-6300.

(5) The ALJ has no authority to determine custody or visitation issues, or to set a payment schedule for the arrears debt.

(6) When a party has advised the ALJ that they will participate by telephone, the ALJ attempts to contact that party on the record before beginning the proceeding or rules on a motion. The ALJ may not disclose to the other parties the telephone number of the location of the party appearing by phone.

(7) In most support establishment hearings, the NCP and CP may participate in the hearing. However, in certain cases, there is no "custodial parent" because the child or children are in foster care.

(a) If both the NCP ((~~fails~~)) and CP fail to appear for hearing, see WAC 388-14A-3131.

(b) If only one of the parties appears for the hearing, see WAC 388-14A-3132.

(c) If both the NCP ((~~appears~~)) and CP appear for hearing, see WAC 388-14A-3133.

(8) In ((~~certain~~)) some cases, there can be two NCPs, called "joint NCPs." This happens when DCS serves a joint support establishment notice on the marital community made up of a husband and wife ((~~are jointly served a support establishment notice~~)) who reside together, seeking to establish a support obligation for a ((~~common~~)) child in common who is not residing in their home.

(a) If both joint NCPs fail to appear for hearing, see WAC 388-14A-3131;

(b) If both joint NCPs appear for hearing, see WAC 388-14A-3133; or

(c) One joint NCP may appear and represent the other joint NCP.

(9) When the CP ((~~asserts~~)) is granted good cause level B (see WAC 388-422-0020), DCS notifies the CP that ((~~they~~)) the CP will ((~~continue to~~)) receive documents, notices and orders. The CP may choose to participate at any time. Failure to appear at hearing results in a default order but does not result in a sanction for noncooperation under WAC 388-14A-2041.

(10) If any party appears for the hearing and elects to proceed, ((~~absent the granting of a continuance~~)) the ALJ hears the matter and enters an initial decision and order based on the evidence presented, unless the ALJ grants a continuance. The ALJ includes a party's failure to appear in the initial decision and order as an order of default against that party. The direct appeal rights of the party who failed to appear ((~~shall be~~)) are limited to an appeal on the record made at the hearing.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3205 How does DCS calculate my income? (1) The division of child support (DCS) calculates a parent's income using the best available information((~~,~~)). In the absence of records of a parent's actual earnings, DCS and/or the administrative law judge (ALJ) may impute a parent's income under RCW 26.19.071(6) in the following order of priority:

(a) ((~~Actual income~~)) Full-time earnings at the current rate of pay;

(b) ((~~Estimated income, if DCS has:~~

~~(i) Incomplete information;~~

~~(ii) Information based on the prevailing wage in the parent's trade or profession; or~~

~~(iii) Information that is not current.~~

~~(c) Imputed income under RCW 26.19.071(6)~~)) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, general assistance-unemployable, supplemental security income, or disability, has recently been released from incarceration, or is a high school student; or

(e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports.

(2) As an exception to the imputation process described in subsection (1) of this section, DCS and/or the ALJ imputes full time earnings at the minimum wage to a TANF recipient in the absence of actual income information((~~, DCS imputes full time earnings at the minimum wage to a TANF recipient~~)). You may rebut the imputation of income if you are excused from being required to work while receiving TANF, because:

(a) You are either engaged in other qualifying WorkFirst activities which do not generate income, such as job search; or

(b) You are excused or exempt from being required to work in order to receive TANF, because of other barriers such as family violence or mental health issues.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order. (1) The division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 on either parent whenever it is necessary to establish a fixed dollar amount owed under a child support order. Situations when DCS may serve a notice of support owed include, but are not limited to:

(a) When the support obligation is not a fixed dollar amount;

(b) When DCS is implementing an adjustment or escalation provision of a court order; or

(c) When DCS is establishing the obligation of either the noncustodial parent (NCP) or custodial parent (CP) to contribute his or her proportionate share of medical support or medical expenses for the child(ren).

(2) DCS may serve a notice of support owed under RCW 26.23.110 on a noncustodial parent (NCP) ((~~under RCW 26.23.110~~)) to establish a fixed dollar amount of monthly support and accrued support debt, including day care costs:

(a) If the support obligation under an order is not a fixed dollar amount; or

(b) To implement an adjustment or escalation provision of a court order.

((~~(2)~~)) (3) The notice of support owed may include day care costs and medical support if the court order provides for such costs.

(4) DCS may serve a notice of support owed under RCW 26.23.110 on either of the parties to a support order, whether the party being served is the noncustodial parent (NCP) or the custodial parent (CP), in order to establish that parent's share of medical expenses and/or medical support owed for the child or children covered by a support order. WAC 388-14A-3312 describes the use of a notice of support owed for this purpose.

(a) DCS may use the notice of support owed to collect unreimbursed medical expenses from either of the parties to a support order when the support order provides that a parent is responsible for his or her proportionate share of uninsured medical expenses, no matter which one has custody of the child(ren).

((~~(3)~~)) (b) DCS may serve a notice of support owed to establish a parent's share of a health insurance premium paid by the other parent or DSHS for coverage for the child(ren), as provided in RCW 26.09.105 (1)(c). If the child support order provides that either or both parents are obligated to pay a monthly payment in the form of a proportionate share of the health insurance premium for the child(ren), and the obligated parent does not have health insurance available through his or her union or employer, DCS may serve a notice of support owed under RCW 26.23.110. DCS may serve the notice on:

(i) The NCP to establish and enforce the NCP's monthly payment toward the premium paid for coverage by the CP or by the state; or

(ii) The CP to establish and enforce the CP's monthly payment toward the premium paid for coverage by the NCP.

(5) DCS serves a notice of support owed under this section on ((~~an~~)) the NCP or the CP, as appropriate, like a summons in a civil action or by certified mail, return receipt requested.

(((~~4~~))) (6) Following service of a notice of support owed under this section, DCS mails notice to the other party to the support order.

(a) After service on the NCP, DCS mails a notice to payee under WAC 388-14A-3315.

(b) After service on the CP, DCS mails the NCP a copy of the notice which was served on the NCP.

(((~~5~~))) (7) In a notice of support owed, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order to calculate monthly support or the amounts claimed for medical support;

(b) Any other information not contained in the order that was used to calculate monthly support or medical support and ((~~the~~)) any support debt; and

(c) Notice of the right to request an annual review of the order or a review on the date, if any, given in the order for an annual review.

(((~~6~~))) (8) The NCP, or the CP as appropriate, must make all support payments after service of a notice of support owed to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(((~~7~~))) (9) A notice of support owed becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP (or CP as appropriate), within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(i) Files a request with DCS for a hearing under this section; or

(ii) Obtains a stay from the superior court.

(b) A notice of support owed served in another state becomes final according to WAC 388-14A-7200.

(((~~8~~))) (10) DCS may enforce at any time:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or by prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

(((~~9~~))) (11) For the rules on a hearing on a notice of support owed, see WAC 388-14A-3320.

(((~~10~~))) (12) A notice of support owed or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

(((~~11~~))) (13) If ((~~an~~)) either the NCP or ((~~custodial parent (CP)~~)) CP requests a late hearing, ((~~the party~~)) he or she must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed.

(((~~12~~))) (14) A notice of support owed fully and fairly informs the ((~~NCP~~)) parties of the rights and responsibilities in this section.

(((~~13~~))) (15) For the purposes of this section, WAC 388-14A-3312, 388-14A-3315 and 388-14A-3320, the term "payee" includes "physical custodian," "custodial parent," or "party seeking reimbursement."

(16) DCS serves a notice of support owed under this section only when the party on whose behalf the notice is served has:

(a) An open IV-D case; and

(b) A Washington child support order.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3312 The division of child support serves a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support to establish a fixed dollar amount owed under a child support order. (1) Depending on the specific requirements of the child support order, the division of child support (DCS) may serve a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP), as appropriate, in order to:

(a) Establish as a sum certain and collect the obligated parent's proportionate share of uninsured medical expenses owed to the party seeking reimbursement;

(b) Establish as a sum certain and collect the obligated parent's monthly payment toward the premium paid by the other parent for insurance coverage for the child;

(c) Establish as a sum certain and collect the NCP's monthly payment toward the premium amounts paid for managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment; or

(d) Establish and collect amounts owed under both subsections (a) and (b) of this section.

(2) Either the NCP or the CP (if the CP is both a parent and a party to the support order) may ask DCS to serve a notice of support owed ((~~for~~)) on the other party to the support order in order to establish the obligated parent's proportionate share of unreimbursed medical expenses ((~~on the other party to the support order, if that party is an obligated party under~~)) if the support order establishes such an obligation.

(a) If the CP is not both a parent and a party to the support order, DCS can not assist the CP in making a claim for unreimbursed medical expenses, but the CP may seek to recover such expenses by filing an action in court.

(b) DCS serves the notice if the party seeking reimbursement provides proof of payment of at least five hundred dollars in uninsured medical expenses.

(3) Either the NCP or the CP may ask DCS to serve a notice of support owed on the other parent when the support order provides that if health insurance is not available

through the obligated parent's employer or union at a cost not to exceed twenty-five percent of the basic support obligation, the obligated parent must pay a monthly payment toward the premium paid for coverage which represents the obligated parent's proportionate share of the health insurance premium paid by the other parent or the state.

(a) DCS serves the notice to establish a monthly payment toward the premium paid by the other parent only if the obligated parent is not already providing coverage for the children.

(b) If the CP is not both a parent and a party to the support order DCS cannot assist the CP in making a claim for a monthly contribution toward any insurance coverage provided by the CP.

(4) Each parent's proportionate share of income and basic support obligation is found on the Washington state child support schedule worksheet that was completed as part of the support order.

(5) If the support order provides for the payment of a monthly amount as part of the parent's medical support obligation under RCW 26.09.105 (1)(c) but does not set that obligation as a sum certain, the division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 to establish the amount owed by the obligated parent as a monthly payment toward the premium paid for coverage by the other parent or the state, when appropriate.

(6) When either parent asks DCS to serve a notice of support owed to establish the other parent's proportionate share of unreimbursed medical expenses and the expenses include premiums for health insurance for the child(ren) covered by the order, DCS reviews the order to determine whether it provides for a monthly payment toward the premium when the obligated parent does not have insurance available through his or her employer or union.

(a) If the order does not have such a requirement, DCS includes the health insurance premiums in the claim for reimbursement of uninsured medical expenses.

(b) If the order does have such a requirement, DCS serves a notice of support owed which:

(i) Includes the health insurance premiums in the claim for reimbursement of uninsured medical expenses; and

(ii) If appropriate, includes the provisions necessary to establish a monthly contribution which represents the obligated parent's proportionate share of the premium paid by the other parent (not to exceed twenty-five percent of the obligated parent's basic support obligation), if the obligated parent is not already providing health insurance coverage for the child(ren).

(7) Once DCS serves a notice of support owed under this section that establishes a monthly payment toward the premium, which represents the obligated parent's proportionate share of the premium paid by the other parent or the state, the obligated parent is not required to reimburse the other parent or the state for any amounts of the obligated parent's proportionate share of the premium which are not paid because those amounts exceed twenty-five percent of the obligated parent's basic support obligation. The obligation to contribute a proportionate share of other uninsured medical expenses is not affected by the establishment of a monthly payment toward the premium under this section.

(8) If the child(ren) receive medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment, DCS may serve a notice of support owed under RCW 26.23.110 to establish the amount owed by the noncustodial parent as a monthly payment toward the premium paid for coverage by the state, which represents the obligated parent's proportionate share of the premium paid by the state (not to exceed twenty-five percent of the obligated parent's basic support obligation), if the obligated parent is not already providing health insurance coverage for the child(ren).

(9) A parent's request that DCS serve a notice of support owed to establish the other parent's obligation for ((~~unreimbursed~~)) medical ((~~expenses~~)) support:

(a) May be for a period of up to twenty-four consecutive months.

(b) May include only medical services provided after July 21, 2007.

(c) May include only health insurance coverage provided after September 30, 2009.

(d) May not include months which were included in a prior notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support or a prior judgment.

(((~~d~~))) (e) Need not be for the twenty-four month period immediately following the period included in the prior notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support.

(((~~4~~))) (10) The party seeking reimbursement must ask DCS to serve a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support within two years of the date that the expense ((~~being~~)) or premium was incurred.

(a) The fact that a ((~~claim for unreimbursed~~)) request that DCS serve a notice of support owed for medical ((~~expenses~~)) support is ((~~rejected by DCS~~)) denied, either in whole or in part, does not mean that the parent cannot pursue reimbursement of those expenses by proceeding in court.

(b) If a parent obtains a judgment for ((~~unreimbursed~~)) reimbursement of medical ((~~expenses~~)) support, DCS enforces the judgment.

(((~~5~~))) (11) DCS does not serve a notice of support owed ((~~for unreimbursed medical expenses~~)) under RCW 26.23.110 unless the party seeking reimbursement for medical support declares under penalty of perjury that he or she has asked the obligated party to pay his or her share of the medical expenses and/or medical support, or provides good cause for not asking the obligated party to pay.

(a) If the medical expenses have been incurred within the last twelve months, this requirement is waived.

(b) If the obligated party denies having received notice that the other party was seeking reimbursement for medical expenses or support, the service of the notice of support owed ((~~for unreimbursed medical expenses~~)) constitutes the required notice.

(((~~6~~))) (12) The NCP must apply for full child support enforcement services before the NCP may ask DCS to enforce the CP's medical support obligation.

(a) DCS opens a separate case to enforce a CP's medical support obligation.

(b) The case where DCS is enforcing the support order and collecting from the NCP is called the main case.

(c) The case where DCS is acting on NCP's request to enforce CP's medical support obligation is called the medical support case.

(((~~(7)~~))) (d) WAC 388-14A-4112 describes the circumstances under which DCS enforces a CP's obligation to provide medical support.

(13) DCS serves a notice of support owed for medical support on the obligated parent like a summons in a civil action or by certified mail, return receipt requested.

(((~~(8)~~))) (14) Following service on the obligated parent, DCS mails a notice to the party seeking reimbursement under WAC 388-14A-3315.

(((~~(9)~~))) (15) In a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order regarding medical support;

(b) A statement of uninsured medical expenses and a declaration by the parent seeking reimbursement; and

(c) Notice of the right to request an annual review of the order, as provided in WAC 388-14A-3318.

(((~~(10)~~))) (16) A notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless ((~~the obligated~~)) either parent, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(b) Files a request with DCS for a hearing under this section; or

(c) Obtains a stay from the superior court.

(((~~(11)~~))) (17) A notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support served in another state becomes final according to WAC 388-14A-7200.

(((~~(12)~~))) (18) For the rules on a hearing on a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support, see WAC 388-14A-3320.

(((~~(13)~~))) (19) A notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

(((~~(14)~~))) (20) If the obligated parent is the NCP, any amounts owing determined by the final administrative order are added to the debt on the main case.

(a) Amounts owed to the CP are added to the CP debt on the main case.

(b) Amounts owed to reimburse the state for medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment are added to the main case as permanently assigned arrears.

(((~~(15)~~))) (21) If the obligated parent is the CP, any amounts owing determined by the final administrative order are paid in the following order:

(a) Any amount owed by the CP to the NCP is applied as an offset to any nonassistance child support arrears owed by the NCP on the main case only; or

(b) If there is no debt owed to the CP on the main case, payment of the amount owed by the CP is in the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final, but not to exceed ten percent of the current support amount; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order, but not to exceed ten percent of the current support amount.

(c) If the amount owed by the CP exceeds the amount that can be paid off using the methods specified in subsections (a) and (b) of this section, DCS uses the medical support case to collect the remaining amounts owed using the remedies available to DCS for collecting child support debts.

(((~~(16)~~))) (22) If either the obligated parent or the parent seeking reimbursement or payment toward the premium requests a late hearing, that party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support.

(((~~(17)~~))) (23) A notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support fully and fairly informs the obligated parent of the rights and responsibilities in this section.

(((~~(18)~~))) (24) A notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support under this section is subject to annual review as provided in WAC 388-14A-3318.

(((~~(19)~~))) (25) If both CP and NCP request that DCS serve a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support on the other party, those notices remain separate and may not be combined.

(a) The office of administrative hearings (OAH) may schedule consecutive hearings but may not combine the matters under the same docket number.

(b) The administrative law judge (ALJ) must issue two separate administrative orders, one for each obligated parent.

(((~~(20)~~))) (26) DCS does not serve a second or subsequent notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support on an obligated parent until the party seeking reimbursement meets the conditions set forth in WAC 388-14A-3318.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3315 When DCS serves a notice of support debt ((~~or~~)), notice of support owed ((~~or~~)), notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support, we notify the other party to the child support order. (1) The division of child support (DCS) sends a notice to the payee/obligee under a Washington child support order or a foreign child support order when DCS receives proof of service on the ((~~noncustodial~~)) obligated parent (((~~NCP~~))) of:

(a) A notice of support owed under WAC 388-14A-3310; ((~~or~~))

(b) A notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support under WAC 388-14A-3312; or

(c) A notice of support debt under WAC 388-14A-3304.

(2) DCS sends the notice to payee by first class mail to the last known address of the payee and encloses a copy of the notice served on the ((~~NCP~~)) obligated parent.

(3) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on a notice of support owed under WAC 388-14A-3310, a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support under WAC 388-14A-3312, or a notice of support debt under WAC 388-14A-3304 within twenty days of the date of a notice to payee that was mailed to a Washington address.

(4) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.

(5) The notice of support owed under WAC 388-14A-3312 informs both the CP and the NCP of the right to file a request for hearing on the notice within twenty days of the date of a notice to payee that was mailed to a Washington address, or within sixty days if the NCP copy is mailed to an out-of-state address.

(6) The effective date of a hearing request is the date DCS receives the request.

(((~~(6) When DCS serves a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, DCS mails the notice to payee to the parent seeking reimbursement.~~))

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3317 What is an annual review of a support order under RCW 26.23.110? (1) RCW 26.23.110 provides for an annual review of the ((~~support~~)) final administrative order which ((~~was previously the subject of~~)) resulted from a notice of support owed ((~~under that statute~~)), but only if ((~~the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP)~~)) one of the parties to that administrative order requests a review.

(a) This ((~~type of annual review concerns~~)) section describes the annual review that ((~~takes place after service of~~)) occurs for a final administrative order that resulted from a notice of support owed that was served under WAC 388-14A-3310.

(b) ((~~For the definition of an annual review of a support order under RCW 26.23.110 that takes place after service of~~)) WAC 388-14A-3318 describes the annual review that for a final administrative order that results from a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support that was served under WAC 388-14A-3312((~~, see WAC 388-14A-3318~~)).

(2) For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:

(a) The collection by DCS of necessary information from CP and NCP;

(b) The service of a notice of support owed under WAC 388-14A-3310; and

(c) The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.

(3) A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date.

(4) Either CP or NCP may request an annual review of the support order, even though ((~~the statute~~)) RCW 26.23.110 mentions only the NCP.

(5) DCS may ((~~request~~)) commence an annual review of the support order on its own initiative, but has no duty to ((~~do so~~)) commence an annual review unless either the CP or NCP requests a review.

(6) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

(7) The twelve-month requirement for an annual review under this section runs separately from the twelve-month requirement for an annual review under WAC 388-14A-3318.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312? (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the noncustodial parent (NCP) or the custodial parent (CP) requests a review.

(2) For purposes of chapter 388-14A WAC, the following rules apply to an "annual review of a support order" for a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support served under WAC 388-14A-3312:

(a) Either the CP or the NCP may be the party seeking reimbursement.

(b) The party seeking reimbursement of uninsured medical expenses must provide proof of payment of at least five hundred dollars in uninsured medical expenses for services provided in the last twenty-four months.

(c) There is no minimum dollar amount required when asking for an annual review concerning the monthly payment toward the premium paid by the other party or the state.

(d) At least twelve months must have passed since:

(i) The date the last notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support on behalf of the party seeking reimbursement became a final order; or

(ii) The last administrative order or decision based on a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support on behalf of that party became a final administrative order.

(3) In the event that DCS has served both a notice of support owed under WAC 388-14A-3310 and a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support under WAC 388-14A-3312 on the same case, each type of notice of support owed has its own twelve-month cycle for annual review.

(4) For purposes of this section, the twelve-month cycle for annual review runs separately for the NCP and for the CP, depending on which one is the party seeking reimbursement.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3320 What happens at a hearing on a notice of support owed? (1) A hearing on a notice of support owed is only for interpreting the order for support and any modifying orders and not for changing or deferring the support provisions of the order.

(2) A hearing on a notice of support owed served under WAC 388-14A-3310 is only to determine:

(a) The amount of monthly support as a fixed dollar amount;

(b) Any accrued arrears through the date of hearing; and

(c) If a condition precedent in the order to begin or adjust the support obligation was met.

(3) A hearing on a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support served under WAC 388-14A-3312 is only to determine:

(a) Issues regarding unreimbursed medical expenses, such as:

(i) Whether the parent on whom the notice was served is obligated under the support order to pay for uninsured medical expenses for the children covered by the order;

(((~~b~~))) (ii) The total amount of uninsured medical expenses paid by the party seeking reimbursement;

(((~~c~~))) (iii) The obligated parent's share of the uninsured medical expenses;

(((~~d~~))) (iv) The amount, if any, the obligated parent has already paid to the party seeking reimbursement; and

(((~~e~~))) (v) The amount owed by the obligated parent to the party seeking reimbursement for unreimbursed medical expenses.

(b) Issues regarding a monthly payment toward the premium paid for coverage for the children, such as:

(i) Whether the support order requires the obligated parent to pay when the obligated parent does not provide coverage;

(ii) Whether the obligated parent is currently providing coverage, or did so during the time period in question;

(iii) The amount of the premium paid by the other parent or by the state to cover the child(ren);

(iv) The obligated parent's proportionate share of the premium;

(v) The amount, if any, the obligated parent has already contributed toward health insurance premiums paid by the other parent or the state for the time period in question; and

(vi) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health insurance premium.

(4) If the administrative law judge (ALJ) determines that the uninsured medical expenses claimed by the parent seeking reimbursement do not amount to at least five hundred dollars, the ALJ:

(a) May not dismiss the notice on this basis;

(b) Must make the determination listed in subsection (3) above.

(5) The hearing is not for the purpose of setting a payment schedule on the support debt.

(6) Either the noncustodial parent (NCP) or payee may request a hearing on a notice of support owed served under WAC 388-14A-3310.

(7) Either the obligated parent or the party seeking reimbursement may request a hearing on a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support served under WAC 388-14A-3312.

(8) The party who requested the hearing has the burden of proving any defenses to liability that apply under WAC 388-14A-3370 or that the amounts stated in the notice of support owed are incorrect.

(9) The office of administrative hearings (OAH) sends a notice of hearing to the NCP, to the division of child support (DCS), and to the custodial parent (CP). The NCP and the CP each may participate in the hearing as an independent party.

(10) If only one party appears and wishes to proceed with the hearing, the administrative law judge (ALJ) holds a hearing and issues an order based on the evidence presented or continues the hearing. See WAC 388-14A-6110 and 388-14A-6115 to determine if the ALJ enters an initial order or a final order.

(a) An order issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

(b) If neither the NCP nor the CP appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

(11) If either party requests a late hearing on a notice of support owed, that party must show good cause for filing the late hearing request, as provided in WAC 388-14A-3500.

(12) For purposes of this section, the terms "payee" and "CP" are used interchangeably and can mean either the CP, the payee under the order or both, except that a CP who is not also the payee under the support order may not ask DCS to serve a notice of support owed for ((~~unreimbursed~~)) medical ((~~expenses~~)) support under WAC 388-14A-3312.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-3400 Are there limitations on how much of my income is available for child support? (1) There are two kinds of limitations based on your income when we set your child support obligation:

(a) The monthly basic child support ((~~amount~~)) obligation for all of your biological or legal children cannot exceed forty-five percent of your monthly net income, unless there are special circumstances as provided in chapter 26.19 RCW; and

(b) The monthly basic child support ((~~amount~~)) obligation cannot reduce your net monthly income below ((~~the one person need standard (WAC 388-478-0015)~~)) one hundred twenty-five percent of the federal poverty level, unless there are special circumstances as provided in chapter 26.19 RCW.

(2) RCW 74.20A.090 limits the amount that can be withheld from your wages for child support to fifty percent of your net monthly earnings.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4100 How does the division of child support enforce my obligation to provide health insur-

ance for my children? (1) If a child support order requires ((~~the noncustodial parent (NCP)~~)) a parent to provide health insurance for the children, the division of child support (DCS) attempts to enforce that requirement according to the terms of the order. ((~~The following subsections describe the different types of premium limitations that could apply to a support order~~)) A parent required to provide medical support or health insurance coverage for a child is called the obligated parent, and can be either the custodial parent (CP) or the noncustodial parent (CP).

(2) When DCS is enforcing a support order which contains a specific dollar limit for the cost of health insurance premiums or provides for coverage which is available at no cost to the ((~~NCP~~)) obligated parent, DCS does not require the ((~~NCP~~)) obligated parent to provide health insurance if coverage is not available within the limitations of the order.

(3) When DCS is enforcing a support order entered in Washington on or after October 1, 2009, which provides that either or both parents must provide coverage and/or a proportionate share of uninsured medical expenses as part of the medical support obligation under RCW 26.09.105, the rules in this subsection apply unless the support order specifies differently:

(a) The obligated parent must provide health insurance for dependent children covered by the order if coverage is:

(i) Available or becomes available through private insurance which is not provided through the obligated parent's employer or union; or

(ii) Available or becomes available through the obligated parent's employment or union at a cost of not greater than twenty-five percent of the obligated parent's basic support obligation.

(b) If the obligated parent does not provide proof of coverage or if coverage is not available, DCS may serve a notice of support owed under WAC 388-14A-3312 to determine the monthly amount that the obligated parent must pay as his or her proportionate share of any premium paid by the other parent or by the state on behalf of the child(ren).

(4) When DCS is enforcing a support order entered ((~~on or after~~)) in Washington between May 13, 1989 and September 30, 2009, unless the support order specifies differently, the ((~~NCP~~)) obligated parent must provide health insurance for dependent children if coverage is:

(a) Available or becomes available through the ((~~NCP's~~)) obligated parent's employment or union; and

(b) Available at a cost of not greater than twenty-five per cent of the ((~~NCP's~~)) obligated parent's basic support obligation.

(((~~4~~))) (5) When DCS is enforcing a Washington support order entered prior to May 13, 1989, unless the support order specifies differently, the ((~~NCP~~)) obligated parent must provide health insurance for dependent children if coverage is available or becomes available through the ((~~NCP's~~)) obligated parent's employment or union:

(a) For a maximum of twenty-five dollars per month, if the order specifies that the ((~~NCP~~)) obligated parent must provide coverage only if it is available at a reasonable cost; or

(b) For any premium amount whatsoever, if the order does not specify reasonable cost.

(((~~5~~))) (6) When DCS is enforcing a support order entered by a court or administrative tribunal that is not located in Washington, unless the order provides differently, DCS enforces the medical support obligation as provided in subsection (4) of this section.

(7) DCS serves a notice of intent to enforce a health insurance obligation if the support order:

(a) Requires the ((~~NCP~~)) obligated parent either to provide health insurance coverage or prove that coverage is not available; and

(b) Does not inform the ((~~NCP~~)) obligated parent that failure to provide health insurance or prove it is not available may result in enforcement of the order without notice to the ((~~NCP~~)) obligated parent.

(((~~6~~))) (8) DCS serves the notice of intent to enforce a health insurance obligation on the ((~~NCP~~)) obligated parent by certified mail, return receipt requested, or by personal service.

(((~~7~~))) (9) The notice advises the ((~~NCP~~)) obligated parent that ((~~the NCP~~)) he or she must submit proof of coverage, proof that coverage is not available, or proof that the ((~~NCP~~)) obligated parent has applied for coverage, within twenty days of the date of service of the notice.

(((~~8~~))) (10) The notice advises the ((~~NCP~~)) obligated parent that, if health insurance is not yet available, the ((~~NCP~~)) obligated parent must immediately notify DCS if health insurance coverage becomes available through the ((~~NCP's~~)) obligated parent's employer or union.

(((~~9~~))) (11) When DCS enforces an ((~~NCP's~~)) obligated parent's health insurance obligation, such enforcement may include asking the employer and the plan administrator to enroll the ((~~NCP~~)) obligated parent in a health insurance plan available through the employer.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4110 If my support order requires me to provide ((~~health insurance~~)) medical support for my children, what do I have to do? (1) Once a support order is entered requiring ((~~health insurance~~)) medical support, the obligated parent must take the following actions within twenty days:

(a) Provide health insurance coverage; and

(b) Provide proof of coverage to the other parent and to the division of child support (DCS), such as:

(i) The name of the insurer providing the health insurance coverage;

(ii) The names of the beneficiaries covered;

(iii) The policy number;

(iv) That coverage is current; and

(v) The name and address of the obligated parent's employer.

(2) If health insurance coverage that is accessible to the children named in the order is available, the obligated parent must:

(a) Provide for coverage for the children without waiting for an open enrollment period, as provided under RCW 48.01.235 (4)(a); and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(3) If health insurance is not immediately available to the obligated parent, as soon as health insurance becomes available, the obligated parent must:

(a) Provide for coverage for the children named in the order; and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(4) Medical assistance provided by the department under chapter 74.09 RCW does not substitute for health insurance.

(5) DCS may serve a notice of support owed for medical support under WAC 388-14A-3312 to establish either or both of the following:

(a) Either parent's share of uninsured medical expenses owed to the other parent; or

(b) Either parent's monthly payment toward the premium paid for coverage by the other parent or the state, if:

(i) Health insurance coverage is not available through the parent's employer or union or is not otherwise provided; and

(ii) The support order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage.

(6) See WAC 388-14A-4165 for a description of what happens when the combined total of a noncustodial parent's current support obligation, arrears payment and health insurance premiums to be withheld by the employer exceeds the fifty per cent limitation for withholding.

(7) Both parents must notify DCS any time there is a change to the health insurance coverage for the children named in the order.

NEW SECTION

WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation? The division of child support (DCS) may decline to enforce a medical support obligation using the remedies available under RCW 26.09.105, 26.18.170 and 26.23.110 if one or more of the following apply:

(1) The medical support obligation is imposed by a child support order that was not entered in a court or administrative forum of the state of Washington;

(2) The department of social and health services is not paying public assistance or providing foster care services;

(3) The party requesting enforcement of the medical support obligation does not have an open IV-D case with DCS for the child;

(4) The party requesting enforcement of the medical support obligation is not a parent of the child for whom the medical support obligation was established;

(5) The party requesting enforcement of the medical support obligation is not a former recipient of public assistance as described in WAC 388-14A-2000 (2)(d);

(6) DCS has not received a request for services from a child support agency in another state or a child support agency of an Indian tribe or foreign country;

(7) The party requesting enforcement of the medical support obligation has not applied for full support enforcement services;

(8) The party requesting enforcement of the medical support obligation does not qualify as a party who can receive child support enforcement services from DCS under WAC 388-14A-2000;

(9) The case does not meet the requirements for provision of support enforcement services from DCS under WAC 388-14A-2010;

(10) DCS denies the application under WAC 388-14A-2020; or

(11) The case meets one or more of the reasons set out in WAC 388-14A-4112(2) that DCS does not enforce a custodial parent's obligation to provide medical support.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide ((~~health insurance coverage~~)) medical support? (1) A noncustodial parent (NCP) may file an application for full child support enforcement services and specifically request that the division of child support (DCS) enforce the ((~~health insurance~~)) medical support obligation of the custodial parent (CP). DCS does not enforce the CP's medical support obligation unless the NCP files an application for services under WAC 388-14A-2000 (2)(c). The NCP must specify whether he or she is requesting that DCS enforce one or both parts of the CP's medical support obligation:

(a) The CP's proportionate share of uninsured medical expenses; or

(b) The CP's obligation to provide health insurance coverage (including the possibility of a monthly payment toward the premium paid for coverage when appropriate).

(2) A medical support obligation includes providing health insurance coverage or contributing a monthly payment toward the premium paid for coverage when appropriate, and paying a proportionate share of any uninsured medical expenses for the children.

(a) DCS may enforce the CP's obligation to pay a proportionate share of any uninsured medical expenses for the children under WAC 388-14A-3312.

(b) DCS may decide whether it is appropriate to enforce the CP's obligation to provide health insurance coverage or contribute a monthly payment toward the premium paid for coverage under subsection (3) of this section.

(3) DCS does not enforce a custodial parent's obligation to provide health insurance coverage or pay a monthly payment toward the premium paid for coverage when:

(a) The support order does not include a medical support obligation which includes providing health insurance ((~~obligation~~)) or paying monthly payment toward the premium paid for coverage for the CP.

(b) The NCP is already providing health insurance coverage for the children covered by the order.

(c) The amount that the CP would have to pay for the premium for health insurance exceeds the NCP's monthly support obligation for the children.

(d) The children are covered by health insurance provided by someone else.

(e) The children are receiving medicaid.

(f) The children are receiving TANF.

(g) The CP does not reside in Washington state.

(h) The CP is a tribal member living on or near the reservation.

(i) The CP is receiving child support enforcement services through a tribal IV-D program.

(((~~(3)~~))) (4) If none of the conditions under subsection (((~~(2)~~))) (3) exist, DCS may enforce the CP's obligation to provide health insurance coverage when the CP has health insurance available at a reasonable cost through the CP's employer or union.

(((~~(4)~~))) (5) A "reasonable cost" for health insurance coverage is defined as twenty-five percent of the basic support obligation for the children covered by the order, unless the support order provides a different limitation.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance? (1) Some support orders reduce the noncustodial parent's ((~~support obligation~~)) transfer payment based on health insurance premiums paid by the noncustodial parent (NCP).

(2) An NCP is entitled to the reduction for premiums paid only if((~~:~~

(~~a~~))) the NCP submits proof of the cost of coverage ((~~as provided in WAC 388-14A-4110 (1)(b); and~~

(~~b) NCP actually pays the required premium~~)) which is actually being provided at the time the support order is entered, so that the amounts can be included in the worksheet calculation.

(((~~(3) If the NCP fails to submit proof or pay the premium, the division of child support (DCS) collects the NCP's adjusted basic support obligation without a reduction for health insurance premium payments.~~)))

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage. (1) The division of child support (DCS) uses a notice of enrollment called the National Medical Support Notice (NMSN) to enforce an obligated parent's obligation to provide health insurance coverage under chapter 26.18 RCW.

(2) DCS sends the NMSN to the obligated parent's employer in one of the following ways:

(a) In the same manner as a summons in a civil action,

(b) By certified mail, return receipt requested,

(c) By regular mail, or

(d) By electronic means as provided in WAC 388-14A-4040 (1)(d).

(3) DCS sends the NMSN without notice to the obligated parent, who could be either the noncustodial parent (NCP) or the custodial parent (CP) when:

(a) A court or administrative order requires the obligated parent to provide insurance coverage for a dependent child;

(b) The obligated parent fails to provide health insurance (either by not covering the child or by letting the coverage lapse) or fails to provide proof of coverage;

(c) The requirements of RCW 26.23.050 are met; and

(d) DCS has reason to believe that coverage is available through the obligated parent's employer or union.

(4) If sending the NMSN does not result in coverage for the child, DCS may seek to enforce the obligated parent's medical support obligation by other means, as provided in RCW 26.18.170 and WAC 388-14A-4110.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium? (1) Under RCW 26.23.060(3), a payroll deduction may not exceed fifty percent of the noncustodial parent's disposable earnings in each pay period.

(2) When the division of child support (DCS) enforces a child support obligation through an income withholding action and also enforces a health insurance obligation, the noncustodial parent's employer often must withhold amounts for:

(a) Current child support;

(b) Child support arrears; and

(c) Health insurance premiums.

(3) When the employer or plan administrator must enroll the noncustodial parent (NCP) in a health insurance plan in order to enroll the children (see WAC 388-14A-4140), the premium amount for the NCP's coverage is included in the amounts to withhold under subsection (2) above. If the NCP is already enrolled in a plan, the premium amount for the NCP's coverage is not included the amounts to withhold under that subsection.

(4) If the combined amounts for current support, support arrears and health insurance premiums are more than fifty percent of the noncustodial parent's disposable earnings, the employer must notify DCS immediately.

(5) In certain circumstances, DCS may adjust the amount to be withheld for support arrears so that the total amount withheld does not exceed fifty percent of the noncustodial parent's disposable earnings.

(6) If the noncustodial parent's current support obligation plus health insurance premiums exceeds fifty percent of the noncustodial parent's disposable earnings, DCS:

(a) Enforces the child support obligation through income withholding; but

(b) Is not able to enforce the noncustodial parent's health insurance obligation at that time.

(7) In the situation described in subsection (6), DCS may establish a monthly payment toward the premium, as described in WAC 388-14A-3312, even if the combined amount for the current support obligation and the monthly payment toward the premium exceeds fifty percent of the NCP's disposable earnings.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4175 ((~~Is an employer~~)) Who is required to notify the division of child support when insurance coverage for the children ends? (1) Once the division of child support (DCS) has notified an employer that a parent is obligated by a support order to provide health insurance coverage for the children named in the order, the National Medical Support Notice (NMSN) or other notice of enrollment remains in effect as specified in WAC 388-14A-4170.

(2) If coverage for the children is terminated, the employer must notify DCS within thirty days of the date coverage ends.

(3) A parent who is required by a child support order to provide health insurance coverage for his or her children must notify DCS and the other parent within thirty days of the date coverage for the children ends. This requirement applies whether the obligated parent is the custodial parent or the noncustodial parent.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4180 When must the division of child support communicate with the DSHS health and recovery services administration? (1) The division of child support (DCS) must inform the DSHS health and recovery services administration (HRSA) of the existence of a new or modified court or administrative order for child support when the order includes a requirement for medical support. HRSA is the part of DSHS which provides services for the state of Washington under Title XIX of the federal Social Security Act.

(2) DCS must provide HRSA with the following information:

(a) Title IV-A case number, Title IV-E foster care case number, medicaid number or the individual's Social Security number;

(b) Name of the obligated parent;

(c) Social Security number of the obligated parent;

(d) Name and Social Security number of the child(ren) named in the order;

(e) Home address of the obligated parent;

(f) Name and address of the obligated parent's employer;

(g) Information regarding the obligated parent's health insurance policy; and

(h) Whether the child(ren) named in the order are covered by the policy.

(3) DCS must periodically communicate with HRSA to determine if there have been any lapses (stops and starts) in the obligated parent's health insurance coverage for medicaid applicants.

(4) Before DCS may serve a notice of support owed for medical support under WAC 388-14A-3312 to establish an obligated parent's monthly payment toward the premium paid by the state for coverage, HRSA must provide information regarding the premium paid for each child covered by the notice.

(a) DCS distributes to HRSA any collections based on the obligation established under WAC 388-14A-3312 when the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

(b) Such collections are retained by the department to reimburse the state, subject to the limitations in WAC 388-14A-2035(4).

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5002 How does DCS distribute support collections in a nonassistance case? (1) A nonassistance case is one where the family has never received a cash public assistance grant.

(2) The division of child support (DCS) applies support collections within each Title IV-D nonassistance case:

(a) First, to satisfy the current support obligation for the month DCS received the collection;

(b) Second, to any current medical support obligation owed to the family;

(c) Third, to the noncustodial parent's support debts owed to the family;

((~~(c) Third~~)) (d) Fourth, to prepaid support as provided for under WAC 388-14A-5008.

(3) DCS uses the fee retained under WAC 388-14A-2200 to offset the fee amount charged by the federal government for IV-D cases that meet the fee criteria in WAC 388-14A-2200(1).

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5003 How does DCS distribute support collections in an assistance case? (1) An assistance case is one where the family is currently receiving a TANF grant.

(2) The division of child support (DCS) distributes support collections within each Title IV-D assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the collection;

(b) Second, to satisfy any current medical support obligation owed for the month DCS received the collection;

(c) Third, to satisfy support debts which are permanently assigned to the department ((~~to reimburse the cumulative amount of assistance which has been paid to the family~~));

((~~(c) Third~~)) (d) Fourth:

(i) To satisfy support debts which are temporarily assigned to the department to reimburse the cumulative amount of assistance paid to the family; or

(ii) To satisfy support debts which are conditionally assigned to the department. Support collections distributed to conditionally assigned arrears are disbursed according to WAC 388-14A-2039.

((~~(d) Fourth~~)) (e) Fifth, to satisfy support debts owed to the family;

((~~(e) Fifth~~)) (f) Sixth, to prepaid support as provided for under WAC 388-14A-5008.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5004 How does DCS distribute support collections in a former assistance case? (1) A former assistance case is one where the family is not currently receiving a TANF grant, but has at some time in the past.

(2) Subject to the exceptions provided under WAC 388-14A-5005, the division of child support (DCS) distributes support collections within each Title IV-D former-assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the collection;

(b) Second, to satisfy support debts owed to the family;

(c) Third, to satisfy support debts which are conditionally assigned to the department. These collections are disbursed according to WAC 388-14A-2039;

(d) Fourth, to medical support debt owed to the family;

(e) Fifth, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family; and

((~~(e) Fifth~~)) (f) Sixth, to prepaid support as provided for under WAC 388-14A-5008.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5005 How does DCS distribute federal tax refund offset collections? The division of child support (DCS) distributes federal tax refund offset collections in accordance with 42 U.S.C. Sec. 657, as follows:

(1) First, to satisfy the current support obligation for the month in which DCS received the collection.

(2) Second, DCS distributes any amounts over current support depending on the type of case to which the collection is distributed:

(a) In a never assistance case, all remaining amounts are distributed to family arrears, meaning those arrears which have never been assigned.

(b) In a former assistance case, all remaining amounts are distributed first to family arrears, then to permanently assigned arrears, then to conditionally assigned arrears, and then to assigned medical support arrears.

(c) In a current assistance case, all remaining amounts are distributed first to permanently assigned arrears, then to temporarily assigned arrears (if they exist), then to conditionally assigned arrears, and then to family arrears.

(3) Federal tax refund offset collections distributed to assigned support are retained by the state to reimburse the cumulative amount of assistance which has been paid to the family.

(4) DCS may distribute federal tax refund offset collections only to certified support debts and to current support obligations on cases with certified debts. DCS must refund any excess to the noncustodial parent (NCP).

(5) DCS may retain the twenty-five dollar annual fee required under the federal deficit reduction act of 2005 and RCW 74.20.040 from federal tax refund offset collections distributed to nonassistance cases.

(6) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a collection from a federal tax refund offset is from a tax refund based on a joint return, DCS follows the procedures set forth in WAC 388-14A-5010.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-5006 How does DCS distribute support collections when the paying parent has more than one case? When the NCP has more than one Title IV-D case, the division of child support (DCS) distributes support collections:

(1) First, to the current support obligation on each Title IV-D case, in proportion to the amount of the current support order on each case; and

(2) Second, to the current monthly payment toward the premium, on each Title IV-D case for which a monthly payment toward the premium has been established and is being enforced, in proportion to the amount of the current monthly payment toward the premium owed by the NCP on each case;

(3) Third, to the total of the support debts whether owed to the family or to the department for the reimbursement of public assistance on each Title IV-D case, in proportion to the amount of support debt owed by the NCP on each case; and

((~~(3) Third~~)) (4) Fourth, within each Title IV-D case according to WAC 388-14A-5002, 388-14A-5003, or 388-14A-5004.

AMENDATORY SECTION (Amending WSR 01-24-078, filed 12/3/01, effective 1/3/02)

WAC 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case? (1) The division of child support (DCS) applies amounts to a support debt owed for one family or household and distributes the amounts accordingly, rather than make a proportionate distribution between support debts ((~~owned~~)) owed to different families, when:

(a) Proportionate distribution is administratively inefficient; or

(b) The collection resulted from the sale or disposition of a specific piece of property against which a court awarded the custodial parent (CP) a judgment lien for child support; or

(c) The collection is the result of a contempt order which provides that DCS must distribute the amounts to a particular case.

(2) If the collection is the result of an automated enforcement of interstate (AEI) transaction under RCW 74.20A.188, DCS applies the payment as provided in WAC 388-14A-5006, even if the requesting state wants the payment applied to a specific case.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation. (1) A support order entered under this chapter must conform to the requirements set forth in RCW 26.09.105 and 26.18.170, and in RCW 26.23.050 (3) and (5). The administrative law judge (ALJ) must comply with the DSHS

rules on child support and include a Washington state child support schedule worksheet when entering a support order.

(2) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the ALJ must determine:

(a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;

(b) The names and dates of birth of the children covered by the support order;

(c) The net monthly income of the noncustodial parent (NCP) and any custodial parent (CP);

(d) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;

(e) If requested by a party, the NCP's share of any special child-rearing expenses in a sum certain amount per month;

(f) A statement that either or both parents are obligated to provide medical support under RCW 26.09.105 and 26.18.170, including but not limited to the following:

(i) A requirement that either or both parents are obligated to provide health insurance coverage for the child covered by the support order if coverage that can be extended to cover the child is or becomes available through the parent's employment or union;

(ii) Notice that if proof of health insurance coverage or proof that the coverage is unavailable is not provided to DCS within twenty days, DCS may seek direct enforcement through the obligated parent's employer or union without further notice to the parent; and

(iii) The reasons for not ordering health insurance coverage if the order fails to require such coverage;

(g) A provision which determines the mother and the father's proportionate share of uninsured medical expenses;

(h) The NCP's accrued debt and order payments toward the debt in a monthly amount to be determined by the division of child support (DCS);

(i) The NCP's current and future monthly support obligation as a per month per child amount and order payments in that amount; and

(j) The NCP's total current and future support obligation as a sum certain and order payments in that amount.

(3) Having made the determinations required in subsection (2) above, the ALJ must order the NCP to make payments to the Washington state support registry (WSSR).

(4) The ALJ must allow DCS to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.

(5) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.

(6) In a hearing held on a notice of support owed for medical support issued under WAC 388-14A-3312, the ALJ must determine either or both of the following, depending on what was requested in the notice:

(a) The amount owed by the obligated parent to the other for unreimbursed medical expenses;

(b) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health insurance premium paid by the other parent or the state.

((~~(a)~~)) (7) The ALJ does not specify how the amounts owed by the obligated parent should be paid.

((~~(b)~~)) (8) In the event that DCS has served a notice under WAC 388-14A-3312 on both the NCP and the CP, the ALJ must issue a separate administrative order for each notice issued, and may not set off the debts against each other.

AMENDATORY SECTION (Amending WSR 06-16-073, filed 7/28/06, effective 8/28/06)

WAC 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation when the parents of a child in foster care are married and residing together? (1) When the division of child support (DCS) is setting a joint support obligation for married parents who reside together, DCS follows the steps set out in this section for completing the worksheets under the Washington state child support schedule (WSCSS).

(2) DCS calculates each parent's income under the rules set out in WAC 388-14A-3205, and then calculates the income of the marital community by combining both parents' income in ((~~the "Father"~~)) one column of the worksheet and does not put any income in the ((~~"Mother"~~)) other column.

(3) DCS calculates the joint support obligation using the limitations contained in RCW 26.19.065:

(a) The joint child support obligation may not exceed forty-five percent of the net income of the marital community except for good cause.

(b) Even ((~~with~~)) though there are two parents involved, DCS uses the one-person amount when determining the ((~~need standard~~)) one hundred twenty-five percent of federal poverty level limitation.

(c) Despite the application of any limitations, there is a presumptive minimum obligation of ((~~twenty-five~~)) fifty dollars per month per child.

((~~(c)~~)) (d) DCS or the administrative law judge (ALJ) may find reasons for deviation and must support those reasons with appropriate findings of fact in the support order.

(4) As described in subsection (2) of this section, the support obligation in the ((~~"Father"~~)) column of the WSCSS worksheet which contains information regarding both parents is the joint support obligation of the parents. ((~~The support obligation in the "Mother" column of the WSCSS worksheet is irrelevant for purposes of this particular support calculation.~~))

(5) DCS determines the joint support obligation of the parents without regard to the cost of foster care placement, as provided in WAC 388-14A-8105.

WSR 10-12-069
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed May 28, 2010, 1:44 p.m., effective May 28, 2010, 1:44 p.m.]

Effective Date of Rule: Immediately.

Purpose: These amendments are necessary to meet the legislative requirements of sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 for durable medical equipment. Specifically, the department is eliminating coverage for transcutaneous electrical neural stimulation (TENS) devices and supplies (including battery chargers and supplies for client-owned devices) for in-home use and the instruction in the application of TENS.

Citation of Existing Rules Affected by this Order: Amending WAC 388-543-1150, 388-543-1300, 388-543-1600, 388-543-2800, 388-545-300, and 388-545-500.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Section 1109, chapter 564, Laws of 2009 (ESHB 1244), WAC 388-501-0055.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Emergency rule adoption is required in order for the department to fully meet the legislatively mandated appropriation reduction in section 1109, chapter 564, Laws of 2009 (ESHB 1244) for durable medical equipment for fiscal years 2010-2011. The permanent rule is expected to be adopted in early June 2010.

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 6, 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 6, Repealed 0.

Date Adopted: May 28, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-22-047, filed 10/28/09, effective 11/28/09)

WAC 388-543-1150 Limits and limitation extensions. The department covers non-DME (MSE), DME, and related supplies, prosthetics, orthotics, medical supplies, and related services as described in WAC 388-543-1100(1). The department limits the amount, frequency, or duration of certain covered MSE, DME, and related supplies, prosthetics, orthotics, medical supplies, and related services, and reimburses up to the stated limit without requiring prior authorization. These limits are designed to avoid the need for prior authorization for items normally considered medically necessary and for quantities sufficient for a thirty-day supply for one client. In order to exceed the stated limits, the provider must request a limitation extension (LE), which is a form of prior authorization (PA). The department evaluates such requests for LE under the provisions of WAC 388-501-0169. Procedures for LE are found in department billing instructions. The following items and quantities do not require prior authorization; requests to exceed the stated quantities require LE:

(1) Antiseptics and germicides:

(a) Alcohol (isopropyl) or peroxide (hydrogen) - one pint per month;

(b) Alcohol wipes (box of two hundred) - one box per month;

(c) Betadine or pHisoHex solution - one pint per month;

(d) Betadine or iodine swabs/wipes (box of one hundred) - one box per month; or

(e) Periwash (when soap and water are medically contraindicated) - one five-ounce bottle of concentrate solution per six-month period.

(2) Blood monitoring/testing supplies:

(a) Replacement battery of any type, used with a client-owned, medically necessary home or specialized blood glucose monitor - one in a three-month period;

(b) Spring-powered device for lancet - one in a six-month period.

(c) Test strips and lancets for an insulin dependent diabetic - one hundred of each, per month; and

(d) Test strips and lancets for a noninsulin dependent diabetic - one hundred of each, per three-month period.

(3) Braces, belts and supportive devices:

(a) Knee brace (neoprene, nylon, elastic, or with a hinged bar) - two per twelve-month period;

(b) Ankle, elbow, or wrist brace - two per twelve-month period;

(c) Lumbosacral brace, rib belt, or hernia belt - one per twelve-month period;

(d) Cervical head harness/halter, cervical pillow, pelvic belt/harness/boot, or extremity belt/harness - one per twelve-month period.

(4) Decubitus care products:

(a) Cushion (gel, sacroiliac, or accuback) and cushion cover (any size) - one per twelve-month period;

(b) Synthetic or lambs wool sheepskin pad - one per twelve-month period;

(c) Heel or elbow protectors - four per twelve-month period.

(5) Ostomy supplies:

(a) Adhesive for ostomy or catheter: Cement; powder; liquid (e.g., spray or brush); or paste (any composition, e.g., silicone or latex) - four total ounces per month.

(b) Adhesive or nonadhesive disc or foam pad for ostomy pouches - ten per month.

(c) Adhesive remover or solvent - three ounces per month.

(d) Adhesive remover wipes, fifty per box - one box per month.

(e) Closed pouch, with or without attached barrier, with a one-or two-piece flange, or for use on a faceplate - sixty per month.

(f) Closed ostomy pouch with attached standard wear barrier, with built-in one-piece convexity - ten per month.

(g) Continent plug for continent stoma - thirty per month.

(h) Continent device for continent stoma - one per month.

(i) Drainable ostomy pouch, with or without attached barrier, or with one- or two-piece flange - twenty per month.

(j) Drainable ostomy pouch with attached standard or extended wear barrier, with or without built-in one-piece convexity - twenty per month.

(k) Drainable ostomy pouch for use on a plastic or rubber faceplate (only one type of faceplate allowed) - ten per month.

(l) Drainable urinary pouch for use on a plastic, heavy plastic, or rubber faceplate (only one type of faceplate allowed) - ten per month.

(m) Irrigation bag - two every six months.

(n) Irrigation cone and catheter, including brush - two every six months.

(o) Irrigation supply, sleeve - one per month.

(p) Ostomy belt (adjustable) for appliance - two every six months.

(q) Ostomy convex insert - ten per month.

(r) Ostomy ring - ten per month.

(s) Stoma cap - thirty per month.

(t) Ostomy faceplate - ten per month. The department does not allow the following to be used on a faceplate in combination with drainable pouches (refer to the billing instructions for further details):

(i) Drainable pouches with plastic face plate attached; or

(ii) Drainable pouches with rubber face plate.

(6) ((~~Supplies associated with client-owned transcutaneous electrical nerve stimulators (TENS):~~

~~(a) For a four-lead TENS unit - two kits per month. (A kit contains two leads, conductive paste or gel, adhesive, adhesive remover, skin preparation material, batteries, and a battery charger for rechargeable batteries.)~~

~~(b) For a two-lead TENS unit - one kit per month.~~

~~(c) TENS tape patches (for use with carbon rubber electrodes only) are allowed when they are not used in combination with a kit(s).~~

~~(d) A TENS stand-alone replacement battery charger is allowed when it is not used in combination with a kit(s).~~

~~(7)~~)) Urological supplies - diapers and related supplies:

(a) The standards and specifications in this subsection apply to all disposable incontinent products (e.g., briefs, diapers, pull-up pants, underpads for beds, liners, shields, guards, pads, and undergarments). See subsections (b), (c), (d), and (e) of this section for additional standards for specific products. All of the following apply to all disposable incontinent products:

(i) All materials used in the construction of the product must be safe for the client's skin and harmless if ingested;

(ii) Adhesives and glues used in the construction of the product must not be water-soluble and must form continuous seals at the edges of the absorbent core to minimize leakage;

(iii) The padding must provide uniform protection;

(iv) The product must be hypoallergenic;

(v) The product must meet the flammability requirements of both federal law and industry standards; and

(vi) All products are covered for client personal use only.

(b) In addition to the standards in subsection (a) of this section, diapers must meet all the following specifications. They must:

(i) Be hourglass shaped with formed leg contours;

(ii) Have an absorbent filler core that is at least one-half inch from the elastic leg gathers;

(iii) Have leg gathers that consist of at least three strands of elasticized materials;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have a backsheet that is moisture impervious and is at least 1.00 mm thick, designed to protect clothing and linens;

(vi) Have a topsheet that resists moisture returning to the skin;

(vii) Have an inner lining that is made of soft, absorbent material; and

(viii) Have either a continuous waistband, or side panels with a tear-away feature, or refastenable tapes, as follows:

(A) For child diapers, at least two tapes, one on each side.

(B) The tape adhesive must release from the backsheet without tearing it, and permit a minimum of three fastening/unfastening cycles.

(c) In addition to the standards in subsection (a) of this section, pull-up pants and briefs must meet the following specifications. They must:

(i) Be made like regular underwear with an elastic waist or have at least four tapes, two on each side or two large tapes, one on each side;

(ii) Have an absorbent core filler that is at least one-half inch from the elastic leg gathers;

(iii) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling;

(iv) Have leg gathers that consist of at least three strands of elasticized materials;

(v) Have a backsheet that is moisture impervious, is at least 1.00 mm thick, and is designed to protect clothing and linens;

(vi) Have an inner lining made of soft, absorbent material; and

(vii) Have a top sheet that resists moisture returning to the skin.

(d) In addition to the standards in subsection (a) of this section, underpads are covered only for incontinent purposes in a client's bed and must meet the following specifications:

(i) Have an absorbent layer that is at least one and one-half inches from the edge of the underpad;

(ii) Be manufactured with a waterproof backing material;

(iii) Be able to withstand temperatures not to exceed one hundred-forty degrees Fahrenheit;

(iv) Have a covering or facing sheet that is made of nonwoven, porous materials that have a high degree of permeability, allowing fluids to pass through and into the absorbent filler. The patient contact surface must be soft and durable;

(v) Have filler material that is highly absorbent. It must be heavy weight fluff filler or the equivalent; and

(vi) Have four-ply, nonwoven facing, sealed on all four sides.

(e) In addition to the standards in subsection (a) of this section, liners, shields, guards, pads, and undergarments are covered for incontinence only and must meet the following specifications:

(i) Have channels to direct fluid throughout the absorbent area, and leg gathers to assist in controlling leakage, and/or be contoured to permit a more comfortable fit;

(ii) Have a waterproof backing designed to protect clothing and linens;

(iii) Have an inner liner that resists moisture returning to the skin;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have pressure-sensitive tapes on the reverse side to fasten to underwear; and

(vi) For undergarments only, be contoured for good fit, have at least three elastic leg gathers, and may be belted or unbelted.

(f) The department covers the products in this subsection only when they are used alone; they cannot be used in combination with each other. The department approves a client's use of a combination of products only when the client uses different products for daytime and nighttime use (see department billing instructions for how to specify this when billing). The total quantity of all products in this section used in combination cannot exceed the monthly limitation for the product with the highest limit (see subsections (g), (h), (i), (j), (k), (l), and (m) of this section for product limitations). The following products cannot be used together:

(i) Disposable diapers;

(ii) Disposable pull-up pants and briefs;

(iii) Disposable liners, shields, guards, pads, and undergarments;

(iv) Rented reusable diapers (e.g., from a diaper service); and

(v) Rented reusable briefs (e.g., from a diaper service), or pull-up pants.

(g) Purchased disposable diapers (any size) are limited to:

(i) Two hundred per month for a child three to eighteen years of age; and

(ii) Two hundred per month for an adult nineteen years of age and older.

(h) Reusable cloth diapers (any size) are limited to:

(i) Purchased - thirty-six per year; and

(ii) Rented - two hundred per month.

(i) Disposable briefs and pull-up pants (any size) are limited to:

(i) Two hundred per month for a child age three to eighteen years of age; and

(ii) One hundred fifty per month for an adult nineteen years of age and older.

(j) Reusable briefs, washable protective underwear, or pull-up pants (any size) are limited to:

(i) Purchased - four per year.

(ii) Rented - one hundred fifty per month.

(k) Disposable pant liners, shields, guards, pads, and undergarments are limited to two hundred per month.

(l) Underpads for beds are limited to:

(i) Disposable (any size) - one hundred eighty per month.

(ii) Purchased, reusable (large) - forty-two per year.

(iii) Rented, reusable (large) - ninety per month.

((~~(8)~~)) (7) Urological supplies - urinary retention:

(a) Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube - two per month. This cannot be billed in combination with any of the following:

(i) With extension drainage tubing for use with urinary leg bag or urostomy pouch (any type, any length), with connector/adapter; and/or

(ii) With an insertion tray with drainage bag, and with or without catheter.

(b) Bedside drainage bottle, with or without tubing - two per six month period.

(c) Extension drainage tubing (any type, any length), with connector/adapter, for use with urinary leg bag or urostomy pouch. This cannot be billed in combination with a vinyl urinary leg bag, with or without tube.

(d) External urethral clamp or compression device (not be used for catheter clamp) - two per twelve-month period.

(e) Indwelling catheters (any type) - three per month.

(f) Insertion trays:

(i) Without drainage bag and catheter - one hundred and twenty per month. These cannot be billed in combination with other insertion trays that include drainage bag, catheters, and/or individual lubricant packets.

(ii) With indwelling catheters - three per month. These cannot be billed in combination with: Other insertion trays without drainage bag and/or indwelling catheter; individual indwelling catheters; and/or individual lubricant packets.

(g) Intermittent urinary catheter - one hundred twenty per month. These cannot be billed in combination with: An insertion tray with or without drainage bag and catheter; or other individual intermittent urinary catheters.

(h) Irrigation syringe (bulb or piston) - cannot be billed in combination with irrigation tray or tubing.

(i) Irrigation tray with syringe (bulb or piston) - thirty per month. These cannot be billed in combination with irrigation syringe (bulb or piston), or irrigation tubing set.

(j) Irrigation tubing set - thirty per month. These cannot be billed in combination with an irrigation tray or irrigation syringe (bulb or piston).

(k) Leg straps (latex foam and fabric). Allowed as replacement only.

(l) Male external catheter, specialty type, or with adhesive coating or adhesive strip - sixty per month.

(m) Urinary suspensory with leg bag, with or without tube - two per month. This cannot be billed in combination with: a latex urinary leg bag; urinary suspensory without leg bag; extension drainage tubing; or a leg strap.

(n) Urinary suspensory without leg bag, with or without tube - two per month.

(o) Urinary leg bag, vinyl, with or without tube - two per month. This cannot be billed in combination with: A leg strap; or an insertion tray with drainage bag and without catheter.

(p) Urinary leg bag, latex - one per month. This cannot be billed in combination with an insertion tray with drainage bag and with or without catheter.

((~~(9)~~)) (8) Miscellaneous supplies:

(a) Bilirubin light therapy supplies - five days' supply. The department reimburses only when these are provided with a prior authorized bilirubin light.

(b) Continuous passive motion (CPM) softgoods kit - one, with rental of CPM machine.

(c) Eye patch with elastic, tied band, or adhesive, to be attached to an eyeglass lens - one box of twenty.

(d) Eye patch (adhesive wound cover) - one box of twenty.

(e) Nontoxic gel (e.g., LiceOut TM) for use with lice combs - one bottle per twelve month period.

(f) Nonsterile gloves - one hundred per box, two box per month.

(g) Sterile gloves - thirty pair, per month.

((~~(10)~~)) (9) Miscellaneous DME:

(a) Bilirubin light or light pad - five days rental per twelve-month period.

(b) Blood glucose monitor (specialized or home) - one in a three-year period.

(c) Continuous passive motion (CPM) machine - up to ten days rental and requires prior authorization.

(d) Lightweight protective helmet/soft shell (including adjustable chin/mouth strap) - two per twelve-month period.

(e) Lightweight ventilated hard-shell helmet (including unbreakable face bar, woven chin strap w/adjustable buckle and snap fastener, and one set of cushion pads for adjusting fit to head circumference) - two per twelve-month period.

(f) Pneumatic compressor - one in a five-year period.

(g) Positioning car seat - one in a five-year period.

((~~(11)~~)) (10) Prosthetics and orthotics:

(a) Thoracic-hip-knee-ankle orthosis (THKAO) standing frame - one every five years.

(b) Preparatory, above knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot plaster socket, molded to model - one per lifetime, per limb.

(c) Preparatory, below knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot thermoplastic or equal, direct formed - one per lifetime, per limb.

(d) Socket replacement, below the knee, molded to patient model - one per twelve-month period.

(e) Socket replacement, above the knee/knee disarticulation, including attachment plate, molded to patient model - one per twelve-month period.

(f) All other prosthetics and orthotics are limited to one per twelve-month period per limb.

((~~(12)~~)) (11) Positioning devices:

(a) Positioning system/supine boards (small or large), including padding, straps adjustable armrests, footboard, and support blocks - one in a five-year period.

(b) Prone stander (child, youth, infant or adult size) - one in a five-year period.

(c) Adjustable standing frame (for child/adult thirty - sixty-eight inches tall), including two padded back support blocks, a chest strap, a pelvic strap, a pair of knee blocks, an abductor, and a pair of foot blocks - one in a five-year period.

((~~(13)~~)) (12) Beds, mattresses, and related equipment:

(a) Pressure pad, alternating with pump - one in a five-year period.

(b) Dry pressure mattress - one in a five-year period.

(c) Gel or gel-like pressure pad for mattress - one in a five-year period.

(d) Gel pressure mattress - one in a five-year period.

(e) Water pressure pad for mattress - one in a five-year period.

(f) Dry pressure pad for mattress - one in a five-year period.

(g) Mattress, inner spring - one in a five-year period.

(h) Mattress, foam rubber - one in a five-year period.

(i) Hospital bed, semi-electric - one in a ten-year period.

(j) Bedside rails - one in a ten-year period.

((~~(14)~~)) (13) Other patient room equipment:

(a) Patient lift, hydraulic, with seat or sling - one in a five-year period.

(b) Traction equipment - one in a five year period.

(c) Trapeze bars - one in a five-year period.

(d) Fracture frames - one in a five-year period.

(e) Transfer board or devices - one in a five-year period.

((~~(15)~~)) (14) Noninvasive bone growth((~~/nerve~~)) stimulators((~~:~~

~~(a) Transcutaneous electrical nerve stimulation device (TNS) - one in a five-year period.~~

~~(b)~~)) (such as osteogenesis stimulators) - one in a five-year period.

((~~(16)~~)) (15) Communication devices - artificial larynx, any type - one in a five-year period.

((~~(17)~~)) (16) Ambulatory aids:

(a) Canes - one in a five-year period.

(b) Crutches - one in a five-year period.

(c) Walkers - one in a five-year period.

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

AMENDATORY SECTION (Amending WSR 09-22-047, filed 10/28/09, effective 11/28/09)

WAC 388-543-1300 Equipment, related supplies, or other nonmedical supplies, and devices that are not covered. (1) The department pays only for DME and related supplies, medical supplies and related services that are medically necessary, listed as covered in this chapter, and meet the definition of DME and medical supplies as defined in WAC 388-543-1000 and prescribed per WAC 388-543-1100 and 388-543-1200.

(2) The department pays only for prosthetics or orthotics that are listed as such by the Centers for Medicare and Medicaid Services (CMS) that meet the definition of prosthetic and orthotic as defined in WAC 388-543-1000 and are prescribed per WAC 388-543-1100 and 388-543-1200.

(3) The department considers all requests for covered DME, related supplies and services, medical supplies, prosthetics, orthotics, and related services under the provisions of WAC 388-501-0165.

(4) The department evaluates a request for any DME item listed as noncovered in this chapter under the provisions of WAC 388-501-0160. When early and periodic screening, diagnosis and treatment (EPSDT) applies, the department evaluates a noncovered service, equipment, or supply according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-543-0100 for EPSDT rules).

(5) The department specifically excludes services and equipment in this chapter from fee-for-service (FFS) scope of coverage when the services and equipment do not meet the definition for a covered item, or the services are not typically medically necessary. This exclusion does not apply if the services and equipment are:

(a) Included as part of a managed care plan service package;

(b) Included in a waivered program;

(c) Part of one of the medicare programs for qualified medicare beneficiaries; or

(d) Requested for a child who is eligible for services under the EPSDT program. The department reviews these requests according to the provisions of chapter 388-534 WAC.

(6) Excluded services and equipment include, but are not limited to:

(a) Services, procedures, treatment, devices, drugs, or the application of associated services that the Food and Drug Administration (FDA) and/or the Centers for Medicare and Medicaid Services (CMS) consider investigative or experimental on the date the services are provided;

(b) Any service specifically excluded by statute;

(c) A client's utility bills, even if the operation or maintenance of medical equipment purchased or rented by the department for the client contributes to an increased utility bill (refer to the aging and disability services administration's (ADSA) COPES program for potential coverage);

(d) Hairpieces or wigs;

(e) Material or services covered under manufacturers' warranties;

(f) Shoe lifts less than one inch, arch supports for flat feet, and nonorthopedic shoes;

(g) Outpatient office visit supplies, such as tongue depressors and surgical gloves;

(h) Prosthetic devices dispensed solely for cosmetic reasons;

(i) Home improvements and structural modifications, including but not limited to the following:

(i) Automatic door openers for the house or garage;

(ii) Saunas;

(iii) Security systems, burglar alarms, call buttons, lights, light dimmers, motion detectors, and similar devices;

(iv) Swimming pools;

(v) Whirlpool systems, such as jacuzzies, hot tubs, or spas; or

(vi) Electrical rewiring for any reason;

(vii) Elevator systems and elevators; and

(viii) Lifts or ramps for the home; or

(ix) Installation of bathtubs or shower stalls.

(j) Nonmedical equipment, supplies, and related services, including but not limited to, the following:

(i) Back-packs, pouches, bags, baskets, or other carrying containers;

(ii) Bed boards/conversion kits, and blanket lifters (e.g., for feet);

(iii) Car seats for children under five, except for positioning car seats that are prior authorized. Refer to WAC 388-543-1700(13) for car seats;

(iv) Cleaning brushes and supplies, except for ostomy-related cleaners/supplies;

(v) Diathermy machines used to produce heat by high frequency current, ultrasonic waves, or microwave radiation;

(vi) Electronic communication equipment, installation services, or service rates, including but not limited to, the following:

(A) Devices intended for amplifying voices (e.g., microphones);

(B) Interactive communications computer programs used between patients and healthcare providers (e.g., hospitals, physicians), for self care home monitoring, or emergency response systems and services (refer to ADSA COPES or outpatient hospital programs for emergency response systems and services);

(C) Two-way radios; and

(D) Rental of related equipment or services;

(vii) Environmental control devices, such as air conditioners, air cleaners/purifiers, dehumidifiers, portable room heaters or fans (including ceiling fans), heating or cooling pads, and light boxes;

(viii) Ergonomic equipment;

(ix) Exercise classes or equipment such as exercise mats, bicycles, tricycles, stair steppers, weights, trampolines;

(x) Generators;

(xi) Computer software other than speech generating, printers, and computer accessories (such as anti-glare shields, backup memory cards);

(xii) Computer utility bills, telephone bills, internet service, or technical support for computers or electronic notebooks;

(xiii) Any communication device that is useful to someone without severe speech impairment (e.g., cellular telephone, walkie-talkie, pager, or electronic notebook);

(xiv) Racing strollers/wheelchairs and purely recreational equipment;

(xv) Room fresheners/deodorizers;

(xvi) Bidet or hygiene systems, sharp containers, paraffin bath units, and shampoo rings;

(xvii) Timers or electronic devices to turn things on or off, which are not an integral part of the equipment;

(xviii) Vacuum cleaners, carpet cleaners/deodorizers, and/or pesticides/insecticides; or

(xix) Wheeled reclining chairs, lounge and/or lift chairs (e.g., geri-chair, posture guard, or lazy boy).

(k) Blood monitoring:

(i) Sphygmomanometer/blood pressure apparatus with cuff and stethoscope;

(ii) Blood pressure cuff only; and

(iii) Automatic blood pressure monitor.

(l) Bathroom equipment:

(i) Bath stools;

(ii) Bathtub wall rail (grab bars);

(iii) Bed pans;

(iv) Control unit for electronic bowel irrigation/evacuation system;

(v) Disposable pack for use with electronic bowel system;

(vi) Potty chairs;

(vii) Raised toilet seat;

(viii) Safety equipment (e.g. belt, harness or vest);

(ix) Shower/commode chairs;

(x) Sitz type bath or equipment;

(xi) Standard and heavy duty bath chairs;

(xii) Toilet rail;

(xiii) Transfer bench tub or toilet;

(xiv) Urinal male/female.

(m) Disinfectant spray - one twelve-ounce bottle or can per six-month period.

(n) Personal and **comfort items** including but not limited to the following:

(i) Bathroom items, such as antiperspirant, astringent, bath gel, conditioner, deodorant, moisturizer, mouthwash, powder, shampoo, shaving cream, shower cap, shower curtains, soap (including antibacterial soap), toothpaste, towels, and weight scales;

(ii) Bedding items, such as bed pads, blankets, mattress covers/bags, pillows, pillow cases/covers, sheets, and bumper pads;

(iii) Bedside items, such as bed trays, carafes, and over-the-bed tables;

(iv) Clothing and accessories, such as coats, gloves (including wheelchair gloves), hats, scarves, slippers, socks, custom vascular supports (CVS), surgical stockings, gradient compression stockings, and graduated compression stockings for pregnancy support (pantyhose style);

(v) Clothing protectors, surgical masks, and other protective cloth furniture coverings;

(vi) Cosmetics, including corrective formulations, hair depilatories, and products for skin bleaching, commercial sun screens, and tanning;

(vii) Diverter valves and handheld showers for bathtub;

(viii) Eating/feeding utensils;

(ix) Emesis basins, enema bags, and diaper wipes;

(x) Health club memberships;

(xi) Hot or cold temperature food and drink containers/holders;

(xii) Hot water bottles and cold/hot packs or pads not otherwise covered by specialized therapy programs;

(xiii) Impotence devices;

(xiv) Insect repellants;

(xv) Massage equipment;

(xvi) Medication dispensers, such as med-collators and count-a-dose, except as obtained under the compliance packaging program. See chapter 388-530 WAC;

(xvii) Medicine cabinet and first-aid items, such as adhesive bandages (e.g., Band-Aids, Curads), cotton balls, cotton-tipped swabs, medicine cups, thermometers, and tongue depressors;

(xviii) Page turners;

(xix) Radio and television;

(xx) Telephones, telephone arms, cellular phones, electronic beepers, and other telephone messaging services; and

(xxi) Toothettes and toothbrushes, waterpics, and peridontal devices whether manual, battery-operated, or electric.

(o) Certain wheelchair features and options are not considered by the department to be medically necessary or essential for wheelchair use. This includes, but is not limited to, the following:

(i) Attendant controls (remote control devices);

(ii) Canopies, including those for strollers and other equipment;

(iii) Clothing guards to protect clothing from dirt, mud, or water thrown up by the wheels (similar to mud flaps for cars);

(iv) Identification devices (such as labels, license plates, name plates);

(v) Lighting systems;

(vi) Speed conversion kits; and

(vii) Tie-down restraints, except where medically necessary for client-owned vehicles.

(p) Electrical neural stimulation devices and supplies for in-home use, including battery chargers.

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

AMENDATORY SECTION (Amending WSR 09-22-047, filed 10/28/09, effective 11/28/09)

WAC 388-543-1600 Items and services which require prior authorization. (1) The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services require **prior authorization (PA)** or **expedited prior authorization (EPA)** on utilization criteria. (See WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA.) The department considers all of the following when establishing utilization criteria:

(a) High cost;

(b) Potential for utilization abuse;

(c) Narrow therapeutic indication; and

(d) Safety.

(2) The department requires providers to obtain prior authorization for certain items and services, except for dual-eligible medicare/medicaid clients when medicare is the primary payer. This includes, but is not limited to, the following:

(a) Augmentative communication devices (ACDs);

(b) Certain by report (BR) DME and supplies as specified in the department's published issuances, including billing instructions and numbered memoranda;

(c) Blood glucose monitors requiring special features;

(d) Certain equipment rentals and certain prosthetic limbs, as specified in the department's published issuances, including billing instructions and numbered memoranda;

(e) Decubitus care products and supplies;

(f) Decubitus care mattresses, including flotation or gel mattress, if the provider fails to meet the criteria in WAC 388-543-1900;

(g) Equipment parts and labor charges for repairs or modifications and related services;

(h) Hospital beds, if the provider fails to meet the requirements in WAC 388-543-1900;

(i) Low air loss flotation system, if the provider fails to meet the requirements in WAC 388-543-1900;

(j) Orthopedic shoes and selected orthotics;

(k) Osteogenic stimulator, noninvasive, if the provider fails to meet the requirements in WAC 388-543-1900;

(l) Positioning car seats for children under five years of age;

(m) ((~~Transcutaneous electrical nerve stimulators, if the provider fails to meet the requirements in WAC 388-543-1900;~~

~~(n)~~)) Wheelchairs, wheelchair accessories, wheelchair modifications, air, foam, and gel cushions, and repairs;

(((~~(o)~~))) (n) Other DME not specifically listed in the department's published issuances, including billing instructions and numbered memoranda, and submitted as a miscellaneous procedure code; and

(((~~(p)~~))) (o) Limitation extensions.

AMENDATORY SECTION (Amending WSR 07-17-062, filed 8/13/07, effective 9/13/07)

WAC 388-543-2800 Reusable and disposable medical supplies. (1) The department requires that a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PAC) prescribe reusable and disposable medical supplies. Except for dual eligible medicare/medicaid clients, the prescription must:

(a) Be dated and signed by the prescriber;

(b) Be less than six months in duration from the date the prescriber signs the prescription; and

(c) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity.

(2) The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services require prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA). The department considers all of the following when establishing utilization criteria:

(a) High cost;

(b) The potential for utilization abuse;

(c) A narrow therapeutic indication; and

(d) Safety.

(3) The department requires a provider to obtain a limitation extension in order to exceed the stated limits for nondurable medical equipment and medical supplies. See WAC 388-501-0165.

(4) The department categorizes medical supplies and non-DME (MSE) as follows (see WAC 388-543-1150, 388-543-1600, and department's billing instructions for further information about specific limitations and requirements for PA and EPA):

(a) Antiseptics and germicides;

(b) Bandages, dressings, and tapes;

(c) Blood monitoring/testing supplies;

(d) Braces, belts, and supportive devices;

(e) Decubitus care products;

(f) Ostomy supplies;

(g) Pregnancy-related testing kits and nursing equipment supplies;

(h) ((~~Supplies associated with transcutaneous electrical nerve stimulators (TENS);~~

~~(i)~~)) Syringes and needles;

(((~~(j)~~))) (i) Urological supplies (e.g., diapers, urinary retention catheters, pant liners, and doublers); and

(((~~(k)~~))) (j) Miscellaneous supplies.

AMENDATORY SECTION (Amending WSR 01-02-075, filed 12/29/00, effective 1/29/01)

WAC 388-545-300 Occupational therapy. (1) The following providers are eligible to enroll with ((~~medical assistance administration (MAA)~~)) the department to provide occupational therapy services:

(a) A licensed occupational therapist;

(b) A licensed occupational therapy assistant supervised by a licensed occupational therapist; and

(c) An occupational therapy aide, in schools, trained and supervised by a licensed occupational therapist.

(2) Clients in the following ((~~MAA~~)) department programs are eligible to receive occupational therapy services described in this chapter:

(a) Categorically needy;

(b) Children's health;

(c) General assistance unemployable (within Washington state or border areas only);

(d) Alcoholism and drug addiction treatment and support act (ADATSA) (within Washington state or border areas only);

(e) Medically indigent program for emergency hospital-based services only; or

(f) Medically needy program only when the client is either:

(i) Twenty years of age or younger and referred by a screening provider under the early and periodic screening, diagnosis and treatment program (healthy kids program) as described in chapter 388-534 WAC; or

(ii) Receiving home health care services as described in chapter 388-551 WAC, subchapter II.

(3) Occupational therapy services received by ((~~MAA~~)) department eligible clients must be provided:

(a) As part of an outpatient treatment program for adults and children;

(b) By a home health agency as described under chapter 388-551 WAC, subchapter II;

(c) As part of the physical medicine and rehabilitation (PM&R) program as described in WAC 388-550-2551;

(d) By a neurodevelopmental center;

(e) By a school district or educational service district as part of an individual education program or individualized family service plan as described in WAC 388-537-0100; or

(f) When prescribed by a provider for clients age twenty-one or older. The therapy must:

(i) Prevent the need for hospitalization or nursing home care;

(ii) Assist a client in becoming employable;

(iii) Assist a client who suffers from severe motor disabilities to obtain a greater degree of self-care or independence; or

(iv) Be a part of a treatment program intended to restore normal function of a body part following injury, surgery, or prolonged immobilization.

(4) ((~~MAA~~)) The department pays only for covered occupational therapy services listed in this section when they are:

(a) Within the scope of an eligible client's medical care program;

(b) Medically necessary, when prescribed by a provider; and

(c) Begun within thirty days of the date prescribed.

(5) ((~~MAA~~)) The department covers the following occupational therapy services per client, per calendar year:

(a) Unlimited occupational therapy program visits for clients twenty years of age or younger;

(b) One occupational therapy evaluation. The evaluation is in addition to the twelve program visits allowed per year;

(c) Two durable medical equipment needs assessments. The assessments are in addition to the twelve program visits allowed per year;

(d) Twelve occupational therapy program visits;

(e) Twenty-four additional outpatient occupational therapy program visits when the diagnosis is any of the following:

(i) A medically necessary condition for developmentally delayed clients;

(ii) Surgeries involving extremities, including:

(A) Fractures; or

(B) Open wounds with tendon involvement;

(iii) Intracranial injuries;

(iv) Burns;

(v) Traumatic injuries;

(f) Twenty-four additional occupational therapy program visits following a completed and approved inpatient PM&R program. In this case, the client no longer needs nursing services but continues to require specialized outpatient therapy for any of the following:

(i) Traumatic brain injury (TBI);

(ii) Spinal cord injury (paraplegia and quadriplegia);

(iii) Recent or recurrent stroke;

(iv) Restoration of the levels of function due to secondary illness or loss from multiple sclerosis (MS);

(v) Amyotrophic lateral sclerosis (ALS);

(vi) Cerebral palsy (CP);

(vii) Extensive severe burns;

(viii) Skin flaps for sacral decubitus for quads only;

(ix) Bilateral limb loss; or

(x) Acute, infective polyneuritis (Guillain-Barre' syndrome).

(g) Additional medically necessary occupational therapy services, regardless of the diagnosis, must be approved by ((~~MAA~~)) the department.

(6) ((~~MAA will pay for one visit to instruct in the application of transcutaneous neurostimulator (TENS), per client, per lifetime.~~

~~(7) MAA~~)) The department does not cover occupational therapy services that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

AMENDATORY SECTION (Amending WSR 01-02-075, filed 12/29/00, effective 1/29/01)

WAC 388-545-500 Physical therapy. (1) The following providers are eligible to provide physical therapy services:

(a) A licensed physical therapist or physiatrist; or

(b) A physical therapist assistant supervised by a licensed physical therapist.

(2) Clients in the following ((~~MAA~~)) department programs are eligible to receive physical therapy services described in this chapter:

(a) Categorically needy (CN);

(b) Children's health;

(c) General assistance-unemployable (GA-U) (within Washington state or border areas only);

(d) Alcoholism and drug addiction treatment and support act (ADATSA) (within Washington state or border areas only);

(e) Medically indigent program (MIP) for emergency hospital-based services only; or

(f) Medically needy program (MNP) only when the client is either:

(i) Twenty years of age or younger and referred under the early and periodic screening, diagnosis and treatment program (EPSDT/healthy kids program) as described in WAC 388-86-027; or

(ii) Receiving home health care services as described in chapter 388-551 WAC.

(3) Physical therapy services that ((~~MAA~~)) department eligible clients receive must be provided as part of an outpatient treatment program:

(a) In an office, home, or outpatient hospital setting;

(b) By a home health agency as described in chapter 388-551 WAC;

(c) As part of the acute physical medicine and rehabilitation (acute PM&R) program as described in the acute PM&R subchapter under chapter 388-550 WAC;

(d) By a neurodevelopmental center;

(e) By a school district or educational service district as part of an individual education or individualized family service plan as described in WAC 388-537-0100; or

(f) For disabled children, age two and younger, in natural environments including the home and community settings in which children without disabilities participate, to the maximum extent appropriate to the needs of the child.

(4) ((~~MAA~~)) The department pays only for covered physical therapy services listed in this section when they are:

(a) Within the scope of an eligible client's medical care program;

(b) Medically necessary and ordered by a physician, physician's assistant (PA), or an advanced registered nurse practitioner (ARNP);

(c) Begun within thirty days of the date ordered;

(d) For conditions which are the result of injuries and/or medically recognized diseases and defects; and

(e) Within accepted physical therapy standards.

(5) Providers must document in a client's medical file that physical therapy services provided to clients age twenty-one and older are medically necessary. Such documentation may include justification that physical therapy services:

(a) Prevent the need for hospitalization or nursing home care;

(b) Assist a client in becoming employable;

(c) Assist a client who suffers from severe motor disabilities to obtain a greater degree of self-care or independence; or

(d) Are part of a treatment program intended to restore normal function of a body part following injury, surgery, or prolonged immobilization.

(6) ((~~MAA~~)) The department determines physical therapy program units as follows:

(a) Each fifteen minutes of timed procedure code equals one unit; and

(b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.

(7) ((~~MAA~~)) The department does not limit coverage for physical therapy services listed in subsections (8) through (10) of this section if the client is twenty years of age or younger.

(8) ((~~MAA~~)) The department covers, without requiring prior authorization, the following ordered physical therapy services per client, per diagnosis, per calendar year, for clients twenty-one years of age and older:

(a) One physical therapy evaluation. The evaluation is in addition to the forty-eight program units allowed per year;

(b) Forty-eight physical therapy program units;

(c) Ninety-six additional outpatient physical therapy program units when the diagnosis is any of the following:

(i) A medically necessary condition for developmentally delayed clients;

(ii) Surgeries involving extremities, including:

(A) Fractures; or

(B) Open wounds with tendon involvement.

(iii) Intracranial injuries;

(iv) Burns;

(v) Traumatic injuries;

(vi) Meningomyelocele;

(vii) Down's syndrome;

(viii) Cerebral palsy; or

(ix) Symptoms involving nervous and musculoskeletal systems and lack of coordination;

(d) Two durable medical equipment (DME) needs assessments. The assessments are in addition to the forty-eight physical therapy program units allowed per year. Two program units are allowed per DME needs assessment; and

(e) One wheelchair needs assessment in addition to the two durable medical needs assessments. The assessment is in addition to the forty-eight physical therapy program units allowed per year. Four program units are allowed per wheelchair needs assessment.

(f) The following services are allowed, per day, in addition to the forty-eight physical therapy program units allowed per year:

(i) Two program units for orthotics fitting and training of upper and/or lower extremities.

(ii) Two program units for checkout for orthotic/prosthetic use.

(iii) One muscle testing procedure. Muscle testing procedures cannot be billed in combination with each other.

(g) Ninety-six additional physical therapy program units are allowed following a completed and approved inpatient acute PM&R program. In this case, the client no longer needs nursing services but continues to require specialized outpatient physical therapy for any of the following:

(i) Traumatic brain injury (TBI);

(ii) Spinal cord injury (paraplegia and quadriplegia);

(iii) Recent or recurrent stroke;

(iv) Restoration of the levels of functions due to secondary illness or loss from multiple sclerosis (MS);

(v) Amyotrophic lateral sclerosis (ALS);

(vi) Cerebral palsy (CP);

(vii) Extensive severe burns;

(viii) Skin flaps for sacral decubitus for quadriplegics only;

(ix) Bilateral limb loss;

(x) Open wound of lower limb; or

(xi) Acute, infective polyneuritis (Guillain-Barre' syndrome).

(9) For clients age twenty-one and older, ((~~MAA~~)) the department covers physical therapy services which exceed the limitations established in subsection (8) of this section if the provider requests prior authorization and ((~~MAA~~)) the department approves the request.

(10) ((~~MAA will pay for one visit to instruct in the application of transcutaneous neurostimulator (TENS) per client, per lifetime.~~

~~(11)~~)) Duplicate services for occupational therapy and physical therapy are not allowed for the same client when both providers are performing the same or similar procedure(s).

(((~~(12) MAA~~)) (11) The department does not cover physical therapy services that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

(((~~(13) MAA~~)) (12) The department does not cover physical therapy services performed by a physical therapist in an outpatient hospital setting when the physical therapist is not employed by the hospital. Reimbursement for services must be billed by the hospital.

WSR 10-12-115
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed June 2, 2010, 9:43 a.m., effective June 2, 2010, 9:43 a.m.]

Effective Date of Rule: Immediately.

Purpose: Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. The department has adopted the following emergency rules to explain how these requirements apply.

WAC 458-20-19401 Minimum nexus thresholds for apportionable activities, Washington's business and occupation (B&O) taxes may be imposed only if a business has substantial nexus with this state. This rule explains the minimum nexus thresholds for the B&O taxation of businesses engaged in apportionable activities.

WAC 458-20-19402 Single factor receipts apportionment—Generally, this rule explains how gross income earned by businesses engaged in apportionable activities is apportioned. This rule does not apply to the apportionment of income of financial institutions taxable under RCW 82.04.290, which is addressed in WAC 458-20-19404, nor that of royalty income earned from granting the right to use intangible property, which is addressed in WAC 458-20-19403.

WAC 458-20-19403 Single factor receipts apportionment—Royalties, this rule addresses how gross income from royalties is apportioned when the business receives royalty payments from both within and outside the state.

WAC 458-20-19404 Financial institutions—Income apportionment, this rule addresses how gross income from engaging in business as a financial institution is apportioned when the financial institution engages in business both within and outside the state.

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

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

Reasons for this Finding: An emergency adoption of these rules is necessary because permanent rules cannot be adopted at this time.

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 [4], Amended 4 [0], Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0 [4], Amended 4 [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: June 2, 2010.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. (1) **Introduction**.

(a) Business and occupation (B&O) taxes may not be imposed on a business unless that business has a substantial nexus with this state. The terms "nexus" and "substantial nexus" are used interchangeably in this rule.

Section 104, chapter 23, Laws of 2010 1st sp. sess. establishes, effective June 1, 2010, minimum nexus thresholds for the B&O taxation of apportionable activities. The minimum nexus thresholds are determined on a tax year basis. Generally, a tax year is the same as a calendar year. For the purposes of this rule, tax years will be referred to as calendar years. This means that if a taxpayer's activities in Washington meet the minimum nexus thresholds in a calendar year, the taxpayer is subject to B&O taxes for the entire calendar year. For 2010, the minimum nexus thresholds are based on the entire 2010 calendar year, but taxes are only due under the new thresholds from June 1, 2010, forward. Whether a taxpayer had substantial nexus with Washington prior to June 1, 2010, is determined by a physical presence standard. See WAC 458-20-194 for more information.

(b) Taxpayers may also find helpful information in the following rules:

(1) WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property.

(2) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(c) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(2) **Definitions**. Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this rule.

(a) "Apportionable activities" include only those activities subject to business and occupation tax under the following classifications:

(i) Service and other activities,

(ii) Royalties (see WAC 458-20-19403 for apportionment of royalties),

(iii) Travel agents and tour operators,

(iv) International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent,

(v) Stevedoring and associated activities,

(vi) Disposing of low-level waste,

(vii) Title insurance producers, title insurance agents, or surplus line brokers,

(viii) Public or nonprofit hospitals,

(ix) Real estate brokers,

(x) Research and development performed by nonprofit corporations or associations,

(xi) Inspecting, testing, labeling, and storing canned salmon owned by another person,

(xii) Representing and performing services for fire or casualty insurance companies as an independent resident

managing general agent licensed under the provisions of chapter 48.17 RCW,

(xiii) Contests of chance,

(xiv) Horse races,

(xv) International investment management services,

(xvi) Room and domiciliary care to residents of a boarding home;

(xvii) Aerospace product development,

(xviii) Printing or publishing a newspaper (but only with respect to advertising income),

(xix) Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income), and

(xx) Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an "apportionable activity" under any of the tax classifications listed in (a)(i) through (xviii) of this subsection (2) if this special tax classification did not exist.

(b) "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(c)(i) "Property" means tangible, intangible, and real property owned or rented and used in this state during the calendar year, except as provided in (ii) of this subsection (2)(c).

(ii) Property does not include ownership of or rights in computer software, including computer software used in providing a digital automated service; master copies of software; and digital goods or digital codes residing on servers located in this state. Refer to RCW 82.04.192 and 82.04.215 for definitions of the terms "computer software," "digital automated services," digital goods," "digital codes," and "master copies."

(d) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(3) **How is substantial nexus for apportionable activities determined?** A person is deemed to have substantial nexus for apportionable activities with this state in any calendar year if the person is:

(a) An individual and is a resident or domiciliary of this state during the calendar year;

(b) A business entity and is organized or commercially domiciled in this state during the calendar year; or

(c) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and in any calendar year the person has:

(i) More than fifty thousand dollars of property in this state;

(ii) More than fifty thousand dollars of payroll in this state;

(iii) More than two hundred fifty thousand dollars of receipts from this state; or

(iv) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

(d) The Department will adjust the amounts listed in (c) of this subsection (3) based on changes in the consumer price index as required by section 104(5), chapter 23, Laws of 2010 1st sp. sess.

(4) **How is the property threshold determined?**

(a) The value of property is determined by averaging the values at the beginning and ending of the calendar year; but the department may require the averaging of monthly values during the calendar year if reasonably required to properly reflect the average value of the taxpayer's property in this state throughout the taxable period.

(b) What value is placed on property?

(i) Property the taxpayer owns and uses in this state, other than loans and credit card receivables, is valued at its original cost basis.

(ii) Loans and credit card receivables owned by the taxpayer are valued at their outstanding principal balance, without regard to any reserve for bad debts. However, if a loan or credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the loan or credit card receivable charged off is deducted from the outstanding principal balance.

(A) A loan is located in this state if:

(I) More than fifty percent (50%) of the fair market value of the real and/or personal property securing the loan is located in this state. The determination of whether the real or personal property securing a loan is located within this state must be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral must be disregarded; or

(II) The borrower is located in this state, but only if a loan is:

- unsecured; or
- secured and there is no state where more than fifty percent (50%) of the fair market value of property securing the loan is located.

A borrower that is engaged in business is located in this state if the borrower's commercial domicile is located in this state. A borrower who is not engaged in business is located in this state if the borrower's billing address is located in this state.

(B) Credit card receivables are located in this state if the billing address of the card holder is located in this state.

(iii) Property the taxpayer rents and uses in this state is valued at eight times the net annual rental rate.

(c) For purposes of this subsection, the following definitions apply:

(i) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(ii) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(5) **How is the payroll threshold determined?** "Payroll" is the total compensation (wages, salaries, commissions,

and any other form of remuneration defined as gross income under 26 U.S.C. Sec. 61 of the federal internal revenue code of 1986, as of June 1, 2010) paid during the calendar year to employees and non-employees (third-party representatives) who represent the taxpayer in interactions with the taxpayer's clients and includes sales commissions.

(a) Employee compensation is paid in this state if the compensation is properly reportable to this state for unemployment compensation tax purposes, regardless of whether the compensation was actually reported to this state.

(b) Nonemployee compensation is paid in this state if the service performed by the representative third party occurs entirely or primarily within this state.

(6) **How is the receipts threshold determined?** The receipts threshold includes only the taxpayer's gross income assigned to this state from engaging in apportionable activities. The gross income of the business is attributed to this state if it is part of the numerator of the apportionment calculation as explained in WAC 458-20-19402, 19403, or 19404.

(7) **If an out-of-state taxpayer does not meet the $50,000 property, $50,000 payroll, or $250,000 receipts nexus thresholds, can it still have substantial nexus with Washington?** Yes. If twenty-five percent (25%) of an out-of-state taxpayer's property, payroll, or receipts from apportionable activities is in Washington, then the taxpayer has substantial nexus with Washington. The twenty-five percent (25%) threshold is determined by dividing the value of property located in Washington by the total value of taxpayer's property, payroll located in Washington by taxpayer's total payroll, or the receipts attributed to Washington by total receipts.

(8) **Do the minimum nexus thresholds explained in this rule apply to local gross receipts business and occupations taxes?** No. Taxpayers must still comply with their local business and occupations tax nexus laws. This rule does not apply to the nexus requirements for local gross receipts business and occupation taxes.

(9) **Once established, how long does nexus continue?** A person who establishes substantial nexus with this state in any calendar year will be deemed to have a substantial nexus with this state for the following calendar year. This applies for all taxpayers, regardless of the business and occupation tax classification(s) they are subject to, e.g. service and other activities, retailing, or wholesaling.

(10) **Do the nexus thresholds in subsection (3) of this rule apply to non-apportionable activities?** No. The nexus thresholds in subsection (3) of this rule apply only with respect to apportionable activities.

(a) A person engaged in non-apportionable activities is subject to B&O tax on a non-apportionable activity only if the person has a physical presence in this state, which need only be demonstrably more than a slightest presence. This is true even if the person is engaged in apportionable activities in this state and has nexus under the thresholds in subsection (3) of this rule. A person is physically present in this state if the person has property or employees in this state. A person is also physically present in this state if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.

(b) Non-apportionable activities include those activities taxed under the following B&O tax classifications: Retailing, wholesaling, manufacturing, processing for hire, extracting, extracting for hire, printing and publishing (except for advertising), government contracting, public road construction, the classifications in RCW 82.04.280 (2) and (6), and any other activity not specifically included in the definition of apportionable activities in subsection (3) of this rule.

(11) **Examples.** For each of the examples in this subsection (11), gross income received by the taxpayer is from engaging in apportionable activities. Also, the examples have no applicability to tax liability prior to June 1, 2010.

(a) **Example 1:** Company A is domiciled in State X. In a calendar year it has $150,000 in royalty receipts attributed to Washington per WAC 458-20-19403 and $150,000 in gross income from other apportionable activities attributed to Washington per WAC 458-20-19402.

Company A has substantial nexus with Washington because it has a total of $300,000 in receipts attributed to Washington in a calendar year. It does not matter that the receipts were from apportionable activities that are subject to tax under different B&O tax classifications. Substantial nexus is determined by the totality of the taxpayer's apportionable activities in Washington.

(b) **Example 2:** Company B is domiciled in state Y. In a calendar year it has $45,000 in property, $45,000 in payroll, and $240,000 in gross income attributed to Washington. Its total property is valued at $200,000; its world-wide payroll is $200,000; and its total gross income is $2,000,000. Company B does not have substantial nexus with Washington during the calendar year based on the minimum thresholds listed in subsection (3) above.

(c) **Example 3:** Assume the same facts as Example 2 except world-wide payroll is $150,000. With the changed facts, Company B has substantial nexus with Washington because thirty percent (30%) of its payroll is located in Washington.

(d) **Example 4:** Company C is domiciled in Canada. It has $200,000 of gross income attributed to Washington and $300,000 of gross income attributed to Canada. Company C has no property or payroll located in Washington. Company C has substantial nexus with Washington because forty percent of its receipts are attributed to Washington.

(e) **Example 5:** Company D has no property located in Washington on January 1st and on December 31st of a calendar year. However, it brought $100,000 in property into Washington on January 15th and removed it from Washington on November 15th of that calendar year. The department may compute the value of Company D's property on a monthly basis in this situation because it is required to properly reflect the average value of Company D's property in Washington ($100,000 multiplied by ten divided by 12 which is $83,333). Company D has nexus with Washington based on the value of the property averaged over the calendar year.

(f) **Example 6:** Company E receives $100,000 in gross income attributed to Washington on each of March 15, 2010; July 12, 2010; and November 1, 2010. Company E has substantial nexus with Washington for the period June 1, 2010,

through December 31, 2010, because it received $300,000 in gross income during 2010. Company E will also have substantial nexus with Washington for 2011 regardless of the amount of gross income attributed to Washington in 2011.

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.

NEW SECTION

WAC 458-20-19402 Single factor receipts apportionment—Generally. (1) **Introduction.**

(a) Section 105, chapter 23, Laws of 2010 1st sp. sess. establishes a new apportionment method for businesses engaged in apportionable activities and that have nexus with Washington. The new apportionment method explained in this rule only applies to business and occupation (B&O) tax liability incurred after May 31, 2010. This rule does not apply to the apportionment of income of financial institutions taxable under RCW 82.04.290, which is governed by WAC 458-20-19404, nor the receipt of royalty income from granting the right to use intangible property under WAC 458-20-19403.

(b) Taxpayers may also find helpful information in the following sections:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective June 1, 2010.

(ii) WAC 458-20-19403 Single factor receipts apportionment - Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19404 Single factor receipts apportionment - Financial institutions. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions - Income apportionment. This rule describes the apportionment of income for financial institutions for tax liability incurred prior to June 1, 2010.

(c) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances

(2) **Definitions.** The following definitions apply to this rule:

(a) "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under this chapter if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(i) Example 1. Corporation A received $2,000,000 in gross income from its world-wide apportionable activities, including $500,000 in world-wide bona fide initiation fees deductible under RCW 82.04.4282. Corporation A's apportionable income would be $1,500,000.

(b) "Apportionable activities" means only those activities subject to B&O tax under the following classifications:

(i) Service and other activities,

(ii) Royalties (see WAC 458-20-19403 for apportionment of royalties),

(iii) Travel agents and tour operators,

(iv) International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent,

(v) Stevedoring and associated activities,

(vi) Disposing of low-level waste,

(vii) Title insurance producers, title insurance agents, or surplus line brokers,

(viii) Public or nonprofit hospitals,

(ix) Real estate brokers,

(x) Research and development performed by nonprofit corporations or associations,

(xi) Inspecting, testing, labeling, and storing canned salmon owned by another person,

(xii) Representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW,

(xiii) Contests of chance,

(xiv) Horse races,

(xv) International investment management services,

(xvi) Room and domiciliary care to residents of a boarding home;

(xvii) Aerospace product development,

(xviii) Printing or publishing a newspaper (but only with respect to advertising income),

(xix) Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income), and

(xx) Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an "apportionable activity" under any of the tax classifications listed in (a)(i) through (xviii) of this subsection (2) if this special tax classification did not exist.

(c) "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. The term includes personal income taxes if the gross income from apportionable activities is included in the gross income subject to the personal income tax. The term "business activities tax" does not include a sales tax, use tax, or similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(d) "Customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.

(e) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any terri-

tory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(f) "Taxable in another state" means either:

(i) The taxpayer is actually subject to a business activities tax by another state on its income received from engaging in apportionable activity; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activity, but the other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(3) **Apportionment general:** Persons earning apportionable income subject to B&O tax and that are also taxable in another state are entitled to determine their taxable income for B&O tax purposes by using the apportionment method provided in this rule. Taxable income is determined by multiplying apportionable income from each apportionable activity by its receipts factor.

(4) **Receipts Factor.** The receipts factor is a fraction that applies to all apportionable income for each calendar year. Separate receipts factors must be calculated for each apportionable activity taxed under a separate business and occupation tax classification.

(a) The numerator of the receipts factor is the total gross income of the business of the taxpayer attributable to this state during the calendar year from engaging in an apportionable activity.

(b) The denominator of the receipts factor is the total gross income of the business of the taxpayer from engaging in an apportionable activity everywhere in the world during the tax year, less amounts that are attributed to states where the taxpayer is not taxable and at least some of the activity is performed in Washington.

(c) Example 2. XYZ Corp. is a Washington business, has no property or payroll outside of Washington, and performs all of its services inside this state. XYZ Corp. has gross income from apportionable activities that is attributed using the criteria listed in subsection (5) below as follows: Washington $500,000; Idaho $200,000; Oregon $100,000; and California $300,000. XYZ Corp. is subject to Oregon corporate income tax, but does not owe any California or Idaho business activities taxes. The $200,000 that would be attributed to Idaho is excluded from the denominator because XYZ Corp. performs the services in Washington, and it is not subject to actual Idaho business activities taxes and does not have substantial nexus with Idaho under Washington thresholds. Although California does not impose a business activities tax on XYZ Corp., XYZ Corp. does have substantial nexus with California using Washington thresholds (more than $250,000 in receipts). Therefore, the California attributed income is not excluded from the denominator. The Oregon receipts remain in the denominator because XYZ Corp. is subject to Oregon corporate income taxes. The receipts factor is 500,000/900,000 or 55.56%.

(d) Example 3. The same facts as Example 2 except all of XYZ's property and payroll are located in Oregon, and XYZ Corp. performs no activities in Washington related to the $200,000 attributed to Idaho. In this situation, the $200,000 is not excluded from the denominator. The receipts factor is 500,000/1,100,000 or 45.45%.

(5) **Attribution of income.** Income is attributed to states based on a cascading method. That is, each receipt is attributed to a state based on a series of rules. These rules are:

(a)(i) Where the customer received the benefit of the taxpayer's service. The location of the benefit of the service or services is determined on an activity by activity basis. A taxpayer receives the benefit of a service in this state when:

(A) The service relates to real property that is located in this state;

(B) An apportionable service relates to tangible personal property that is located in this state at the time the service is received; or

(C) The service does not relate to real or tangible personal property, and:

(I) The service is provided to a person not engaged in business who is physically present in this state at the time the service is received; or

(II) The service is provided to a person engaged in business in this state, and the service relates to the person's business activities in this state.

(ii) Examples.

(A) Example 4. Director serves on the board of directors of DEF, Inc. DEF, Inc. is commercially domiciled in State Z. DEF, Inc. is Director's customer. DEF is engaged in business in State Z, and the director's services relate to the management of DEF, Inc. Therefore, DEF, Inc. receives the benefit of Director's services in State Z.

(B) Example 5. ABC is headquartered outside of Washington and provides retail services to customers in Washington, Oregon, and Idaho. When those customers fail to pay ABC for its services, ABC contracts with Debt Collector located outside of Washington to collect the debt. ABC pays Debt Collector a percentage of the amount collected. ABC is engaged in business in Washington and the activities of Debt Collector relate to that business, therefore the benefit of the service is received by ABC in Washington when Debt Collector obtains payment from debtors located in Washington.

(b) If the customer received the benefit of the service in more than one state, gross income of the business must be attributed to the state in which the benefit of the service was primarily received.

(i) Example 6. The same facts as Example 5, except Debt Collector is paid a fixed amount per month regardless of the total amount collected from debtors, and the debtors are located in Idaho and Washington. The vast majority of debtors referred to Debt Collector are located in Idaho. Debt Collector would attribute its receipts from ABC to Idaho even though a portion of the benefit of Debt Collector's services is received by ABC in Washington.

(ii) Example 7. The same facts as Example 6, except the debtors are in every state and no state has a majority of the debtors. Because the benefit of Debt Collector's services are not primarily received by ABC in any single state, the receipts cannot be attributed using (a) or (b) of this subsection (5), and Debtor Collector will have to use the remaining rules in (c) through (g) of this subsection (5) to attribute the income from ABC.

(c) If the taxpayer is unable to attribute gross income of the business under (a) or (b) of this subsection (5), gross income of the business must be attributed to the state from which the customer ordered the service.

(d) If the taxpayer is unable to attribute gross income of the business under (a), (b), or (c) of this subsection (5), gross income of the business must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(e) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), or (d) of this subsection (5), gross income of the business must be attributed to the state from which the customer sends payment to the taxpayer.

(f) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), (d), or (e) of this subsection (5), gross income of the business must be attributed to the state where the customer is located as indicated by the customer's address: (i) Shown in the taxpayer's business records maintained in the regular course of business; or (ii) obtained during consummation of the sale or the negotiation of the contract for services, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(g) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), (d), (e) or (f) of this subsection (5), gross income of the business must be attributed to the commercial domicile of the taxpayer.

(6) **Reporting methods.**

(a) Taxpayers entitled to use the apportionment method described in this rule may report their apportionable income based on the receipts factor for the most recent calendar year for which the taxpayer has information. If a taxpayer does not calculate the receipts factor for the current tax year based on the most recent tax year for which information is available, the taxpayer must use current year information.

(b) Regardless of how a taxpayer reports its apportionable income under (a) of this subsection 6, when the taxpayer has the information from which to determine the receipts for a calendar year, it must file reconciliation and either obtain a refund or pay the additional tax. In either event (refund or additional taxes due), interest will apply retroactively to the due date of each tax return. If the reconciliation is completed prior to October 31st of the following year, no penalties will apply.

(c) Example 8: Assume that LMN is headquartered in Washington, reports B&O taxes on a quarterly basis, and its apportionable income is a constant $300,000 per quarter. LMN's receipts factor after performing the reconciliation is as follows:

Year	Receipt factor	When Determined
Year 1	0.28	March of Year 2
Year 2	0.25	September of Year 3
Year 3	0.35	June of Year 4
Year 4	0.30	June of Year 5

The following table demonstrates how LMN should report its apportionable income for Years 3 and 4.

Tax return	Gross income	Receipt factor used	Taxable reported	Reconciliation amount
Year 3 Quarter 1	300,000	0.28[1]	84,000	
Year 3 Quarter 2	300,000	0.28	84,000	
Year 3 Quarter 3	300,000	0.25[2]	75,000	
Year 3 Quarter 4	300,000	0.25	75,000	
Year 4 Quarter 1	300,000	0.25	75,000	
Year 4 Quarter 2	300,000	0.35[3]	105,000	
Year 3 reconciliation	1,200,000	0.35	420,000	102,000[4]
Year 4 Quarter 3	300,000	0.35	105,000	
Year 4 Quarter 4	300,000	0.35	105,000	
Year 4 reconciliation	1,200,000	0.30	360,000	(30,000)[5]

[1] LMN will be using its year 1 receipts factor for the first 2 quarters of year 3 because it is the most recent year for which it has accurate numbers.

[2] LMN will change its receipts factor for the third quarter to year 2's actual receipts factor because it now has that information.

[3] LMN will change its receipts factor for the third quarter to year 3's actual receipts factor because it now has that information.

[4] LMN will file its reconciliation for Year 3. The taxable amount is $420,000 less the previously reported taxable amount of $318,000. This means LMN will owe taxes on $102,000 plus interest on the underpaid taxes. However, no penalties will be imposed if the reconciliation is filed with the department no later than October 31st of Year 4.

[5] LMN will file its reconciliation for Year 3. The taxable amount is $360,000 less the previously reported taxable amount of $390,000. This means LMN overpaid taxes by $30,000. LMN will receive interest on the overpaid taxes.

NEW SECTION

WAC 458-20-19403 Single factor receipts apportionment—Royalties. (1) **Introduction.** Effective June 1, 2010, section 105, chapter 23, Laws of 2010 1st sp. sess. changed Washington's method of apportioning the gross income from royalties. This rule addresses how such gross income must

be apportioned when the business receives royalty payments from both within and outside the state.

(a) This rule is limited to the apportionment of gross income from royalties. This rule does not apply to apportionment or allocation of income from any other business activity.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective June 1, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment - Generally. This rule describes the general application of single factor receipts apportionment that is effective June 1, 2010.

(iii) WAC 458-20-19404 Single factor receipts apportionment - Financial institutions. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions - Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(2) **Definitions for the purposes of this rule.** Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this rule.

(a) "Apportionable activity" means those activities conducted by a person in the business of receiving gross income from royalties.

(b) "Apportionable income" means gross income of the business generated from engaging in apportionable activity, including income received from apportionable activity performed outside Washington if the income would be taxable under the business and occupation tax if received from activities in Washington less any allowable exemptions and deductions under chapter 82.04 RCW.

(c) "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state by a person. The term includes taxes measured in whole or in part on net income or gross income or receipts. The term includes personal income taxes if the gross income from royalties is included in the gross income subject to the personal income tax. The term "business activities tax" does not include a sales tax, use tax, or similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not referred to as a gross receipts tax or a tax imposed on the privilege of doing business.

(d) "Customer" means a person who pays royalties or charges in the nature of royalties for the use of the taxpayer's intangible property.

(e) "Gross income from royalties" means compensation for the use of intangible property, including charges in the nature of royalties regardless of where the intangible property will be used. "Gross income from royalties" does not include compensation for any natural resources, the licensing of prewritten computer software to the end user, or the licensing of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

(f) "Intangible property" includes: copyrights, patents, licenses, franchises, trademarks, trade names and similar items.

(g) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(h) "Taxable in another state" means either:

(i) The taxpayer is actually subject to a business activities tax by another state on its income received from engaging in apportionable activity; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activity, but the other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(iii) "Not Taxable" with respect to a particular state means the taxpayer is not actually subject to a business activities tax by that state on its income received from engaging in apportionable activities and that state does not have jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(3) **How does a taxpayer apportion its gross income from royalties?** A taxpayer earning gross income from royalties generated on or after June 1, 2010, must apportion such income when the taxpayer is taxable in another state. Gross income is apportioned to Washington by multiplying apportionable income by the receipts factor. The resulting amount of taxable income is then multiplied by the applicable tax rate.

(4) **What is the receipts factor?** The "receipts factor" is a fraction with the following numerator and denominator:

(a) Numerator: is the total gross income from royalties attributable to Washington during the tax year. Generally, a tax year is the same as a calendar year. For the purposes of this rule, tax years will be referred to as calendar years.

(b) Denominator: is the total gross income from royalties attributable to everywhere in the world during the calendar year, less amounts that are attributed to states where the taxpayer is not taxable if at least some of the apportionable activity is performed in Washington.

(5) **How are royalty receipts attributed to Washington?** To compute the numerator of the receipts factor, gross income from royalties is attributable to states as follows:

(a) Place of use: where the customer used the taxpayer's intangible property. The location of the use of the intangible is determined on a license use basis.

(b) Primary place of use: if the customer used the intangible property in more than one state, gross income of the business must be attributed to the state in which the intangible property was primarily used.

(c) Office of negotiation: if the taxpayer is unable to attribute gross income to a location under (a) or (b) of this subsection (5), then gross income must be attributed to the

office of the customer from which the royalty agreement with the taxpayer was negotiated.

(d) Billing state: if the taxpayer is unable to attribute gross income to a location under (a), (b), or (c) of this subsection (5), then gross income must be attributed to the state to which the billing statement or invoices are sent to the customer by the taxpayer.

(e) Payment state: if the taxpayer is unable to attribute gross income to a location under (a), (b), (c), or (d) of this subsection (5), then gross income must be attributed to the state from which the customer sends payment to taxpayer.

(f) Customer's address: if the taxpayer is unable to attribute gross income under (a), (b), (c), (d), or (e) of this subsection (5), then gross income must be attributed to the state where the customer is located as indicated by customer's address:

(i) As shown in the taxpayer's business records maintained in the regular course of business; or

(ii) Obtained during negotiation of the contract for the use of the taxpayer's intangible property, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(g) Taxpayer's domicile: if the taxpayer is unable to attribute gross income under (a), (b), (c), (d), (e), or (f) of this subsection (5), then gross income must be attributed to the commercial domicile of the taxpayer.

(6) **Examples.** Examples included in this subsection identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(a) **Example 1:** Taxpayer has its domicile in California and runs a national restaurant franchising business. Taxpayer enters into a contract with Company A under which Taxpayer licenses the right to use its trademark to Company A's so that Company A can display that trademark on its restaurant, menus, marketing materials, etc. Company A has a single restaurant that is located in Washington. Company A pays Taxpayer $500,000 per calendar year for the right to use the trademark at its restaurant in Washington. Pursuant to the first sourcing rule, the intangibles (trademark) are used in Washington. Therefore, Taxpayer would attribute the $500,000 in receipts from Company A to Washington.

(b) **Example 2:** Same facts as Example 1 except Company A in a single contract receives the right to use Taxpayer's trademark in as many restaurants as it wants in Washington and Idaho and pays $500,000 for each restaurant when the restaurant opens and each calendar year thereafter. Company A opens two restaurants in Idaho and one in Washington. Taxpayer would attribute $500,000 it received from Company A to Washington and $1,000,000 to Idaho.

(c) **Example 3:** Same facts as Example 1 above, except that Company A now has many locations in Idaho but still only one in Washington. Further, Company A enters into a new contract with Taxpayer under which Company A must now pay $1,500,000 per calendar year for the exclusive and unlimited right to the use of the trademark in Idaho but only a single location in Washington. Because the intangible is used in more than one state, but is primarily used in Idaho, Taxpayer would attribute all receipts received from Company A, (i.e. $1,500,000) to Idaho pursuant to the second sourcing rule.

(7) **What data can be used for calculating the receipts factor?**

(a) A taxpayer may calculate the receipts factor for the current calendar year based on the most recent calendar year for which information is available for the full calendar year. Taxpayers may refer to WAC 458-20-19402 for an example of the application of the use of the most current information available.

(b) If a taxpayer does not calculate the receipts factor for the current calendar year based on the previous calendar year information as authorized in this rule, the business must use current year information to calculate the receipts factor for the current tax year.

(c) In either case, a taxpayer must correct the reporting for the current calendar year when complete information is available to calculate the receipts factor for that year, but not later than October 31st of the following calendar year. Taxpayers may refer to WAC 458-20-19402 for an example of the reconciliation.

(8) **What interest applies to underpayments and overpayments?**

(a) Interest will apply to any additional tax due on a corrected tax return. Interest must be assessed at the rate provided for delinquent excise taxes under RCW 82.32.050 retroactively to the date the original return was due and will accrue until the additional taxes are paid.

(b) Interest as provided in RCW 82.32.060 will apply to any tax paid in excess of the that properly due on a return as a result of a taxpayer using previous calendar year data or incomplete current year data to calculate the receipts factor.

(9) **What penalties may apply?** Penalties as provided in RCW 82.32.090 will apply to any additional taxes due only if the current calendar year reporting is not corrected and the additional tax is not paid by October 31st of the following calendar year.

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 458-20-19404 Financial institutions—Income apportionment. (1) **Introduction.**

(a) Effective June 1, 2010, section 108, chapter 23, Laws of 2010 1st sp. sess. changed Washington's method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus standards that are effective June 1, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment – Generally. This rule describes the general application of single factor receipts apportionment that is effective June 1, 2010.

(iii) WAC 458-20-19403 Single factor receipts apportionment - Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the periods January 1, 2006, through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions - Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(c) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).

(2) **Apportionment and allocation.**

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must allocate and apportion its service and other activities income as provided in this rule. Any other apportionable income must be apportioned pursuant to WAC 458-20-19402 (Single factor receipts apportionment - Generally) or WAC 458-20-19403 (Single factor receipts apportionment - Royalties). "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under chapter RCW 82.04 if received from activities in this state, less the exemptions and deductions allowable under chapter RCW 82.04. All gross income that is not includable in service and other activities income or gross income must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the Federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for further guidance on the requirements of each accounting method. Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31th of the following year. See WAC 458-20-19402 for an example of how to use the most recent calendar year for which information is available. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the factors to reflect its changed operations.

(d) Interest and penalties on reconciliations under (c) of this subsection (2) apply as follows:

(i) Interest must be assessed on any additional tax due at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the original return was due, and will accrue until the additional taxes are paid.

(ii) Interest as provided in RCW 82.32.060 will apply to any tax paid in excess of that properly due on a return as a result of a taxpayer using previous calendar year data or incomplete current year data to calculate the receipts factor.

(iii) Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

(e) See WAC 458-20-19402 for an example of the reconciliation process.

(f) If the allocation and apportionment provisions of this rule do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(c) "Commercial domicile" means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United

States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

(d) "Credit card" means credit, travel or entertainment card.

(e) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

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

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) Any corporation or other business entity chartered under Titles 30, 31, 32, or 33 RCW, or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813 (b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. Secs. 611 to 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

(vii) Any credit union, other than a state or federal credit union exempt under state or federal law;

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

(i) "Gross income of the business," "gross income," or "income":

(A) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses; and

(B) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose of this subsection (3)(i) affiliated means the affiliated person and the financial institution are under common control. Common control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.

(C) Financial institutions must determine their gross income of the business from gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis.

(j) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. "Loan" includes participations, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include: futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(k) "Loan secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

(l) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) "Participation" means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) "Person" has the meaning given in RCW 82.04.030.

(o) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(p) "Service and other activities income" means the gross income of the business taxable under RCW 82.04.290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(q) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(r) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up

to a specified percentage of the total extension of credit or up to a specified dollar amount.

(s) "Taxable in another state" means either:

(i) The taxpayer is subject to business activities tax by another state on its service and other activities income; or

(ii) The taxpayer is not subject to a business activities tax by another state on its service and other activities income, but that state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401. For purposes of this subsection (3)(s), "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(t) "Taxable period" means the calendar year during which tax liability is incurred.

(4) **Receipts factor.**

(a) General. The receipts factor is a fraction, the numerator of which is the gross income of the taxpayer in this state during the taxable period and the denominator of which is the gross income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(b) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection (4)(b)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection (4)(b)(i) must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state. Interest and fees on loans secured by commercial aircraft that qualifies for the exemption from business and occupation tax under section 112, chapter 23, Laws of 2010, 1st sp. sess. are not be included in either numerator nor the denominator of the receipts factor.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(e) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and income from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection (4) and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(g) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection (4) and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(h) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder charge backs, but must not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(i) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

(j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4), if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.

(k) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection (4), the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from investment assets and activities and from trading assets and activities described in (k)(i) of this subsection (4) that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection (4) from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (k)(i)(A) and (B) of this subsection (4)), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection (4) by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of this subsection (4)(k)(ii), the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(iii) In lieu of using the method set forth in (k)(ii) of this subsection (4), the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection (4) from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (k)(ii)(A) or (B) of this subsection (4)), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection (4) by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the

denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection (4), it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after June 1, 2010.

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.

WSR 10-12-117
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed June 2, 2010, 9:46 a.m., effective June 2, 2010, 9:46 a.m.]

Effective Date of Rule: Immediately.

Purpose: WAC 458-20-194 (Rule 194) explains the apportionment requirements of persons entitled to apportion income under RCW 82.04.460(1). It also describes Washington nexus standards for business activities subject to apportionment under RCW 82.04.460(1). Rule 194 applies to persons subject to the service and other activities, international investment income, licensed boarding home, and low-level radioactive waste disposal business and occupation (B&O) tax classifications, and who are not required to apportion their income under another statute or rule.

WAC 458-20-14601 provides tax reporting instructions for financial institutions doing business both inside and outside the state of Washington.

Chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus provisions addressed in these rules, effective June 1, 2010. The department is amending these rules to recognize that the guidance provided in the rules does not apply after May 31, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-194 Doing business inside and outside the state and 458-20-14601 Financial institutions—Income apportionment.

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

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

Reasons for this Finding: An emergency adoption of these rules is necessary because permanent rules cannot be adopted at this time.

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 2, Repealed 0.

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

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

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

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

Date Adopted: June 2, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 97-11-033, filed 5/15/97, effective 7/1/97)

WAC 458-20-14601 Financial institutions—Income apportionment. (1) **Introduction.**

(a) This section provides tax reporting instructions for financial institutions doing business both inside and outside the state of Washington, and applies to tax liability incurred through May 31, 2010. Chapter 23, 2010 Laws 1st Special Session (2ESSB 6143) changed the apportionment reporting requirements for financial institutions effective June 1, 2010. Refer to WAC 458-20-19404 (Financial institutions - Income apportionment) for tax liability incurred on and after June 1, 2010.

Financial businesses that do not meet the definition of "financial institution" in subsection (3)(j) of this section and other businesses taxable under RCW 82.04.290 should refer to WAC 458-20-194 (Doing business inside and outside the state) for tax liability incurred on or before May 31, 2010.

(b) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).

(2) **Apportionment and allocation.**

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state shall allocate and apportion its apportionable income as provided in this section. All gross income that is not includable in apportionable income shall be allocated pursuant to the provisions of chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the Federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, shall allocate and apportion its gross income as provided in this section.

(b) The apportionment percentage is determined by adding the taxpayer's receipts factor (as described in subsection (4) of this section), property factor (as described in subsection (5) of this section), and payroll factor (as described in subsection (6) of this section) together and dividing the sum by three. If one of the factors is missing, the two remaining factors are added together and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

(c) Each factor shall be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for further guidance on the requirements of each accounting method. Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with the provisions of this section, financial institutions will file returns using factors calculated based on the most recent calendar year for which information is available. A reconciliation shall be filed for each year within thirty days of the time that the taxpayer files its federal income tax returns for that year, but not later than October 30th of the following year. For example, for returns filed for taxable activities occurring during calendar 1998, a taxpayer would use factors calculated based on its 1996 information. A reconciliation would be filed for 1998 using factors based on 1998 information as soon as the information was available to the taxpayer, but not later than thirty days after the time federal income tax returns were due for 1998, or October 30, 1999. In the case of consolidations, mergers, or divestitures, a taxpayer shall make the appropriate adjustments to the factors to reflect its changed operations.

(d) If the allocation and apportionment provisions of this section do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) A calculation of tax liability utilizing the cost of doing business method outlined in RCW 82.04.460(1);

(iii) The exclusion of any one or more of the factors;

(iv) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(v) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this section:

(a) **"Apportionable income"** means the gross income of the business taxable under RCW 82.04.290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(b) **"Billing address"** means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(c) **"Borrower or credit card holder located in this state"** means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(d) **"Commercial domicile"** means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this section to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

(e) **"Compensation"** means wages, salaries, commissions and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the Federal Internal Revenue Code. In the case of employees not subject to the Federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the Federal Internal Revenue Code shall be made as though such employees were subject to the Federal Internal Revenue Code.

(f) **"Credit card"** means credit, travel or entertainment card.

(g) **"Credit card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because

one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(h) **"Department"** means the department of revenue.

(i) **"Employee"** means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(j) **"Financial institution"** means:

(i) Any corporation or other business entity chartered under Titles 30, 31, 32, 33 RCW, or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. §§21 et seq.;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. §1813 (b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. §§611 to 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. §3101 that is not exempt under RCW 82.04.315;

(vii) Any credit union, other than a state or federal credit union exempt under state or federal law;

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

(ix) Any corporation or other business entity who receives gross income taxable under RCW 82.04.290, and whose voting interests are more than fifty percent owned, directly or indirectly, by any person or business entity described in (j)(i) through (viii) of this subsection other than an insurance company liable for the insurance premiums tax under RCW 48.14.020 or any other company taxable under chapter 48.14 RCW;

(x) A corporation or other business entity that derives more than fifty percent of its total gross income for federal income tax purposes from finance leases. For purposes of this subsection, a "finance lease" means a lease which meets two requirements:

(A) It is the type of lease permitted to be made by national banks (see 12 U.S.C. 24(7), 12 U.S.C. 24(10), Comptroller of the Currency-Regulations, Part 23-Leasing (added by 56 Fed. Reg. 28314, June 20, 1991, effective July 22, 1991), and Regulation Y of the Federal Reserve System 12 CFR 225.25, as amended); and

(B) It is the economic equivalent of an extension of credit, i.e., the lease is treated by the lessor as a loan for federal income tax purposes. In no event does a lease qualify as an extension of credit where the lessor takes depreciation on such property for federal income tax purposes.

For this classification to apply, the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent requirement;

(xi) Any other person or business entity, other than an insurance general agent taxable under RCW 82.04.280(5), an insurance business exempt from the business and occupation tax under RCW 82.04.320, a real estate broker taxable under RCW 82.04.255, a securities dealer or international investment management company taxable under RCW 82.04.290 (2), that derives more than fifty percent of its gross receipts from activities that a person described in (j)(ii) through (viii) and (x) of this subsection is authorized to transact. For purposes of this subparagraph, the computation of apportionable income shall not include income from nonrecurring, extraordinary items;

(xii) The department is authorized to exclude any person from the application of (j)(xi) of this subsection upon such person proving, by clear and convincing evidence, that the activity producing the receipts of such person is not in substantial competition with those persons described in (j)(ii) through (viii) and (x) of this subsection.

(k) **"Gross income of the business," "gross income," or "income"** has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(l) **"Gross rents"** means the actual sum of money or other consideration payable for the use or possession of real property. "Gross rents" includes, but is not limited to:

(i) Any amount payable for the use or possession of real property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(ii) Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(iii) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or grantor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable period. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

(iv) The following are not included in the term "gross rents":

(A) Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(B) Reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(C) Reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and

(D) That portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it.

(m) **"Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. "Loan" includes participations, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include: Properties treated as loans under Section 595 of the Federal Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(n) **"Loan secured by real property"** means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

(o) **"Merchant discount"** means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(p) **"Participation"** means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(q) **"Person"** has the meaning given in RCW 82.04.030.

(r) **"Principal base of operations"** with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly:

(i) Starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer; or

(ii) Communicates with his or her customers or other persons; or

(iii) Performs any other functions necessary to the exercise of his or her trade or profession at some other point or points.

(s) **"Real property owned"** and **"tangible personal property owned"** mean real and tangible personal property, respectively:

(i) On which the taxpayer may claim depreciation for federal income tax purposes; or

(ii) Property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes (or could claim depreciation if subject to federal income tax).

Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(t) **"Regular place of business"** means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(u) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or any foreign country.

(v) **"Syndication"** means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(w) **"Taxable in another state"** means either:

(i) That a taxpayer is subject in another state to a gross receipts or franchise tax for the privilege of doing business, a franchise tax measured by net income, a corporate stock tax (including a bank shares tax), a single business tax, or an earned surplus tax, or any other tax which is imposed upon or measured by gross or net income; or

(ii) That another state has jurisdiction to subject the taxpayer to any of such taxes regardless of whether, in fact, the state does or does not.

(x) **"Taxable period"** means the calendar year during which tax liability is incurred.

(y) **"Transportation property"** means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers or the like.

(4) **Receipts factor.**

(a) **General.** Except as provided in subsection (7) of this section, the receipts factor is a fraction, the numerator of which is the gross income of the taxpayer in this state during the taxable period and the denominator of which is the gross income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(b) **Receipts from the lease of real property.** The numerator of the receipts factor includes income from the lease or rental of real property owned by the taxpayer if the property is located within this state or income from the sublease of real property if the property is located within this state.

(c) **Receipts from the lease of tangible personal property.**

(i) Except as described in (c)(ii) of this subsection, the numerator of the receipts factor includes income from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(ii) Income from the lease or rental of transportation property owned by the taxpayer is included in the numerator of the receipts factor to the extent that the property is used in this state. The extent an aircraft is used in this state and the

amount of income that is to be included in the numerator of this state's receipts factor is determined by multiplying all the income from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(d) **Interest from loans secured by real property.**

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subparagraph is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subparagraph shall be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(e) **Interest from loans not secured by real property.** The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) **Net gains from the sale of loans.** The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (4)(d) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) **Receipts from credit card receivables.** The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and income from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) **Net gains from the sale of credit card receivables.** The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (g) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) **Credit card issuer's reimbursement fees.** The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (g) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) **Receipts from merchant discount.** The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) **Loan servicing fees.**

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor under (d) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor under (e) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

(l) **Receipts from services.** The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.

(m) **Receipts from investment assets and activities and trading assets and activities.**

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional princi-

pal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (m)(i)(A) and (B) of this subsection, the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from investment assets and activities and from trading assets and activities described in (m)(i) of this subsection that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (m)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (m)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (m)(i)(B) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of this paragraph, average value shall be determined using the rules for determining the average value of tangible personal property set forth in subsection (5) of this section.

(iii) In lieu of using the method set forth in (m)(ii) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (m)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (m)(ii)(a) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (m)(i)(B) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (m)(iii) of this subsection, it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(n) **Attribution of certain receipts to commercial domicile.** All receipts which would be assigned under this section to a state in which the taxpayer is not taxable are

included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Property factor.**

(a) **General.** Except as provided in subsection (7) of this section, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable period, the average value of the real and tangible personal property owned by the taxpayer that is located or used within this state during the taxable period, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable period, and the denominator of which is the average value of all such property located or used inside and outside this state during the taxable period.

(b) **Value of property owned by the taxpayer.**

(i) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation or amortization.

(ii) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established under regulatory or financial accounting guidelines which is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this section.

(iii) Credit card receivables are valued at their out-standing principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(c) **Average value of property owned by the taxpayer.** The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable period and the value on the last day of the taxable period and dividing the sum by two. If averaging on this basis does not properly reflect average value, the department may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the department or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property inside and outside this state and on all subsequent returns unless the taxpayer receives prior permission from the department or the department requires a different method of determining average value.

(d) **Average value of real property and tangible personal property rented to the taxpayer.**

(i) The average value of real property and tangible personal property that the taxpayer has rented from another and which is not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

(ii) Where the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the department or by the taxpayer when approved in writing by the department. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the department or the department requires a different method of valuation.

(e) **Location of real property and tangible personal property owned by or rented to the taxpayer.**

(i) Except as described in (e)(ii) of this subsection, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated or used within this state.

(ii) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere during the tax reporting period. If the extent of the use of any transportation property within this state cannot be determined, then the property is deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state in which it is registered. Thus, a motor vehicle will not be considered as used in Washington if there is no requirement for the vehicle to be licensed or registered in Washington.

(f) **Location of loans.**

(i)(A) A loan is located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(B) A loan is properly assigned to the regular place of business with which it has a majority of substantive contacts. A loan assigned by the taxpayer to a regular place of business outside the state shall be presumed to have been properly assigned if:

(I) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(II) Such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and

(III) The taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(ii) The presumption of proper assignment of a loan provided in (f)(i)(A) of this subsection may be rebutted by a preponderance of the evidence, showing that the majority of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan is located within this state if: The taxpayer had a regular place of business within this state at the time the loan was made; and the taxpayer fails to show, by a preponderance of the evidence, that the majority of substantive contacts regarding such loan did not occur within this state.

(C) If a loan is assigned by the taxpayer to a place outside this state which is not a regular place of business, it is

presumed, subject to rebuttal on a preponderance of evidence, that the majority of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in subsection (3)(d) of this section, was within this state.

(D) To determine the state in which the majority of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis and consideration shall be given to such activities as the solicitation, investigation, negotiation, approval and administration of the loan. The terms "solicitation," "investigation," "negotiation," "approval" and "administration" are defined as follows:

(I) *Solicitation.* Solicitation is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(II) *Investigation.* Investigation is the procedure whereby employees of the taxpayer determine the credit worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(III) *Negotiation.* Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement (e.g., the amount, duration, interest rate, frequency of repayment, currency denomination and security required). Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(IV) *Approval.* Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(V) *Administration.* Administration is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business which oversees this activity.

(g) **Location of credit card receivables.** For purposes of determining the location of credit card receivables, credit card receivables are treated as loans and are subject to the provisions of (f) of this subsection.

(h) **Period for which properly assigned loan remains assigned.** A loan that has been properly assigned to a state shall remain assigned to that state for the length of the original term of the loan, absent any change in material fact. If the original term of the loan is modified (extended or reduced), the loan may be properly assigned to another state if the loan has a majority of substantive contact to a regular place of business there.

(6) **Payroll factor.**

(a) **General.** Except as provided in subsection (7) of this section, the payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable period by the taxpayer for compensation of employees and the denominator of which is the total compensation paid both inside and outside this state during the taxable period. The payroll factor shall include all compensation paid to employees.

(b) **Compensation relating to independent contractors.** Payments made to any independent contractor or any other person not properly classifiable as an employee is excluded from both the numerator and denominator of the factor.

(c) **When compensation paid in this state.** Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(i) The employee's services are performed entirely within this state.

(ii) The employee's services are performed both inside and outside the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both inside and outside this state, the employee's compensation will be attributed to this state:

(A) If the employee's principal base of operations is inside this state; or

(B) If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(C) If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

(7) **Alternative factor calculation.**

(a) **General.** A taxpayer may elect to use the alternative factors calculation as provided in this subsection. The alternative factors calculation requires the use of all three factors provided below. A taxpayer making such an election must keep books and records sufficient to explain the calculations. Such an election, once made, must continue for a full calendar year.

(b) **Receipts factor.** The alternative receipts factor may be calculated by excluding from both the numerator and the denominator of the receipts factor as calculated in subsection (4) of this section gross income attributable to items that

would not be subject to tax under the provisions of RCW 82.04.290, whether from activities inside or outside of the state. For example, a taxpayer making the election to use the alternative factors calculation must exclude all receipts from the rental of tangible personal property in Washington from the numerator and all receipts from the rental of tangible personal property, wherever located, in the denominator.

(c) **Property factor.** The alternative property factor may be calculated by excluding from both the numerator and the denominator of the property factor as calculated in subsection (5) of this section property, the income from which would be considered wholesale or retail sales under chapter 82.04 RCW, whether from activities inside or outside the state. For example, a taxpayer making the election to use the alternative factors calculation must exclude all tangible personal property rented to customers in Washington from the numerator and all tangible personal property rented to customers, wherever located, in the denominator.

(d) **Payroll factor.** The alternative payroll factor may be calculated by excluding from both the numerator and the denominator of the payroll factor as calculated in subsection (6) of this section that amount paid to employees in connection with earning gross income which would not be subject to tax under RCW 82.04.290, whether earned from activities inside or outside of the state. For example, a taxpayer making the election to use the alternative factors calculation must exclude all compensation paid to employees in connection with activities that are not taxable under RCW 82.04.290 from the numerator and all compensation paid to employees wherever located that would not be taxable under RCW 82.04.290 if it had been earned in Washington.

(8) **Effective date.**

(a) **General.** This section applies to gross income that is reportable with respect to periods beginning on and after July 1, 1997.

(b) **Transition period election.** A financial institution may notify the department of its intention to apportion its gross receipts in the manner prescribed in RCW 82.04.460(1) and WAC 458-20-194. Such election may continue until the earlier of the date the financial institution elects to report in accordance with this section, but not later than January 1, 2000.

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.

AMENDATORY SECTION (Amending WSR 05-24-054, filed 12/1/05, effective 1/1/06)

WAC 458-20-194 Doing business inside and outside the state. (1) **Introduction.**

(a) This section ((~~applies to~~)) explains the apportionment requirements of persons entitled to apportion income under RCW 82.04.460(1), and applies only to tax liability incurred during the period of January 1, 2006 through May 31, 2010. Chapter 23, 2010 Laws 1st Special Session (2ESSB 6143) changed the apportionment provisions of RCW 82.04.460(1) effective June 1, 2010. ((~~Specifically this~~)) This section specifically applies to taxpayers who maintain places of business both within and without the state that contribute to the rendition of services and who are taxable under RCW 82.04.290, 82.04.2908, or any other statute that provides for apportionment under RCW 82.04.460(1) during this period.

Persons subject to the service and other activities, international investment income, licensed boarding home, and low-level radioactive waste disposal business and occupation (B&O) tax classifications, and who are not required to apportion their income under another statute or rule, should use this section. In addition, this section describes Washington nexus standards for business activities subject to apportionment under RCW 82.04.460(1) for tax liability incurred between January 1, 2006 through May 31, 2010. Nexus is described in subsection (2) of this section; separate accounting in subsection (3) of this section; and cost apportionment in subsection (4) of this section.

(b) Readers may also find helpful information in the following rules:

(((~~(i) WAC 458-20-14601 (Financial institutions - Income apportionment).~~

~~(ii) WAC 458-20-170 (Constructing and repairing of new or existing buildings or other structures upon real property).~~

~~(iii) WAC 458-20-179 (Public utility tax).~~

~~(iv) WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).~~

~~(v) WAC 458-20-236 (Baseball clubs and other sport organizations).~~))

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective June 1, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment - Generally. This rule describes the general application of single factor receipts apportionment that is effective June 1, 2010.

(iii) WAC 458-20-19403 Single factor receipts apportionment - Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-19404 Single factor receipts apportionment - Financial institutions. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(v) WAC 458-20-14601 Financial institutions - Income apportionment. This rule describes the apportionment of income for financial institutions for tax liability incurred prior to June 1, 2010.

(c) The examples included in this section identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(2) **Nexus.**

(a) **Place of business - minimum presence necessary for tax.** The following discussion of nexus applies only to gross income from activities subject to apportionment under this rule. A place of business exists in a state when a taxpayer engages in activities in the state that are sufficient to create nexus. Nexus is that minimum level of business activity or connection with the state of Washington which subjects the

business to the taxing jurisdiction of this state. Nexus is created when a taxpayer is engaged in activities in the state, either directly or through a representative, for the purpose of performing a business activity. It is not necessary that a taxpayer have a permanent place of business within a state to create nexus.

(b) **Examples.** The following examples demonstrate Washington's nexus principles.

(i) Assume an attorney licensed to practice only in Washington performs services for clients located in both Washington and Florida. All of the services are performed within Washington. The attorney does not have nexus with any state other than Washington.

(ii) Assume the same facts as the example in (b)(i) of this subsection, plus the attorney attends continuing education classes in Florida related to the subject matter for which his Florida clients hired him. The attorney's presence in Florida for the continuing education classes does not create nexus because he is not engaging in business in Florida.

(iii) Assume the same facts as the example in (b)(ii) of this subsection, plus the attorney is licensed to practice law in Florida and frequently travels to Florida for the purpose of conducting discovery and trial work. Even though the attorney does not maintain an office in Florida, the attorney has nexus with both Washington and Florida.

(iv) Assume an architectural firm maintains physical offices in both Washington and Idaho. The architectural firm has nexus with both Washington and Idaho.

(v) Assume an architectural firm maintains its only physical office in Washington, and when the firm needs a presence in Idaho, it contracts with nonemployee architects in Idaho instead of maintaining a physical office in Idaho. Employees of the Washington firm do not travel to Idaho. Instead, the contract architects interact directly with the clients in Idaho, and perform the services the firm contracted to perform in Idaho. The architectural firm has nexus with both Washington and Idaho.

(vi) Assume the same facts as the example in (b)(v) of this subsection except the contracted architects never meet with the firm's clients and instead forward all work products to the firm's Washington office, which then submits that work product to the client. In this case, the architectural firm does not have nexus with Idaho. The mere purchase of services from a subcontractor located in another state that does not act as the business' representative to customers does not create nexus.

(vii) Assume that an accounting firm maintains its only office in Washington. The accounting firm enters into contracts with individual accountants to perform services for the firm in Oregon and Idaho. The contracted accountants represent the firm when they perform services for the firm's clients. The firm has nexus with Washington, Oregon, and Idaho.

(viii) Assume that an accounting firm maintains its only office in Washington and has clients located in Washington, Oregon, and Idaho. The accounting firm's employees frequently travel to Oregon to meet with clients, review client's records, and present their findings, but do not travel to Idaho. The accounting firm has nexus with Washington and Oregon, but does not have nexus with Idaho.

(ix) Assume that a sales representative earns commissions from the sale of tangible personal property. The sales representative is located in Oregon and does not enter Washington for any business purpose. The sales representative contacts Washington customers only by telephone and earns commissions on sales of tangible personal property to Washington customers. The sales representative does not have nexus with Washington and the commissions earned on sales to Washington customers are not subject to Washington's business and occupation tax.

(x) The examples in this subsection (2) apply equally to situations where the Washington activities and out-of-state activities are reversed. For example, in example (b)(ix) of this subsection, if the locations were reversed, the sales representative would have nexus with Washington, but not in Oregon.

(3) **Separate accounting.**

(a) **In general.** "Separate accounting" refers to a method of accounting that segregates and identifies sources or activities which account for the generation of income within the state of Washington. Separate accounting is distinct from cost apportionment, which assigns a formulary portion of total worldwide income to Washington. A separate accounting method must be used by a business entitled to apportion its income under RCW 82.04.460(1) if this use results in an accurate description of gross income attributable to its Washington activities.

(b) **Accuracy.** Separate accounting is accurate only when the activities that significantly contribute, directly or indirectly, to the production of income can be identified and segregated geographically. Separate accounting thus links taxable income to activities occurring in a discrete jurisdiction. The result is inaccurate when services directly supporting these activities occur in different jurisdictions. For example, if a taxpayer provides investment advice to clients in Washington, but performs all of its research and due diligence activities in another state, then separate accounting would not be accurate. However, if instead of research and due diligence, only the client billing activity is performed in another state, then separate accounting would be allowed.

(c) **Approved methods of separate accounting.** The following methods of separate accounting are acceptable to the department, if accurate:

(i) **Billable hours of employees or representative third parties performing services in Washington.** If a business charges clients an hourly rate for the performance of services, and the place of performance of the employee, contractor, or other individual whose time is billed is reasonably ascertainable, then the billable hours may be used as a basis for separate accounting. The gross amount received from hours billed for services performed in Washington should be reported.

(ii) **Specific projects or contracts.** A business may assign the revenue from specific projects or contracts in or out of Washington by the primary place of performance. For example:

(A) A consulting business with no other presence in Washington that agrees to provide on-site management consulting services for a Washington business and receives five hundred thousand dollars in payment for the project must

report five hundred thousand dollars in gross income to Washington.

(B) If the same business gets another Washington client for on-site management consulting, and receives another payment of five hundred thousand dollars, the business must report an additional five hundred thousand dollars in gross income to Washington.

(C) If a business contracts to distribute advertisements for another business within the state of Washington, the gross amount received for this action should be reported as Washington income.

(iii) **Other reasonable and accurate methods—Notice to the department.**

(A) A taxpayer may report with, or the department may require, the use of one of the alternative methods of separate accounting.

(B) A taxpayer reporting under this subsection must notify the department at the time of filing that it is using an alternative method and provide a brief description of the method employed. If a taxpayer reports using an alternate method, the same method must be used for all subsequent tax reporting periods unless it is demonstrated another method is necessary under the standard in (c)(iii)(E) of this subsection.

(C) If on review of a taxpayer's return(s) the department determines another method is necessary to fairly represent the extent of a taxpayer's business activity in Washington, then the department may impose the method for all returns within the statute of limitations. Statutory interest applies to both balances due and refund or credit claims arising under this section. Further, applicable penalties will be imposed on balances due arising under this section. However, if the taxpayer reported using the separate accounting method in (c)(i) or (ii) of this subsection or cost apportionment under subsection (4)(a) through (h) of this section, the department may impose the alternate method for future periods only.

(D) A taxpayer may request that the department approve an alternative method of separate accounting by submitting a request for prior ruling pursuant to WAC 458-20-100. Such letter ruling may be subject to audit verification before issuance.

(E) The taxpayer or the department, in requesting or imposing an alternate method of separate accounting, must demonstrate by clear and convincing evidence that the separate accounting methods in (c) of this subsection do not fairly represent the extent of the taxpayer's business activity in Washington.

(4) **Cost apportionment.**

(a) **Apportionment ratio.**

(i) Each cost must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for further guidance on the requirements of each accounting method. Taxpayers must file returns using costs calculated based on the taxpayer's most recent fiscal year for which information is available, unless there is a significant change in business operations during the current period. A significant change in business operations includes commencement, expansion, or termination of business activities in or out of Washington, formation of a new business entity, merger, consolidation, creation of a subsidiary, or similar change. If there is a significant change in business operations, then the taxpayer must estimate its cost apportionment formula based on the best records available and then make the appropriate adjustments when the final data is available.

(ii) The apportionment ratio is the cost of doing business in Washington divided by the total cost of doing business as described in RCW 82.04.460(1). The apportionment ratio is calculated under this section as follows. The denominator of the apportionment ratio is the worldwide costs of the apportionable activity and the numerator is all costs specifically assigned to Washington plus all costs assigned to Washington by formula, as described below. Costs are calculated on a worldwide basis for the tax reporting period in question. The tax due to Washington is calculated by multiplying total income times the apportionment ratio times the tax rate. Available tax credits may be applied against the result. Statutory interest and penalties apply to underreported income. For the purposes of this rule, "total income" means gross income under the tax classification in question, less deductions, calculated as if the B&O tax classification applied on a worldwide basis.

(b) **Place of business requirement.** A taxpayer must maintain places of business within and without Washington that contribute to the rendition of its services in order to apportion its income. This "place of business" requirement, however, does not mean that the taxpayer must maintain a physical location as a place of business in another taxing jurisdiction in order to apportion its income. If a taxpayer has activities in a jurisdiction sufficient to create nexus under Washington standards, then the taxpayer is deemed to have a "place of business" in that jurisdiction for apportionment purposes. See subsection (2) of this section.

(c) **Noncost expenditures.** The following is a list of expenditures that are not costs of doing business within the meaning of RCW 82.04.460 and are therefore excluded from both the numerator and the denominator of the apportionment ratio. Expenditures that are not costs of doing business include expenditures that exchange one business asset for another; that reflect a revaluation of an asset not consumed in the course of business; or federal, state, or local taxes measured by gross or net business income. This list is not exclusive. Costs of an activity taxable under another B&O tax classification are also excluded from the apportionment ratio. Similarly, the costs of acquiring a business by merger or otherwise, including the financing costs, are not the costs of doing the apportioned business activity and must be excluded from the cost apportionment calculation.

(i) The cost of acquiring assets that are not depreciated, amortized, or otherwise expensed on the taxpayer's books and records on the basis of generally accepted accounting principles (GAAP), or a loss incurred on the sale of such assets. For example, expenditures for land and investments are excluded from the cost apportionment formula.

(ii) Taxes (other then taxes specifically related to items of property such as retail sales or use taxes and real and personal property taxes).

(iii) Asset revaluations such as stock impairment or goodwill impairment.

(iv) Costs of doing a business activity subject to the B&O tax under a classification other than RCW 82.04.290 or 82.04.2908. For example, if a taxpayer were subject to manufacturing, wholesaling and service and other activities B&O tax, the costs associated with a warehouse and a manufacturing plant (property and employee costs) are excluded from the cost apportionment formula. But if costs support both the service activity and either manufacturing or wholesaling (for example, costs associated with headquarters or joint operating centers), then those costs must be included in the cost apportionment formula without segregating the service portion of the costs.

(d) **Specifically assigned costs.** Real or tangible personal property costs, employee costs, and certain payments to third parties are specifically assigned under (e) through (g) of this subsection.

(e) **Property costs.**

(i) **Definitions.** Real or tangible personal property costs are defined to include:

(A) Depreciation as reported on the taxpayer's books and records according to GAAP, provided that if a taxpayer does not maintain its books and records in accordance with GAAP, it may use tax reporting depreciation. A taxpayer may not change its method of calculating depreciation costs without approval of the department;

(B) Maintenance and warranty costs for specific property;

(C) Insurance costs for specific property;

(D) Utility costs for specific property;

(E) Lease or rental payments for specific property;

(F) Interest costs for specific property; and

(G) Taxes for specific property.

(ii) **Assignment of costs.** Real or tangible personal property costs are assigned to the location of the property. Property in transit between locations of the taxpayer to which it belongs is assigned to the destination state. Property in transit between a buyer and seller and included by a taxpayer in the denominator of the apportionment ratio in accordance with its regular accounting practices is assigned to the destination state. Mobile or movable property located both within and without Washington during the measuring period is assigned in proportion to the total time within Washington during the measuring period. An automobile assigned to a traveling employee is assigned to the state to which the employee's compensation is assigned below or to the state in which the automobile is licensed. Where a business contracts for the maintenance, warranty services, or insurance of multiple properties, the relative rental or depreciation expense may be used to assign these costs.

(f) **Employee costs.**

(i) **Definitions.** For the purposes of this subsection:

(A) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to or accrued to employees for personal services. Employer contributions under a qualified cash plan, deferred arrangement plan, and nonqualified deferred compensation plan are considered compensation. Stock based compensation is considered compensation under this rule to the extent included in gross income for federal income tax purposes.

(B) "Employee" means any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee, but does not include corporate officers.

(ii) **Allocation method.** Employee costs include all compensation paid to employees and all employment based taxes and other fees, for example, amounts paid related to unemployment compensation, labor and industries insurance premiums, and the employer's share of Social Security and medicare taxes. An employee's compensation is assigned to Washington if the taxpayer reports the employee's wages to Washington for unemployment compensation purposes. Employee wages reported for federal income tax purposes may be used to assign the remaining compensation costs.

(g) **Representative third-party costs.**

(i) **Definitions.** For the purposes of this section:

"Representative third party" includes an agent, independent contractor, or other representative of the taxpayer who provides services on behalf of the taxpayer directly to customers. The term includes leased employees who meet the standards under (g) of this subsection.

(ii) **Allocation method.** Payments to a representative third party are assigned to the third party's place of performance. For example, if a business subcontracts with a representative third party who provides services on behalf of the taxpayer from a California location, the cost of compensating the representative third party is assigned to California. This is true even if the third party provides services to Washington customers. Conversely, the cost of compensating a representative third party providing services to California customers from a Washington location is assigned to Washington.

(iii) **Examples.**

(A) X, a Washington business, hires Taxpayer to design and write custom software for a document management system. Taxpayer subcontracts with Z, whose employees determine the needs of X, negotiate a statement of work, write the custom software, and install the software. Z's employees perform all of these services on-site at the X business location. Taxpayer's payments to Z are representative third-party costs and specifically assigned to Washington.

(B) Taxpayer, a service provider, subcontracts with X, who agrees to maintain a customer service center where staff will answer telephone inquiries about Taxpayer's services. X in turn subcontracts with Z, whose employees actually respond to questions from a phone center located in California. The payments by taxpayer to X are representative third-party costs with respect to Taxpayer because X is responsible for providing the staff of the service center. The payments to X are specifically assigned to California.

(C) Taxpayer sells various manufacturers' products at wholesale on a commission basis. Taxpayer subcontracts with X, who agrees to act as Taxpayer's sales representative on the West Coast. Taxpayer has various other sales representatives working on as independent contractors, who are assigned territories, but may make sales from an office or through in-person visits, or a combination of both. Taxpayer does not maintain records sufficient to show the representatives' places of performance. Taxpayer may use sales records and the standards under (h) of this subsection to assign commissions by each subcontractor.

(h) **Costs assigned by formula.**

(i) Costs not specifically assigned under (e) through (g) of this subsection and not excluded from consideration by (c) of this subsection are assigned to Washington by formula. These costs are multiplied by the ratio of sales in Washington over sales everywhere. For example, if a business has one thousand dollars in other unassigned costs and sales of ten thousand dollars in each of the four states in which it has nexus under Washington standards (including Washington), twenty-five percent ($10,000/$40,000), or two hundred fifty dollars of the other costs are assigned to Washington.

(ii) Sales are assigned to where the customer receives the benefit of the service. If the location where the services are received is not readily determinable, the services are attributed to the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services are attributed to the office of the customer to which the services are billed.

(iii) If under the method described above a sale is attributed to a location where the taxpayer does not have nexus under Washington standards, the sale must be excluded from both the numerator and denominator of the sales ratio. For the purposes of this calculation only, the department will presume a taxpayer has nexus anywhere the taxpayer has employees or real property, or where the taxpayer reports business and occupation, franchise, value added, income or other business activity taxes in the state. The burden is on the taxpayer to demonstrate nexus exists in other states.

(i) **Alternative methods.**

(i) A taxpayer may report with, or the department may require, the use of one of the alternative methods of cost apportionment described below:

(A) The exclusion of one or more categories of costs from consideration;

(B) The specific allocation of one or more categories of costs which will fairly represent the taxpayer's business activity in Washington; or

(C) The employment of another method of cost apportionment that will effectuate an equitable apportionment of the taxpayer's gross income.

(ii) A taxpayer reporting under (i) of this subsection must notify the department at the time of filing that it is using an alternative method and provide a brief description of the method employed. If a taxpayer reports using an alternate method, the same method must be used for all subsequent tax reporting periods unless it is demonstrated another method is necessary under the standard in (i)(v) of this subsection.

(iii) If on review of a taxpayer's return(s) the department determines another method is necessary to fairly represent the extent of a taxpayer's business activity in Washington, the department may impose the method for all returns within the statute of limitations. Statutory interest applies to both balances due and refund or credit claims arising under this section. Further, applicable penalties will be imposed on balances due arising under this section. However, if the taxpayer reported using the cost apportionment method in (a) through (h) of this subsection and separate accounting is unavailable, the department may impose the alternate method for future periods only.

(iv) A taxpayer may request that the department approve an alternative method of cost apportionment by submitting a request for prior ruling pursuant to WAC 458-20-100. Such letter ruling may be subject to audit verification before issuance.

(v) The taxpayer or the department, in requesting or imposing an alternate method, must demonstrate by clear and convincing evidence that the cost apportionment method in (a) through (h) of this subsection does not fairly represent the extent of the taxpayer's business activity in Washington.

(5) **Effective date.** This amended rule shall be effective for tax reporting periods beginning on January 1, 2006, and thereafter.

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 10-13-004
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-143—Filed June 2, 2010, 3:56 p.m., effective June 12, 2010]

Effective Date of Rule: June 12, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000X; and amending WAC 232-28-620.

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 department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed to by resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans and are interim until permanent rules take effect.

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: June 2, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62000X Coastal salmon seasons—2010 North of Falcon. Notwithstanding the provisions of WAC 232-28-620, effective June 12, through June 30, 2010, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Area 1: Open June 12 through June 30, 2010, daily limit 2 salmon, except release coho and wild Chinook.

(2) Areas 2, 2-1, and 2-2:

(a) Area 2: Open June 12 through June 30, 2010, daily limit 2 salmon, except release coho and wild Chinook.

(b) Area 2-1 and 2-2: Closed.

(3) Area 3: Open June 12 through June 30, 2010, daily limit 2 salmon, except release coho and wild Chinook.

(4) Area 4:

(a) Open June 12 through June 30, 2010, daily limit 2 salmon, except release coho and wild Chinook, closed to salmon angling east of a true north/south line through Sail Rock.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2010:

WAC 232-28-62000X	Coastal salmon seasons—2010 North of Falcon.

WSR 10-13-014
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-120—Filed June 4, 2010, 9:30 a.m., effective June 5, 2010]

Effective Date of Rule: June 5, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900U; 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 emergency rule is needed to allow recreational angling opportunity for hatchery summer steelhead and trout. 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: June 4, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900U Exceptions to statewide rules—South Fork Stillaguamish River Notwithstanding the provisions of WAC 232-28-619, effective June 5 through September 30, 2010, a person may fish for gamefish in waters of the South Fork Stillaguamish River from the Mountain Loop Highway Bridge above Granite Falls, upstream. Catch-and-release, except two hatchery steelhead may be retained. Selective gear rules are in effect and fishing from a floating device with a motor is prohibited. Effective August 1 through September 30, 2010, night closure is in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2010:

WAC 232-28-61900U	Exceptions to statewide rules—South Fork Stillaguamish River.

WSR 10-13-015
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-136—Filed June 4, 2010, 9:31 a.m., effective June 5, 2010]

Effective Date of Rule: June 5, 2010.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 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: Fishing regulations for the Nisqually River above Alder Lake and all tributary streams of Alder Lake were not included in the newly developed stream strategy for Puget Sound tributaries. The intent is to provide trout fishing opportunity in this area consistent with the stream strategy. 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: June 4, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900A Exceptions to statewide rules—Nisqually River. Notwithstanding the provisions of WAC 232-28-619, effective June 5 through September 30, 2010, a person may fish for game fish in waters of the Nisqually River and (all tributaries) above Alder Lake and in all tributaries to Alder Lake. Daily limit of two trout over 14 inches in length; statewide minimum size and daily limits apply for all other game fish. Selective gear rules in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2010:

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

WSR 10-13-022
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-148—Filed June 4, 2010, 1:52 p.m., effective June 5, 2010]

Effective Date of Rule: June 5, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900P; 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: Klickitat Salmon Hatchery is expected to meet its escapement goal, and this regulation is consistent with rules that are already in effect below Fisher Hill Bridge. 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: June 4, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900P Exceptions to statewide rules—Klickitat River. Notwithstanding the provisions of WAC 232-28-619, effective June 5 through July 31, 2010, a person may fish for salmon in waters of the Klickitat River from 400 feet upstream of the #5 fishway to boundary markers below Klickitat Salmon Hatchery. Daily limit 6 fish, of which no more than 2 may be adult Chinook. Release wild Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2010:

WAC 232-28-619000P	Exceptions to statewide rules—Klickitat River.

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 232-28-619000P is probably intended to be WAC 232-28-61900P.

WSR 10-13-041

EMERGENCY RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 9, 2010, 7:34 a.m., effective June 10, 2010]

Effective Date of Rule: June 10, 2010.

Purpose: The department will create a new chapter 388-816 WAC to address agency certification and implementation of the problem and pathological gambling treatment program. Without these rules, counselors within the division of behavioral health and recovery (DBHR) certified agencies will no longer be able to provide problem and pathological treatment services effective July 1, 2010.

Statutory Authority for Adoption: RCW 43.20A.890.

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

Reasons for this Finding: On July 1, 2009, the Washington state department of health's (DOH) chapter 18.19 RCW was revised, eliminating the registered counselor credential. Counselors providing problem and pathological gambling treatment within a DBHR-certified chemical dependency treatment program would no longer be allowed to provide these treatment services effective July 1, 2010. This new chapter gives DBHR the authority to certify problem and pathological gambling treatment programs. DOH will recognize problem and pathological gambling treatment program certification by DBHR in order to issue a new agency affiliated counselor credential per chapter 18.19 RCW, allowing gambling treatment services to continue.

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 35, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 35, Amended 0, Repealed 0.

Date Adopted: June 4, 2010.

Katherine I. Vasquez

Rules Coordinator

Chapter 388-816 WAC

Certification requirements for problem and pathological gambling treatment program

SECTION I- PURPOSE AND DEFINITIONS

NEW SECTION

WAC 388-816-0001 What is the purpose of this chapter? These rules describe the standards and processes necessary to be a certified problem and pathological gambling treatment program. The rules have been adopted under the authority and purposes of the following chapters of law.

(1) Chapter 43.20A RCW, department of social and health services.

(2) Chapter 49.60 RCW, Discrimination-Human rights commission.

NEW SECTION

WAC 388-816-0005 What definitions are important throughout this chapter? "Added service" means the adding of certification for problem and pathological gambling treatment levels of care to an existing certified agency at an approved location.

"Administrator" means the person designated responsible for the operation of the certified treatment program.

"Adult" means a person eighteen years of age or older.

"Assessment" means the ongoing process of identifying a diagnosis and determining the care needed by the problem gambling client. The assessment includes the requirements described in WAC 388-816-0145 in order to develop a treatment plan.

"Authenticated" means written, permanent verification of an entry in a client treatment record by an individual, by means of an original signature including first initial, last name, and professional designation or job title, or initials of the name if the file includes an authentication record, and the date of the entry. If client records are maintained electronically, unique electronic passwords, biophysical or passcard equipment are acceptable methods of authentication.

"Authentication record" means a document that is part of a client's treatment record, with legible identification of all persons initialing entries in the treatment record, and includes:

(1) Full printed name;

(2) Signature including the first initial and last name; and

(3) Initials and abbreviations indicating professional designation or job title.

"Case management" means services provided to assist the client in gaining access to needed medical, social, educational, and other services. Services include case planning, case consultation, and referral, and other support services for the purpose of engaging and retaining or maintaining clients in treatment.

"Certified treatment program" means a legally operated entity certified by the department to provide problem and pathological gambling treatment services. The components of a treatment program are:

(1) Legal entity/owner;

(2) Facility; and

(3) Staff and services.

"Change in ownership" means one of the following conditions:

(1) When the ownership of a certified problem and pathological gambling treatment program changes from one distinct legal owner to another distinct legal owner;

(2) When the type of business changes from one type to another such as, from a sole proprietorship to a corporation; or

(3) When the current ownership takes on a new owner of five percent or more of the organizational assets.

"Client" means an individual receiving problem or pathological gambling treatment services from a certified program.

"Clinical staff member" means an individual credentialed by the department of health in a counseling profession per chapter 18.19 RCW, chapter 18.83 RCW, or chapter 18.225 RCW.

"Criminal background check" means a search by the Washington state patrol for any record of convictions or civil adjudication related to crimes against children or other persons, including developmentally disabled and vulnerable adults, per RCW 43.43.830 through 43.43.842 relating to the Washington state patrol.

"Critical incident" includes:

(1) Death of a client;

(2) Serious injury;

(3) Sexual assault of clients, staff members, or public citizens on the facility premises;

(4) Abuse or neglect of an adolescent or vulnerable adult client by another client or program staff member on facility premises;

(5) A natural disaster presenting a threat to facility operation or client safety;

(6) A bomb threat; a break in or theft of client identifying information;

(7) Suicide attempt at the facility.

"Department" means the Washington state department of social and health services.

"Disability, a person with" means a person whom:

(1) Has a physical or mental impairment that substantially limits one or more major life activities of the person;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

"DSM-IV TR" means diagnostic and statistical manual of mental disorders, fourth edition text revision, published by the American psychiatric association.

"Essential requirement" means a critical element of problem and pathological gambling treatment services that must be present in order to provide effective treatment.

"Financial evaluation" means the total of a client's monthly financial obligations including gambling debts.

"Governing body" means the officers, board of directors or trustees of a corporation or limited liability company who make up the body for the purpose of administering the problem or pathological gambling program.

"Outcomes evaluation" means a system for determining the effectiveness of results achieved by clients during or following service delivery, and client satisfaction with those results for the purpose of program improvement.

"Pathological gambling" means a mental disorder characterized by loss of control over gambling, progression in and preoccupation with gambling and in obtaining money to gamble and continuation of gambling despite adverse consequences.

"Problem gambling" means an earlier stage of pathological gambling which compromises, disrupts, or damages family or personal relationships or vocational pursuits.

"Progress notes" are a permanent record of ongoing assessments of a client's participation in and response to treatment, and progress in recovery.

"Qualified personnel" means trained, qualified staff who meet appropriate legal, licensing, certification, and registration requirements.

"Relocation" means change in location from one office space to a new office space, or moving from one office building to another.

"Remodeling" means expansion of existing office space to additional office space at the same address, or remodeling of interior walls and space within existing office space.

"Summary suspension" means an immediate suspension of certification, per RCW 34.05.422(4), by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

"Suspend" means termination of the department's certification of a program's treatment services for a specified period or until specific conditions have been met and the department notifies the program of reinstatement.

"Treatment plan review" means a review of active problems on the client's individualized treatment plan, the need to address new problems, and client placement.

"Vulnerable adult" means a person who lacks the functional, mental, or physical ability to care for oneself.

SECTION II—APPLICATION FOR CERTIFICATION

NEW SECTION

WAC 388-816-0010 What problem and pathological gambling treatment programs are certified by the department? The department certifies problem and pathological gambling treatment programs which includes diagnostic screening and assessment, individual, group, couples and family counseling and case management.

NEW SECTION

WAC 388-816-0015 How do I apply for certification as a new problem and pathological gambling treatment program? (1) A potential new problem and pathological gambling treatment program, referred to as applicant, seeking certification as described under WAC 388-816-0010, must request from the department an application packet of information on how to become a certified problem and pathological gambling treatment program.

(2) The applicant must submit a completed application to the department that includes:

(a) If the applicant is a sole proprietor: The name and address of the applicant, and a statement of sole proprietorship;

(b) If the applicant is a partnership: The name and address of every partner, and a copy of the written partnership agreement;

(c) If the applicant is a limited liability corporation: The name and addresses of its officers and any owner of five percent or more of the organizational assets, and a copy of the certificate of formation issued by the state of Washington, secretary of state;

(d) If the applicant is a corporation: The names and addresses of its officers, board of directors and trustees, and any owner of five percent or more of the organizational assets, and a copy of the corporate articles of incorporation and bylaws;

(e) A copy of the master business license authorizing the organization to do business in Washington state;

(f) The social security number or Federal Employer Identification Number for the governing organization or person;

(g) The name and job description of the individual administrator appointed by the governing body under whose management or supervision the services will be provided;

(h) A copy of the report of findings from a criminal background check of any owner of five percent or more of the organizational assets and the administrator;

(i) Additional disclosure statements or background inquiries if the department has reason to believe that offenses specified under RCW 43.43.830, have occurred since completion of the original application;

(j) The physical location of the facility where services will be provided including, in the case of a location known only by postal route and box numbers, and the street address;

(k) Program facility requirements as set forth in WAC 388-816-0025;

(l) Policy and procedure manuals specific to the program at the proposed site, and meet the manual requirements described later in this regulation, including the:

(i) Administrative manual;

(ii) Personnel manual; and

(iii) Clinical manual.

(m) Sample client records for the treatment service applied for; and

(n) Evidence of sufficient qualified staff to deliver services.

(3) The program owner or legal representative must:

(a) Sign the completed application form and submit the original to the department; and

(b) Report any changes occurring during the certification process.

NEW SECTION

WAC 388-816-0020 How do currently certified or licensed agencies apply for added service? Programs certified or licensed by the department through either chapter 388-805 WAC or chapter 388-865 WAC must apply for an added certified service by:

(1) Submitting an abbreviated application, including:

(a) The name of the individual administrator providing management or supervision of the program;

(b) A written declaration that a current copy of the agency policy and procedure manual will be maintained for the added service and that the manual has been revised to accommodate the differences in business and clinical practices at that site;

(c) An organization chart, showing the relationship of the added service to the main organization, job titles, and lines of authority;

(d) Evidence of sufficient qualified staff to deliver services for the added service; and

(e) Evidence of meeting the requirements of:

(i) WAC 388-816-0015 (2)(h) through (l), (n) and (3);

(ii) WAC 388-816-0145;

(iii) WAC 388-816-0150;

(iv) WAC 388-816-0160;

(v) WAC 388-816-0170; and

(vi) WAC 388-816-0175.

NEW SECTION

WAC 388-816-0025 What are the requirements for program facilities? (1) The applicant must include a floor plan showing the dimensions and intended use of each room that includes the location of:

(a) Floor to ceiling walls;

(b) Windows and doors;

(c) Restrooms;

(d) Areas serving as confidential counseling rooms;

(e) Confidential client records storage; and

(f) Other therapy and recreation areas and rooms.

(2) A completed facility accessibility self-evaluation form.

(3) The administrator must ensure the treatment site:

(a) Is accessible to a person with a disability;

(b) Has a reception area separate from therapy areas;

(c) Has adequate private space for personal consultation with a client, staff charting, and therapeutic and social activities, as appropriate;

(d) Has secure storage of active and closed confidential client records;

(e) Has current fire inspection approval;

(f) Has facilities and furnishings that are kept clean and in good repair;

(g) Has adequate lighting, heating, and ventilation; and

(h) Has separate and secure storage of toxic substances, which are used only by staff or supervised persons.

NEW SECTION

WAC 388-816-0030 How does the department conduct an examination of facilities? The department must conduct an on-site examination of each new applicant's facility. The department must determine if the applicant's facility is:

(1) Substantially as described.

(2) Suitable for the purposes intended.

(3) Not a personal residence.

(4) Approved as meeting all building and safety requirements.

NEW SECTION

WAC 388-816-0035 How does the department determine disqualification or denial of an application? The department must consider the ability of each person named in the application to operate in accordance with this chapter before the department grants or renews certification of problem and pathological gambling service.

(1) The department must deny an applicant's certification when any of the following conditions occurred and was not satisfactorily resolved, or when any owner or administrator:

(a) Had a license or certification for a health care agency denied, revoked, or suspended;

(b) Was convicted of child abuse or adjudicated as a perpetrator of substantiated child abuse;

(c) Obtained or attempted to obtain a health provider license, certification, or registration by fraudulent means or misrepresentation;

(d) Committed, permitted, aided, or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180;

(e) Demonstrated cruelty, abuse, negligence, misconduct, or indifference to the welfare of a client or displayed acts of discrimination;

(f) Misappropriated client property or resources;

(g) Failed to meet financial obligations or contracted service commitments that affect client care;

(h) Has a history of noncompliance with state or federal regulations in an agency with which the applicant has been affiliated;

(i) Knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in:

(i) The application or materials attached; and

(ii) Any matter under department investigation.

(j) Refused to allow the department access to records, files, books, or portions of the premises relating to operation of the problem and pathological gambling program service;

(k) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized department representative;

(l) Is in violation of any provision of RCW 43.20A.890; or

(m) Does not meet criminal background check requirements.

(2) The department may deny certification when an applicant:

(a) Fails to provide satisfactory application materials; or

(b) Advertises itself as certified when certification has not been granted, or has been revoked or canceled.

(3) The applicant may appeal department decisions in accord with chapter 34.05 RCW, the Washington Administrative Procedure Act and chapter 388-02 WAC.

NEW SECTION

WAC 388-816-0040 What happens after I make application for certification? (1) The department may grant an applicant initial certification after a review of application materials and an on-site visit confirms the applicant has the capacity to operate in compliance with this chapter.

(2) A program's failure to meet and maintain conditions of the initial certification may result in suspension of certification.

(3) An initial certificate of approval may be issued for up to one year.

(4) The program must post the certificate in a conspicuous place on the premises.

NEW SECTION

WAC 388-816-0045 How do I apply for an exemption? (1) The department may grant an exemption from compliance with specific requirements in this WAC chapter if the exemption does not violate:

(a) An existing federal or state law; or

(b) An existing tribal law.

(2) Programs must submit a signed letter requesting the exemption to the Supervisor, Certification Section, Division of Behavioral Health and Recovery, P.O. Box 45330, Olympia, WA 98504-5330. The program must assure the exemption request does not:

(a) Jeopardize the safety, health, or treatment of clients; and

(b) Impede fair competition of another program.

(3) The department must approve or deny all exemption requests in writing.

(4) The department and the program must maintain a copy of the decision.

SECTION III—MAINTAINING CERTIFICATION

NEW SECTION

WAC 388-816-0070 What do I need to do to maintain program certification? Certificates are effective for one year from the date of issuance. A service program's continued certification and renewal is contingent upon:

(1) Completion of an annual declaration of certification;

(2) Providing the essential requirements for problem and pathological gambling treatment, including the following elements:

(a) Treatment process:

(i) Assessments, as described in WAC 388-816-0145;

(ii) Treatment planning, as described in WAC 388-816-0150 (2)(a) and 388-816-0160(8);

(iii) Documenting client progress, as described in WAC 388-816-0150 (1)(b); 388-816-0160(10);

(iv) Treatment plan reviews and updates, as described in WAC 388-816-0160(11); WAC 388-816-0175 (1)(d)(i)and (ii);

(v) Continuing care, and discharge planning, as described in WAC 388-816-0150 (2)(d); 388-816-0150 (6) and (7); and 388-816-0160(14);

(vi) Conducting individual and group counseling, as described in WAC 388-816-0150 (2)(b) and 388-816-0160 (10).

(b) Staffing: Provide sufficient qualified personnel for the care of clients as described in WAC 388-816-0130.

(c) Facility: Provide sufficient facilities, equipment, and supplies for the care and safety of clients as described in WAC 388-816-0105 (5) and (6).

(3) Findings during periodic on-site surveys and complaint investigations to determine the program's compliance with this chapter. During on-site surveys and complaint investigations, program representatives must cooperate with department representatives to:

(a) Examine any part of the facility at reasonable times and as needed;

(b) Review and evaluate records, including client clinical records, personnel files, policies, procedures, fiscal records, data, and other documents as the department requires to determine compliance; and

(c) Conduct individual interviews with clients and staff members.

(4) The program must post the notice of a scheduled department on-site survey in a conspicuous place accessible to clients and staff.

(5) The program must correct compliance deficiencies found at such surveys immediately or as agreed by a plan of correction approved by the department.

NEW SECTION

WAC 388-816-0075 What do I need to do for a change in ownership? (1) When a certified problem and pathological gambling treatment program plans a change in ownership, the current service program must submit a change in ownership application form sixty or more days before the proposed effective date of ownership change.

(2) The current program must include the following information with the application:

(a) Name and address of each new prospective owner of five percent or more of the organizational assets as required by WAC 388-816-0015 (2)(a) through (d);

(b) Current and proposed name (if applicable) of the service provider;

(c) Date of the proposed transaction;

(d) A copy of the transfer agreement between the outgoing and incoming owner(s);

(e) If a corporation, the names and addresses of the proposed responsible officers or partners;

(f) A statement regarding the disposition and management of client records, as described under 45 CFR, Part 160 through 164, and WAC 388-816-0155; and

(g) A copy of the report of findings from a criminal background check of any new owner of five percent or more of the organizational assets and new administrator when applicable.

(3) The department must determine which, if any, WAC 388-816-0015 or 388-816-0020 requirements apply to the potential new program, depending on the extent of ownership and operational changes.

(4) The department may grant certification to the new owner when the new owner:

(a) Successfully completes the application process; and

(b) Ensures continuation of compliance with rules of this chapter and implementation of plans of correction for deficiencies relating to this chapter, when applicable.

NEW SECTION

WAC 388-816-0080 What do I do to relocate or remodel a facility? (1) When a certified problem or pathological gambling treatment program plans to relocate or change the physical structure of a facility in a manner that affects client care, the program must:

(a) Submit a completed program relocation approval request form, or a request for approval in writing if remodeling, sixty or more days before the proposed date of relocation or change.

(b) Submit a sample floor plan that includes information identified in WAC 388-816-0025.

(c) Submit a completed facility accessibility self-evaluation form.

(d) Provide for department examination of the premises before approval, as described under WAC 388-816-0030.

NEW SECTION

WAC 388-816-0085 How does the department assess penalties? When the department determines that a program fails to comply with requirements of this chapter, the department may cease referrals of new clients who are recipients of state or federal funds.

NEW SECTION

WAC 388-816-0090 How does the department cancel certification? The department may cancel certification if the program:

(1) Stops providing the certified service.

(2) Voluntarily cancels certification.

(3) Changes ownership without prior notification and approval.

(4) Relocates without prior notification and approval.

NEW SECTION

WAC 388-816-0095 How does the department suspend or revoke certification? (1) The department must suspend or revoke a program's certification when a disqualifying situation described under WAC 388-816-0035 applies to a current program.

(2) The department may suspend or revoke a program's certification when any of the following deficiencies or circumstances occur:

(a) A program fails to provide the essential requirements of problem or pathological gambling treatment as described in WAC 388-816-0070(2), and one or more of the following conditions occur:

(i) Violation of a rule threatens or results in harm to a client;

(ii) A reasonably prudent program should have been aware of a condition resulting in significant violation of a law or rule;

(iii) A program failed to investigate or take corrective or preventive action to deal with a suspected or identified client care problem;

(iv) Noncompliance occurs repeatedly in the same or similar areas; or

(v) There is an inability to attain compliance with laws or rules within a reasonable period of time.

(b) The program fails to submit an acceptable and timely plan of correction for cited deficiencies; or

(c) The program fails to correct cited deficiencies.

(3) The department may suspend certification upon receipt of a written request from the program. Programs requesting voluntary suspension must submit a written request for reinstatement of certification within one year from the effective date of the suspension. The department will review the request for reinstatement, determine if the program is able to operate in compliance with certification requirements, and notify the program of the results of the review for reinstatement.

NEW SECTION

WAC 388-816-0100 What is the prehearing, hearing and appeal process? (1) In case of involuntary certification cancellation, suspension, or revocation of the certification, or a penalty for noncompliance, the department must:

(a) Notify the program of any action to be taken; and

(b) Inform the program of prehearing and dispute conferences, hearing, and appeal rights under chapter 388-02 WAC.

(2) The department may order a summary suspension of the program's certification pending completion of the appeal process when the preservation of public health, safety, or welfare requires emergency action.

SECTION IV—ORGANIZATIONAL STANDARDS

NEW SECTION

WAC 388-816-0105 What are the requirements for the governing body of the program? In treatment programs not certified or licensed under chapter 388-805 WAC or chapter 388-865 WAC, a governing body, legally responsible for the conduct and quality of services provided, must:

(1) Appoint an administrator responsible for the day-to-day operation of the program.

(2) Maintain a current job description for the administrator including the administrator's authority and duties.

(3) Notify the department within thirty days, of changes of the program administrator.

(4) Provide personnel, facilities, equipment, and supplies necessary for the safety and care of clients.

(5) Programs must ensure:

(a) Safety of clients and staff; and

(b) Maintenance and operation of the facility.

(6) Ensure the administration and operation of the program is in compliance with:

(a) Chapter 388-816 WAC requirements;

(b) Applicable federal, state, tribal, and local laws and rules; and

(c) Applicable federal, state, tribal, and local licenses, permits, and approvals.

NEW SECTION

WAC 388-816-0110 What are the key responsibilities required of a program administrator? In treatment programs not certified or licensed under chapter 388-805 WAC or chapter 388-865 WAC, the administrator must:

(1) Be responsible for the day-to-day operation of the certified treatment service, including:

(a) All administrative matters;

(b) Client care services; and

(c) Meeting all applicable rules and ethical standards.

(2) Delegate the authority and responsibility to act in the administrator's behalf when the administrator is not on duty or on call.

(3) Ensure administrative, personnel, and clinical policy and procedure manuals:

(a) Are developed and adhered to; and

(b) Are reviewed and revised as necessary, and at least annually.

(4) Employ sufficient qualified personnel to provide adequate problem and pathological gambling treatment, facility security, client safety and other special needs of clients.

(5) Ensure all persons providing counseling services are credentialed by the department of health.

(6) Assign the responsibility of TB infection control manager to a program individual in order to assess the program's annual tuberculosis risk according to the center for disease control guidelines.

NEW SECTION

WAC 388-816-0115 What must be included in a program administrative manual? Treatment programs not certified or licensed under chapter 388-805 WAC or chapter 388-865 WAC must have and adhere to an administrative manual, which contains policies and procedures including:

(1) Services will be made sensitive to the needs of each client, including assurance that:

(a) Certified interpreters or other acceptable alternatives are available for persons with limited English-speaking proficiency and persons having a sensory impairment; and

(b) Assistance will be provided to persons with disabilities in case of an emergency.

(2) An organization chart specifying:

(a) The governing body;

(b) Each staff position by job title, including volunteers, students, and persons on contract; and

(c) The number of full or part-time persons for each position.

(3) A delegation of authority policy.

(4) A copy of current fee schedules.

(5) Implementing state and federal regulations on client confidentiality, including provision of a summary of 45 CFR Part 160 and 164 to each client.

(6) Reporting suspected child abuse and neglect.

(7) Reporting the death of a client to the department within one business day when a client dies on the premises.

(8) A client grievance policy and procedures.

(9) Reporting of critical incidents and actions taken to the department within two business days when an unexpected event occurs.

(10) An evacuation plan for use in the event of a disaster or emergency, addressing:

(a) Communication methods for clients, staff, and visitors including persons with a visual or hearing impairment or limitation;

(b) Evacuation of mobility-impaired persons;

(c) Evacuation of children if child care is offered;

(d) Different types of disasters or emergencies;

(e) Placement of posters showing routes of exit; and

(f) The need to mention evacuation routes at public meetings.

(11) A smoking policy consistent with the Washington clean indoor air act, chapter 70.160 RCW.

SECTION V—HUMAN RESOURCE MANAGEMENT

NEW SECTION

WAC 388-816-0120 What must be included in a program personnel manual? Treatment programs not certified or licensed under chapter 388-805 WAC or chapter 388-865 WAC must have and adhere to a personnel manual, which contains policies and procedures including:

(1) How the program conducts criminal background checks on its employees in order to comply with the rules specified in RCW 43.43.830 through 43.43.842.

(2) How the program provides staff orientation prior to assigning unsupervised duties, including orientation to:

(a) The administrative, personnel and clinical manuals;

(b) Staff ethical standards and conduct, including reporting of unprofessional conduct to appropriate authorities;

(c) Staff and client grievance procedures; and

(d) The facility evacuation plan.

(3) Provides for a drug free work place which includes:

(a) A philosophy of nontolerance of illegal drug-related activity;

(b) Program standards of prohibited conduct; and

(c) Actions to be taken in the event a staff member misuses alcohol or other drugs.

NEW SECTION

WAC 388-816-0125 What are program personnel file requirements? In treatment programs not certified or licensed under chapter 388-805 WAC or chapter 388-865 WAC the administrator must:

(1) Ensure that there is a current personnel file for each employee, trainee, student, and volunteer, and for each contract staff person who provides or supervises client care.

(2) Designate a person to be responsible for management of personnel files.

(3) Each person's file must contain:

(a) Evidence a criminal background check was completed per WAC 388-816-0120(1);

(b) A copy of the results of an initial tuberculin skin test or evidence the person has completed a course of treatment approved by a physician or local health officer if the results are positive and subsequent annual tuberculosis screening and risk assessment based on the program annual TB risk assessment; and

(c) A record of an orientation to the program as described in WAC 388-816-0120(2).

(4) In addition, each clinical staff member providing client care must contain:

(a) Verification of qualifications for each person engaged in the treatment of problem or pathological gambling, including counselors, physicians, nurses, and other certified, or licensed health care professionals, evidence they comply with the credentialing requirements of their respective professions;

(b) A copy of a current job description, signed and dated by the employee and supervisor which includes:

(i) Job title;

(ii) Minimum qualifications for the position; and

(iii) Summary of duties and responsibilities.

(c) A written performance evaluation for each year of employment:

(i) Conducted by the immediate supervisor of each staff member; and

(ii) Signed and dated by the employee and supervisor.

NEW SECTION

WAC 388-816-0130 What are the minimum qualifications for clinical staff members providing problem and pathological gambling treatment? (1) All clinical staff members and approved clinical supervisors providing problem and pathological gambling treatment must have a credential issued by the department of health in a counseling profession per chapter 18.19 RCW, chapter 18.83 RCW, or chapter 18.225 RCW.

(2) Each clinical staff member credentialed per chapter 18.19 RCW providing treatment services to a client must provide documentation of at least fifteen hundred hours of professionally supervised post-certification or post-registration experience providing mental health or chemical dependency treatment services.

(3) Each clinical staff member providing treatment services must have at least a bachelor's degree from an accredited college-level institution.

(a) The department will review requests for an exemption to this requirement on a case-by-case basis.

(b) In order to qualify for an exemption, the employee must possess year-for-year professional level experience equivalent to a bachelor's degree. The department determines this equivalency at the discretion of the department program manager responsible for monitoring problem gambling treatment programs.

(4) Each clinical staff member providing treatment services under supervision must:

(a) Complete a minimum of thirty hours of unduplicated gambling specific training including the sixteen-hour basic training, approved by a state, national, or international organization including but not limited to:

(i) Washington state gambling counselor certification committee;

(ii) National gambling counselor certification board;

(iii) International gambling counselor certification board; or

(iv) The department, division of behavioral health and recovery.

(b) Provide documentation of a minimum of one hundred hours of supervised experience working with problem and pathological gamblers and their significant others; and

(c) Receive a passing score on the national gambling counselor examination before providing unsupervised treatment services to program clients.

(5) Each clinical staff member credentialed per chapter 18.19 RCW providing unsupervised treatment services to program clients must:

(a) Be certified as a Washington state certified gambling counselor; or

(b) Be certified as a national certified gambling counselor.

(6) Approved clinical supervisors must:

(a) Hold a valid international gambling counselor certification board approved clinical consultant credential; or

(b) Hold a valid national certified gambling counselor II or Washington state certified gambling counselor II certification credential; and

(c) Complete six hours of training on gambling specific clinical supervision approved by recognized organizations listed in WAC 388-816-0130 (4)(a)(i) through (iv).

SECTION VI—PROFESSIONAL PRACTICES

NEW SECTION

WAC 388-816-0135 What must be included in the program clinical manual? Treatment programs not certified or licensed under chapter 388-805 WAC or chapter 388-865 WAC must have and adhere to a personnel manual, which contains policies and procedures including:

(1) How the program meets WAC 388-816-0135 through 388-816-0180 requirements.

(2) Identification of resources and referral options so staff can make referrals required by law and as indicated by client needs.

(3) Client admission, continued service, and discharge criteria.

(4) How the program implements the following requirements:

(a) The administrator must not admit or retain a person unless the person's treatment needs can be met.

(b) Clinical staff members must assess and refer each client to the appropriate treatment service.

(5) Tuberculosis screening for prevention and control of TB in all outpatient programs, including:

(a) Obtaining a history of preventive or curative therapy;

(b) Screening and related procedures for coordinating with the local health department; and

(c) Implementing TB control as provided by the department of health TB control program.

(6) Limitation of group counseling sessions to twelve or fewer clients.

(7) Use of self-help groups.

(8) Client rules and responsibilities.

(9) How the program manages:

(a) Medical emergencies; and

(b) Suicidal, chemically dependent and mentally ill clients.

NEW SECTION

WAC 388-816-0140 What are clients' rights requirements in certified programs? Each treatment program must ensure a client:

(1) Is admitted to treatment without regard to race, color, creed, national origin, religion, sex, sexual orientation, age, or disability, except for bona fide program criteria;

(2) Is reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited English proficiency, and cultural differences;

(3) Is treated in a manner sensitive to individual needs and which promotes dignity and self-respect;

(4) Is protected from invasion of privacy except that staff may conduct reasonable searches to detect and prevent possession or use of contraband on the premises;

(5) Has all clinical and personal information treated in accord with state and federal confidentiality regulations;

(6) Has the opportunity to review their own treatment records in the presence of the administrator or designee;

(7) Has the opportunity to have clinical contact with a same gender counselor, if requested and determined appropriate by the supervisor, either at the program or by referral;

(8) Is fully informed regarding fees charged, including fees for copying records to verify treatment and methods of payment available;

(9) Is protected from abuse by staff at all times, or from other clients who are on program premises, including:

(a) Sexual abuse or harassment;

(b) Sexual or financial exploitation;

(c) Racism or racial harassment; and

(d) Physical abuse or punishment.

(10) Is fully informed and receives a copy of counselor disclosure requirements established under RCW 18.19.060;

(11) Receives a copy of client grievance procedures upon request; and

(12) In the event of a program closure or treatment service cancellation, each client must be:

(a) Given thirty days notice;

(b) Assisted with relocation;

(c) Given refunds to which the person is entitled; and

(d) Advised how to access records to which the person is entitled.

(13) A disclosure authorization to a health care provider or health care facility as required by RCW 70.02.030 shall:

(a) Be in writing, dated, and signed by the client;

(b) Identify the nature of the information to be disclosed;

(c) Identify the name and institutional affiliation of the person or class of persons to whom the information is to be disclosed;

(d) Identify the program or person who is to make the disclosure;

(e) Identify the client; and

(f) Contain an expiration date or an expiration event that relates to the client or the purpose of the use or disclosure.

(14) A treatment program must notify clients that outside persons or organizations which provide services to the program are required by written agreement to protect client confidentially.

(15) The administrator must ensure a copy of clients' rights is given at admission to each client receiving services.

(16) The administrator must post a copy of clients' rights in a conspicuous place in the facility accessible to clients and staff.

NEW SECTION

WAC 388-816-0145 What are the requirements for problem and pathological gambling assessments? Programs must require all clinical staff members to obtain, review, evaluate and document a face-to-face diagnostic assessment of each client's involvement with problem and pathological gambling. The assessment must include, if not already documented in a chemical dependency or mental health assessment, the following information:

(1) Legal history describing any involvement with the criminal justice system.

(2) Medical and health history including all prescribed medications.

(3) Mental health history and current mental health status.

(4) Suicidal/homicidal assessment including past suicide attempts, methods, suicide plan, family history of suicide attempts, and suicide intent.

(5) Substance abuse history and screening describing current use, past use including amounts and duration and treatment history.

(6) Family history describing family composition and dynamics.

(7) If client is other than the problem or pathological gambler, a family assessment must be completed.

(8) Education status and history.

(9) Vocational or employment status and history describing skills or trades learned, jobs held, duration of employment, and reasons for leaving.

(10) Peers and friends, indicating interpersonal relationships and interaction with people and groups outside the home.

(11) A financial evaluation and information, including current financial status, gambling debts, any previous bankruptcy or repayment plans, and insurance coverage.

(12) Problem gambling screens.

(13) Documentation of the information collected, including:

(a) A diagnostic assessment statement including sufficient data to determine a client diagnosis supported by DSM IV TR criteria or subsequent editions.

(b) A written summary of the data gathered in subsections (1) through (12) of this section that supports the treatment recommendation.

(14) Evidence the client:

(a) Was notified of the assessment results; and

(b) Documentation of treatment options provided, and the client's choice; or

(c) If the client was not notified of the results and advised of referral options, the reason must be documented.

NEW SECTION

WAC 388-816-0150 What are the requirements for treatment, continuing care, transfer, and discharge plans? Programs must:

(1) Require clinical staff members be responsible for the overall treatment plan for each client, including:

(a) Client involvement in treatment planning;

(b) Documentation of progress toward client attainment of goals; and

(c) Completeness of client records.

(2) The clinical staff member must:

(a) Develop the individualized treatment plan based upon the assessment and update the treatment plan based upon achievement of goals, or when new problems are identified;

(b) Conduct individual or group counseling;

(c) Develop the continuing care plan; and

(d) Complete the discharge summary.

(3) A clinical staff member must follow up when a client misses an appointment to:

(a) Try to motivate the client to stay in treatment; and

(b) Report a noncompliant client to the committing authority as appropriate.

(4) A clinical staff member must involve each client's family or other support persons, when the client gives written consent:

(a) In the treatment program; and

(b) In self-help or support groups.

(5) A clinical staff member must meet with each client at the time of discharge from any treatment program to:

(a) Finalize a continuing care plan to assist in determining appropriate recommendation for care;

(b) Refer the client in making contact with necessary agencies or services; and

(c) Provide the client a copy of the plan.

(6) When transferring a client to another treatment program, the current program must forward copies of the following information to the receiving program when a release of confidential information is signed by the client:

(a) Client's demographic information;

(b) Diagnostic assessment statement and other assessment information, including:

(i) TB screen or test result;

(ii) The reason for the transfer; and

(iii) Court mandated status or program recommended follow-up treatment.

(c) Discharge summary; and

(d) The plan for continuing care or treatment.

(7) A clinical staff member must complete a discharge summary, within seven days of each client's discharge from the program, which includes:

(a) The date of discharge; and

(b) A summary of the client's progress toward each treatment goal.

NEW SECTION

WAC 388-816-0155 What are the requirements for a client record system? Programs not certified or licensed by either chapter 388-805 WAC or chapter 388-865 WAC must have a comprehensive client record system maintained in accord with recognized principles of health record management. The program must ensure:

(1) A designated individual is responsible for the record system;

(2) A secure storage system which:

(a) Promotes confidentiality of and limits access to both active and inactive records; and

(b) Protects active and inactive files from damage during storage.

(3) Client record policies and procedures on:

(a) Who has access to records;

(b) Content of active and inactive client records;

(c) A systematic method of identifying and filing individual client records so each can be readily retrieved;

(d) Assurance that each client record is complete and authenticated by the person providing the observation, evaluation, or service;

(e) Retention of client records for a minimum of six years after the discharge or transfer of the client; and

(f) Destruction of client records.

(4) In addition to subsection (1) through (3) of this section, programs maintaining electronic client records must:

(a) Make records available in paper form upon request:

(i) For review by the department; and

(ii) By clients requesting record review as authorized by WAC 388-816-0140(6).

(b) Provide secure, limited access through means that prevent modification or deletion after initial preparation;

(c) Provide for back up of records in the event of equipment, media or human error;

(d) Provide for protection from unauthorized access, including network and internet access.

(5) In case of a program closure, the closing treatment program must arrange for the continued management of all client records. The closing program must notify the department in writing of the mailing and street address where records will be stored and specify the person managing the records. The closing program may:

(a) Continue to manage the records and give assurance they will respond to authorized requests for copies of client records within a reasonable period of time;

(b) Transfer records of clients who have given written consent to another certified program;

(c) Enter into a business associate agreement with a certified program to store and manage records, when the outgoing program will no longer be a problem and pathological gambling treatment program; or

(d) In the event none of the arrangements listed in (a) through (c) of this subsection can be made, the closing program must arrange for transfer of client records to the department.

NEW SECTION

WAC 388-816-0160 What are the requirements for client record content? Programs must ensure client record content includes:

(1) Demographic information;

(2) A problem and pathological gambling assessment;

(3) Documentation the client was informed of the diagnostic assessment and options for referral or the reason not informed;

(4) Documentation the client was informed of federal confidentiality requirements and received a copy of the client notice required under 45 CFR, Part 160 through 164;

(5) Documentation the client was informed of treatment service rules, translated when needed, signed and dated by the client before beginning treatment;

(6) Voluntary consent to treatment signed and dated by the client;

(7) Documentation the client received counselor disclosure information, acknowledged by the program and client by signature and date;

(8) Initial and updated individual treatment plans, including results of the initial assessment and periodic reviews, addressing:

(a) Client biopsychosocial problems;

(b) Treatment goals;

(c) Estimated dates or conditions for completion of each treatment goal;

(d) Approaches to resolve the problems;

(e) Identification of persons responsible for implementing the approaches;

(f) Medical orders, if appropriate.

(9) Documentation of referrals made for specialized care or services;

(10) Progress notes as events occur, which include:

(a) Date, duration, and content of counseling and other treatment sessions;

(b) Ongoing assessments of each client's participation in and response to treatment and other activities.

(11) Treatment plan reviews as required by WAC 388-816-0175 (1)(d)(i) and (ii);

(12) Properly completed authorizations for release of information;

(13) Copies of all correspondence related to the client, including any court orders and reports of noncompliance; and

(14) A continuing care plan and discharge summary.

NEW SECTION

WAC 388-816-0165 What are the requirements for reporting client noncompliance? The following standards define client noncompliance behaviors and sets minimum time lines for reporting these behaviors to the appropriate court or court designated authority.

(1) Reporting client noncompliance is contingent upon obtaining a properly completed authorization to release confidential information form.

(2) For emergent noncompliance: The following noncompliance is considered emergent noncompliance and must be reported to the appropriate court within three working days from obtaining the information:

(a) Client failure to follow requirements in court order;

(b) Client reports a subsequent gambling related arrest; and

(c) Client leaves program against program advice or is discharged for rule violation.

(3) For nonemergent noncompliance: The following noncompliance is considered nonemergent noncompliance and must be reported to the appropriate court as required by

subsection (4) and (5) of this section and needs to include the program's recommendations for engaging the client:

(a) Client has unexcused absences or failure to report. Programs must report all client unexcused absences.

(b) Client fails to provide program with documentation of attendance at self-help or support groups if required by the treatment plan.

(c) Client failure to make acceptable progress in any part of the treatment plan.

(4) If a court accepts monthly progress reports, nonemergent noncompliance may be reported in monthly progress reports, which must be mailed to the court within ten working days from the end of each reporting period.

(5) If a court does not wish to receive monthly reports and only requests notification of noncompliance or other significant changes in client status, the reports should be transmitted as soon as possible, but in no event longer than ten working days from the date of the noncompliance.

SECTION VII—OUTCOMES EVALUATION

NEW SECTION

WAC 388-816-0170 What are the requirements for outcomes evaluation? Each program must develop and implement policies and procedures for outcomes evaluation, to monitor and evaluate program effectiveness and client satisfaction for the purpose of program improvement.

SECTION VIII—PROGRAM SERVICE STANDARDS

NEW SECTION

WAC 388-816-0175 What are the requirements for outpatient services? All programs certified by this chapter must meet the following requirements:

(1) A clinical staff member, must:

(a) Complete an assessment prior to admission unless participation in this outpatient treatment service is part of the same program's continuum of care.

(b) Complete an initial individualized treatment plan prior to the client's participation in treatment.

(c) Conduct group, individual or conjoint problem or pathological gambling counseling sessions for each client, each month, according to an individual treatment plan.

(d) Conduct and document a treatment plan review for each client:

(i) Once a month for the first three months; and

(ii) Quarterly thereafter or sooner if required by other laws.

NEW SECTION

WAC 388-816-0180 What are the requirements for providing off-site problem and pathological gambling treatment services? (1) If a certified program wishes to offer treatment services, for which the program is certified, at a site where patients are located primarily for purposes other than problem and pathological gambling, the administrator must:

(a) Ensure off-site treatment services will be provided:

(i) In a private, confidential setting that is discrete from other services provided within the off-site location; and

(ii) By a clinical staff member.

(b) Revise program policy and procedures manuals to include a description of how confidentiality will be maintained at each off-site location, including how confidential information and patient records will be transported between the certified facility and the off-site location.

WSR 10-13-052
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-146—Filed June 9, 2010, 3:24 a.m., effective June 9, 2010, 3:24 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500X; and amending WAC 220-56-255.

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: There is sufficient halibut quota remaining in Marine Areas 3 and 4 to reopen the recreational halibut fishery for one day. This rule conforms to federal action taken by the Pacific Fisheries Management Council. 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: June 9, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-56-25500Y Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective immediately

until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1 -** Open until further notice, Thursdays through Saturdays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) **Catch Record Card Area 2 (Northern Nearshore fishery) -** Those waters from 47º31.70'N. latitude south to 46º58.00'N. latitude and east of a line approximating the 30-fathom depth contour as defined by the following coordinates: Open seven days per week until further notice:

47º31.70 N. lat, 124º37.03 W. long
47º25.67 N. lat, 124º34.79 W. long
47º12.82 N. lat, 124º29.12 W. long
46º58.00 N. lat, 124º24.24 W. long

(3) **Catch Record Card Areas 3 and 4 -** Open 12:01 a.m. through 11:59 p.m. June 19, 2010. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48º18' N., 125º18' W.; thence to
48º18'N., 124º59'W.; thence to
48º11'N., 124º59'W.; thence to
48º11'N., 125º11'W., thence to
48º04'N., 125º11'W.; thence to
48º04'N., 124º59'W.; thence to
48ºN., 124º59'W.; thence to
48ºN., 125º18'W.; thence to point of origin.

(4) **Catch Record Card Area 5 -** Open through June 19, 2010, Thursdays through Saturdays only.

(5) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(6) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-56-25500X	Halibut—Areas and seasons. (10-138)

WSR 10-13-059
EMERGENCY RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed June 10, 2010, 11:24 a.m., effective June 10, 2010, 11:24 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amendments to chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for workers' compensation insurance and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance, new classifications.

This emergency rule-making order will add WAC 296-17-89503, which establishes rates for farm internship classifications, and will add WAC 296-17-31014(7) Farming and agriculture.

This emergency rule-making order will create WAC 296-17A-4814, 296-17A-4815, and 296-17A-4816 which are classifications for the farm internship pilot project. This is an emergency rule making due to the effective date of the law passed by the 2010 legislature. Permanent adoption of the rules will be made through the normal rule-making process effective September 9, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17-31014(7); and new WAC 296-17-89503, 296-17A-4814, 296-17A-4815, and 296-17A-4816.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100, and 51.04.020.

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: During the 2010 legislative session, SSB 6349 (chapter 160, Laws of 2010) passed for the farm internship program and was made effective June 10, 2010. Three new farm risk classifications have been established. WAC 296-17-89503 has been established for the rates. Without this emergency rule making, we would not ensure proper reporting of intern hours and collect premiums based on the rates for the new farm intern risk classifications.

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 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.

Date Adopted: June 10, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 04-18-025, filed 8/24/04, effective 10/1/04)

WAC 296-17-31014 Farming and agriculture. (1) **Does this same classification approach apply to farming or agricultural operations?**

Yes, but it may not appear so without further explanation. We classify farming and agricultural operations by type of crop or livestock raised. This is done because each type of grower will use different processes and grow or raise multi-

ple crops and livestock which have different levels of hazards. It is common for farmers and ranchers to have several basic classifications assigned to their account covering various types of crops or livestock. If you fail to keep the records required in the auditing recordkeeping section of this manual, and we discover this, we will assign all worker hours for which records were not maintained to the highest rated classification applicable to the work performed.

(2) **I am involved in diversified farming and have several basic classifications assigned to my business. Can I have one classification assigned to my account to cover the different types of farming I am involved in?**

Yes, your account manager can assist you in determining the single classification that will apply to your business. The name and phone number of your account manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager.

(3) **How do you determine what single farming classification will be assigned to my business?**

The approach used to assign a single classification to a farming business is much the same as we use for construction or erection contractors. To do this, we will need a break down of exposure (*estimate of hours to be worked by your employees*) by type of crop or livestock being cared for (*classification*). This information will be used to estimate the premium which would be paid using multiple classifications. The total premium is then divided by the total estimated hours to produce an average rate per hour. We will select the classification assigned to your business which carries the hourly premium rate which is the closest to the average rate that we produced from the estimated hours. Classification 4806 is not to be assigned to any grower as the single farming classification.

(4) **How will I know what single farming classification you have assigned to my business?**

We will send you a written notice of the basic classification that will apply to your business.

(5) **If I requested a single classification for my farming operation can I change my mind and use multiple classifications?**

Yes, but you will need to call your account manager to verify the applicable classifications.

The name and phone number of your account manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager.

(6) **I am a farm labor contractor. How is my business classified?**

If you are a farm labor contractor we will assign the basic classification that applies to the type of crop being grown, or livestock being cared for. If you contract to supply both machine operators and machinery on a project, all operations are to be assigned to classification 4808.

(7) **Farm internship pilot program. Who may participate in the farm internship pilot program created by the department as a result of Title 49 RCW, effective June 10, 2010?**

Small farms with annual sales of less than two hundred fifty thousand dollars per year located in Island or Skagit counties that receive a special certification from the department may have farm interns. Employers who qualify may report no more than three farm interns. Farm internship program risk classifications are: WAC 296-17A-4814, 296-17A-4815, and 296-17A-4816.

NEW SECTION

WAC 296-17-89503 Farm internship program industrial insurance, accident fund and medical aid fund by class.

Class	Base Rates Effective June 11, 2010 Accident Fund	Medical Aid Fund
4814	.0960	.1384
4815	.2042	.3300
4816	.3345	.4912

NEW SECTION

WAC 296-17A-4814 Classification 4814.

4814-00 Farms: Internship program *(to be assigned only by the agricultural specialist)*

Applies to qualified farms engaged in providing an internship program for agricultural education. The program will provide a curriculum of learning modules and supervised participation. The internship program is designed to teach farm interns about farming practices and farm enterprise. Farms must have a valid labor and industries certification to conduct a farm internship program.

Classification 4814 can only be assigned to those farms which have one of the following classifications assigned to their account as the governing classification: 4806, 4810, or 4813. For governing classification, reference: WAC 296-17-310171.

Special note: The term "farm intern" applies to those certified to participate in the farm internship program. Intern hours must be reported exclusively in classification 4814. All other farm employees hours are to be reported separately in the applicable farm classification that applies to the farm operation.

NEW SECTION

WAC 296-17A-4815 Classification 4815.

4815-00 Farms: Internship program *(to be assigned only by the agricultural specialist)*

Applies to qualified farms engaged in providing an internship program for agricultural education. The program will provide a curriculum of learning modules and supervised participation. The internship program is designed to teach farm interns about farming practices and farm enterprise. Farms must have a valid labor and industries certification to conduct a farm internship program.

Classification 4815 can only be assigned to those farms which have one of the following classifications assigned to their account as the governing classification: 4802, 4803, 4805, 4809, 4811, or 4812. For governing classification, reference: WAC 296-17-310171.

Special note: The term "farm intern" applies to those certified to participate in the farm internship program. Intern hours must be reported exclusively in classification 4815. All other farm employees hours are to be reported separately in the applicable farm classification that applies to the farm operation.

NEW SECTION

WAC 296-17A-4816 Classification 4816.

4816-00 Farms: Internship program ***(to be assigned only by the agricultural specialist)***

Applies to qualified farms engaged in providing an internship program for agricultural education. The program will provide a curriculum of learning modules and supervised participation. The internship program is designed to teach farm interns about farming practices and farm enterprise. Farms must have a valid labor and industries certification to conduct a farm internship program.

Classification 4816 can only be assigned to those farms which have one of the following classifications assigned to their account as the governing classification: 4804, 4808, 7301, 7302, or 7307. For governing classification, reference: WAC 296-17-310171.

Special note: The term "farm intern" applies to those certified to participate in the farm internship program. Intern hours must be reported exclusively in classification 4816. All other farm employees hours are to be reported separately in the applicable farm classification that applies to the farm operation.

WSR 10-13-060
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-150—Filed June 10, 2010, 12:41 p.m., effective June 12, 2010, 8:00 a.m.]

Effective Date of Rule: June 12, 2010, 8:00 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900R; 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: The Reiter Ponds Hatchery has collected enough summer steelhead broodstock to meet production needs. Opening of the closed area will provide additional recreational fishing opportunity. 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: June 10, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Skykomish River (Reiter Ponds) (Skykomish Co.) Notwithstanding the provisions of WAC 232-28-619, effective 8:00 a.m. June 12, through July 31, 2010, a person may fish for and possess gamefish in those waters of the Skykomish Rearing Ponds (Reiter Ponds) area from 1500 feet upstream to 1000 feet downstream of the pond's outlet. Night closure and anti-snagging rule in effect. Also, fishing from a floating device is prohibited. Dolly Varden/bull trout minimum size is 20 inches in length, and these may be retained as part of the trout, daily limit. All other trout daily limit of two, minimum size 14 inches in length. All other game fish statewide size and daily limits apply.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2010:

WAC 232-28-61900R	Exceptions to statewide rules—Skykomish River (Reiter Ponds) (Skykomish Co.)

WSR 10-13-063
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-149—Filed June 10, 2010, 4:21 p.m., effective June 16, 2010]

Effective Date of Rule: June 16, 2010.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered

under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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: Drano Lake: Little White Salmon National Fish Hatchery has achieved the escapement needs for this year and is not taking any additional fish into the hatchery. Surplus hatchery spring chinook are present in large numbers in Drano Lake and the Yakama Nation will continue their Tuesday night fishery through the month of June. The sport fishery is closed on Wednesdays to provide access to the tribal fishers. Wind River: Through May 18, a total of 356 fish had returned to Carson National Fish Hatchery. The hatchery escapement goal is 1,500 fish. The hatchery is expected to meet its escapement goal and surplus hatchery origin fish are available for harvest. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: June 10, 2010.

Philip Anderson

Director

NEW SECTION

WAC 232-28-61900N Exceptions to statewide rules—Drano Lake and Wind River. Notwithstanding the provisions of WAC 232-28-619:

(1) Drano Lake - Effective June 16 through June 30, 2010, a person may fish in waters downstream of markers on the point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Hwy. 14 Bridge, except closed June 16, 23 and June 30. Daily limit four fish, up to 2 may be hatchery steelhead. Release wild Chinook and wild steelhead. Release all trout other than steelhead. Minimum size 12 inches for salmon and 20 inches for steelhead.

(2) Wind River - Immediately through June 30, 2010, a person may fish in waters from mouth (boundary line/markers) to 400 feet below Shipherd Falls, and from 100 feet above Shipherd Falls to 400 feet below the coffer dam to 800 yards downstream of Carson National Fish Hatchery. Daily limit four fish; up to 2 may be hatchery steelhead. Release wild steelhead and all other game fish. Release wild Chinook downstream from Shipherd Falls. Minimum size 12 inches for salmon and 20 inches for steelhead.

REPEALER

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

WAC 232-28-61900Q	Exceptions to statewide rules—Drano Lake and Wind River. (10-131

The following section of the Washington Administrative Code is repealed effective July 1, 2010:

WAC 232-28-61900N	Exceptions to statewide rules—Drano Lake and Wind River.

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

WSR 10-13-066
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-151—Filed June 11, 2010, 10:55 a.m., effective June 11, 2010, 10:55 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000T and 220-24-04000U; and amending WAC 220-24-040.

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: It is projected that the harvestable quota of salmon for the troll fleet has been caught. 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 2.

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

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

Date Adopted: June 11, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-24-04000U All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125º05'00" W longitude and south of 48º23'00" N latitude, open through June 12, 2010.

(2) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(3) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(4) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(5) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(6) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48º23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48º10'00" N latitude, and west of 125º05'00" W longitude.

(7) Columbia Control Zone - An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46º13'35" N. Lat., 124º06'50" W. long.) and the green lighted Buoy #7 (46º15'09' N. lat., 124º06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357º true from the south jetty at 46º14'00" N. lat., 124º03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46º14'48" N. lat., 124º05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46º14'03" N. lat., 124º04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(8) Mandatory Yelloweye Rockfish Conservation Area - The area in Washington Marine Catch Area 3 from 48º00.00' N latitude; 125º14.00' W longitude to 48º02.00' N latitude; 125º14.00' W longitude to 48º02.00' N latitude; 125º16.50' W longitude to 48º00.00' N latitude; 125º16.50' W longitude and connecting back to 48º00.00' N latitude; 125º14.00' W longitude.

(9) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000T	All-citizen commercial salmon troll. (10-86)

The following section of the Washington Administrative Code is repealed effective June 14, 2010:

WAC 220-24-04000U	All-citizen commercial salmon troll.

WSR 10-13-072
EMERGENCY RULES
DEPARTMENT OF EARLY LEARNING

[Filed June 14, 2010, 1:33 p.m., effective June 14, 2010, 1:33 p.m.]

Effective Date of Rule: Immediately.

Purpose: Increasing annual licensing fees for child care centers and school age centers in accordance with section 614(14), of ESSB 6444, the 2010-2011 supplemental operating budget (chapter 37, Laws of 2010 1st sp. sess.). The act authorizes the department of early learning (DEL) to increase these fees effective in fiscal year 2011 starting July 1, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 170-151-070 and 170-295-0060.

Statutory Authority for Adoption: RCW 43.215.255 and chapter 37, Laws of 2010 1st sp. sess. (ESSB 6444).

Other Authority: Chapter 43.215 RCW.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Section 614(14) of the 2010-2011 Supplemental Operating Budget Act (ESSB 6444) directs DEL to increase licensing fees for child care centers by $52 for the first twelve children, plus $4 per additional child up to the center's maximum licensed capacity. The 2010 state legislature authorized this fee increase as part of several revenue-generating measures to close a projected $2.8 billion budget shortfall during the 2011 fiscal year, and for predicted shortfalls in future fiscal years. The rule is needed to implement the requirements or reductions in appropriations enacted in the budget for fiscal year 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs of the state.

Revenues generated by this fee increase will be deposited to the state general fund and are not retained by DEL.

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 2, 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 2, Repealed 0.

Date Adopted: June 14, 2010.

Bette Hyde
Director

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

WAC 170-151-070 How do I apply or reapply for a license? (1) You must comply with the department's application procedures and submit to the department:

(a) A completed department-supplied application for school-age child care center license, including attachments, ninety or more days before the:

(i) Expiration of your current license;

(ii) Opening date of your center;

(iii) Relocation of your center; or

(iv) Change of the licensee.

(b) A completed background check form for each staff person or volunteer having unsupervised or regular access to the child in care; and

(c) The annual licensing fee((~~. The fee~~)) is:

(i) For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars per year for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or

(ii) For new licenses issued after June 30, 2010, or for licensees whose annual licensing fees are due after June 30, 2010, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children.

(2) In addition to the required application materials specified under subsection (1) of this section, you must submit to the department:

(a) An employment and education resume of the person responsible for the active management of the center and of the site coordinator;

(b) Copies of diplomas or education transcripts of the director and site coordinator; and

(c) Three professional references each for you, the director, and the site coordinator.

(3) You, as the applicant for a license under this chapter must be twenty-one years of age or older.

(4) You must conform to rules and regulations approved or adopted by the:

(a) State department of health and relating to the health care of children at school-age child care centers;

(b) State fire marshal's office, establishing standards for fire prevention and protection of life and property from fire, under chapter 212-12 WAC.

(5) The department must not issue a license to you until the state fire marshal's office has certified or inspected and approved the center.

(6) The department may exempt a school site possessing a fire safety certification signed by the local fire official within six months prior to licensure from the requirement to receive an additional fire safety inspection by the state fire marshal's office.

(7) You must submit a completed plan of deficiency correction, when required, to the department of health and the

department licensor before the department will issue you a license.

(8) You, your director and site coordinator must attend department-provided orientation training.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

WAC 170-295-0060 What are the requirements for applying for a license to operate a child care center? (1) To apply or reapply for a license to operate a child care center you must:

(a) Be twenty-one years of age or older;

(b) The applicant, director and program supervisor must attend the orientation programs that we provide, arrange or approve;

(c) Submit to us a completed and signed application for a child care center license or certification using our forms (with required attachments).

(2) The application package must include the following attachments:

(a) The annual licensing fee. The fee is based on your licensed capacity, and is:

(i) For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or

(ii) For new licenses issued after June 30, 2010, or for licenses whose annual license fees are due after June 30, 2010, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children;

(b) If the center is solely owned by you, a copy of your:

(i) Photo identification issued by a government entity; and

(ii) Social Security card that is valid for employment or verification of your employer identification number.

(c) If the center is owned by a corporation, verification of the corporation's employer identification number;

(d) An employment and education resume for:

(i) The person responsible for the active management of the center; and

(ii) The program supervisor.

(e) Diploma or education transcript copies of the program supervisor;

(f) Three professional references each, for yourself, the director, and the program supervisor;

(g) Articles of incorporation if you choose to be incorporated;

(h) List of staff (form is provided in the application);

(i) Written parent communication (child care handbook);

(j) Copy of transportation insurance policy (liability and medical);

(k) In-service training program (for facilities employing more than five persons);

(l) A floor plan of the facility drawn to scale;

(m) A copy of your health care plan reviewed and signed by an advisory physician, physician's assistant, or registered nurse;

(n) A copy of your policies and procedures that you give to parents; and

(o) A copy of your occupancy permit.

(3) You must submit to the department a completed background check form for all persons required to be authorized by DEL to care for or have unsupervised access to the children in care under chapter 170-06 WAC; and

(4) You must submit your application and reapplication ninety or more calendar days before the date:

(a) You expect to open your new center;

(b) Your current license is scheduled to expire;

(c) You expect to relocate your center;

(d) You expect to change licensee; or

(e) You expect a change in your license category.

WSR 10-13-078
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-152—Filed June 15, 2010, 11:12 a.m., effective June 16, 2010, 6:00 a.m.]

Effective Date of Rule: June 16, 2010, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100H; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the first two weekly periods for summer season treaty gillnet fisheries. Opens platform hook-and-line fisheries and allows sales in areas above and below Bonneville Dam. Allows sales of fish from Yakama Nation tributary fisheries. Based on the preseason forecast, 25,500 chinook are available for treaty Indian harvest. Impact limits to ESA-listed chinook remain available for treaty Indian fisheries. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on June 10, 2010. Conforms state

rules with tribal rules. There is insufficient time to promulgate permanent regulations.

Regulations include fisheries that are described in the memorandum of agreement between Washington state and the Yakama Nation. Regulations also include fisheries that are described in individual memorandum of understandings between Washington State and the Umatilla and Warm Springs tribes.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

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

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

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: June 15, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100I Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, walleye or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, Icicle River and Drano Lake, except as provided in the following subsections, and except that individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Mainstem Columbia River above Bonneville Dam

a) SEASON: 6:00 a.m. June 16 to 6:00 p.m. June 18, 2010.

6:00 a.m. June 22 to 6:00 p.m. June 24, 2010.

b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).

c) GEAR: No mesh restriction on gillnets.

2. Mainstem Columbia River above Bonneville Dam

a) SEASON: 6:00 a.m. June 16 until further notice.

b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

3. Columbia River Tributaries above Bonneville Dam

a) SEASON: Immediately until further notice, but only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members, and have openings or allow platform gear and sales of fish in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: Drano Lake, and the Wind, White Salmon, Klickitat, and Icicle rivers.

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake (no mesh restriction, 150-foot length restriction).

4. Mainstem Columbia River below Bonneville Dam

a) PARTICIPANTS: Tribal members may participate under the conditions described in the 2007 Memo of Agreement (MOA) with the Yakama Nation (YN), in the 2010 MOU (Memo of Understanding) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS). Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b) SEASON: Immediately until further notice, except closed Thursdays through Saturdays for the CTUIR and the CTWS when non-tribal salmon fishing is open in the MOU area. Sales allowed when platform gear and sales of fish are allowed in Zone 6 (SMCRA 1F, 1G, 1H).

c) AREA: SMCRA 1E, Yakama Nation MOA: on the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only). Umatilla and Warm Springs MOU: Covers the banks of the Columbia River bounded by a deadline marker on the Oregon bank approximately four miles downstream of Bonneville Dam Powerhouse #1 in a straight line thorough the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock, up the river to a point 600 feet below the Bonneville Dam, but excluding the following four areas:

1) Between the markers located 150 feet upstream and 450 feet downstream from the mouth of Tanner Creek, out to

the center of the Columbia river, during the period from August 16, 2010, until further notice.

2) Inside the south navigation lock at Bonneville Dam from a marker on the western-most tip of Robins Island to a marker on the Oregon mainland shore.

3) From Bradford Island below Bonneville Dam from the south shore between the dam and a line perpendicular to the shore marker at the west end of riprap.

4) from the north shore between the fishway entrance and a line perpendicular to the shoreline marker 850 feet downstream. From Robins Island below Bonneville Dam downstream to a line perpendicular to the shoreline marker on the mooring cell.

d) **GEAR:** Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with tribal regulations.

5. SANCTUARIES: Standard river mouth and dam sanctuaries are applicable to these gear types, except that the Spring Creek Hatchery sanctuary is not in effect.

6. ALLOWABLE SALES: Chinook, coho, sockeye, steelhead, walleye, shad, carp, yellow perch, catfish and bass. Sturgeon may not be sold. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence. **Sturgeon caught below Bonneville Dam may NOT be retained and may NOT be sold.** Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale.

7. ADDITIONAL REGULATIONS: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 16, 2010:

WAC 220-32-05100H	Columbia River salmon seasons above Bonneville Dam. (10-129)

WSR 10-13-079
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-153—Filed June 15, 2010, 11:13 a.m., effective June 17, 2010, 7:00 p.m.]

Effective Date of Rule: June 17, 2010, 7:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets two fishing periods for the summer season commercial fisheries in the mainstem Columbia River. Based on the preseason run size, there are 5,400 upper Columbia summer chinook available for commercial harvest in the mainstem. The fishery is consistent with the *U.S. v Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules, consistent with the compact action taken on June 10, 2010. There is insufficient time to adopt permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wild-

life convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: June 15, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000E Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed:

1. Mainstem Columbia River

a) Dates: 7:00 p.m. June 17 to 5:00 a.m. June 18, 2010.

b) Area: SMCRA 1A, 1B, 1C and 1D (Zones 1-4) up to the I-205 Bridge.

c) Sanctuaries: Grays River, Elokomin-A, Cowlitz River, Kalama-A, Lewis-A, Washougal, and Sandy Rivers as applicable.

d) Gear: Drift gill nets. 8-inch maximum mesh. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

e) Allowable sales: Chinook, coho, shad and white sturgeon (43-54 inch fork length). A maximum of three white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

f) The 24-hour quick reporting rule is in effect for Washington buyers.

2. Mainstem Columbia River

a) Dates: 7:00 p.m. June 22 to 5:00 a.m. June 23, 2010.

b) Area: SMCRA 1A, 1B, 1C, 1D and 1E (Zones 1-5)

c) Sanctuaries: Grays River, Elokomin-A, Cowlitz River, Kalama-A, Lewis-A, Washougal, and Sandy Rivers as applicable.

d) Gear: Drift gill nets. 8-inch maximum mesh. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater

e) Allowable sales: Chinook, coho, shad and white sturgeon (43-54 inch fork length). A maximum of three white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

f) The 24-hour quick reporting rule is in effect for Washington buyers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. June 17, 2010:

WAC 220-33-01000D	Columbia River seasons below Bonneville.

WSR 10-13-086
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-154—Filed June 15, 2010, 3:53 p.m., effective June 15, 2010, 3:53 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000V; and amending WAC 220-24-040.

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: Projections indicate that there remains sufficient harvestable chinook salmon to reopen the troll fishery. 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: June 15, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-24-04000V All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

June 18 through June 22, 2010;

June 25 through June 29, 2010.

(2) Landing and possession limit of 75 Chinook per boat per each entire open period for the entire catch areas 1, 2, 3 and 4 through June 29th.

(3) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(4) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon and Halibut.

(5) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and west of 125°05'00" W longitude.

(8) Columbia Control Zone - An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09' N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) Mandatory Yelloweye Rockfish Conservation Area - The area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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 July 1, 2010:

WAC 220-24-04000V	All-citizen commercial salmon troll.

WSR 10-13-093
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-147—Filed June 16, 2010, 3:05 p.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Amend rules for HPA appeals, consistent with SHB 2935, the pertinent portions of which take effect on July 1, 2010. The department is in the process of developing permanent rules on this subject.

Citation of Existing Rules Affected by this Order: Amending WAC 220-110-030, 220-110-340, and 220-110-350.

Statutory Authority for Adoption: RCW 77.12.047 and 77.55.021 as amended by SHB 2935.

Other Authority: SHB 2935.

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: SHB 2935 eliminates the hydraulic appeals board (HAB) and replaces it with the pollution control hearings board (PCHB) created in chapter 43.21B RCW, effective July 1, 2010. All formal appeals of HPA decisions and orders imposing civil penalties formerly heard by the HAB or an administrative law judge through the office of administrative hearings will now be heard by the PCHB. The Washington department of fish and wildlife (WDFW) must amend its HPA appeal rules to be consistent with the changes that SHB 2935 makes to chapter 77.55 RCW. In addition, WDFW is clarifying its rules for informal appeals. The department is in the process of developing permanent rules on this subject, but they will not be adopted by July 1, 2010. These emergency rules will implement the changes until the permanent rules are adopted.

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 3, 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 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: June 16, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-110-03000A Hydraulic project approvals—Procedures. Notwithstanding the provisions of WAC 220-110-030, effective immediately until further notice:

(1) The department shall administer this chapter in compliance with SEPA, chapter 43.21C RCW, and chapters 197-11 and 220-100 WAC.

(2) The department may, after consultation with the permittee, modify an HPA due to changed conditions. The modification becomes effective unless appealed as specified in RCW 77.55.021(4) and WACs 220-110-340 and 220-110-350.

NEW SECTION

WAC 220-110-34000A Informal appeal of administrative actions. Notwithstanding the provisions of WAC 220-110-340, effective immediately until further notice:

The department recommends that a party aggrieved by the issuance, denial, conditioning, or modification of an HPA contact the department employee responsible for making the decision on the HPA before initiating an informal appeal. Discussion of concerns with the department employee often results in a resolution of the problem without the need for an informal appeal.

The department encourages aggrieved parties to take advantage of the informal appeal process before initiating a formal appeal. However, the informal appeal process is not mandatory, and a person may proceed directly to a formal appeal under WAC 220-110-350.

(1) This rule does not apply to any provisions or conditions in pamphlet HPAs or supplemental approvals as defined in WAC 220-110-020. A person who disagrees with a provision or condition in a pamphlet HPA or its supplemental approval may apply for an individual, written HPA.

(2) Any person with standing may request an informal appeal of the following department actions:

(a) The issuance, denial, conditioning, or modification of an HPA; or

(b) An order imposing civil penalties.

(3) A request for an informal appeal shall be in writing and shall be received by the department within thirty days from the date of receipt of the decision or order. "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

(4) Requests for informal appeal shall be mailed to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, 600 Capitol Way N., Olympia, Washington 98501-1091; e-mailed to HPAapplications@dfw.wa.gov; faxed to (360) 902-2946; or hand-delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth floor.

(5) The request shall be plainly labeled as "Request for Informal Appeal" and shall include the following:

(a) The appellant's name, address, e-mail address (if available), and phone number;

(b) The specific department action that the appellant contests;

(c) The date the department issued, denied, conditioned, or modified an HPA, or the date the department issued the order imposing civil penalties;

(d) The log number or a copy of the HPA, or a copy of the order imposing civil penalties;

(e) A short and plain statement explaining why the appellant considers the department action or order to provide inadequate protection of fish life or to be otherwise unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question;

(h) The specific relief requested;

(i) The attorney's name, address, e-mail address (if available) and phone number, if the person is represented by legal counsel; and

(j) The signature of the appellant or his or her attorney.

(6) Upon receipt of a valid request for an informal appeal, the department may initiate a review of the department action. If the appellant agrees, and the appellant applied for the HPA, resolution of the appeal may be facilitated through an informal conference. The informal conference is an optional part of the informal appeal and is normally a discussion between the appellant, the department employee responsible for the decision, and a supervisor. The time period for the department to issue a decision on an informal appeal is suspended during the informal conference process.

(7) If a resolution is not reached through the informal conference process, or the appellant is not the person who applied for the HPA, or the appeal involves an order imposing civil penalties, an informal appeal hearing shall be conducted by the HPA appeals coordinator or designee. Upon completion of the informal appeal hearing, the HPA appeals coordinator or designee shall recommend a decision to the director or the director's designee. This recommended decision shall be approved or disapproved by the director or the director's designee within sixty days of the date the informal appeal was received by the department, unless an extension of time is agreed to by the appellant. The department shall notify the appellant in writing of the decision of the director or the director's designee.

(8) If the department declines to initiate an informal review of its action after receipt of a valid request, or the appellant still wishes to contest the department action following completion of the informal appeal process, the appellant may initiate a formal appeal under WAC 220-110-350. Formal review must be requested within the time periods specified in WAC 220-110-350.

NEW SECTION

WAC 220-110-35000A Formal appeal of administrative actions. Notwithstanding the provisions of WAC 220-110-350, effective immediately until further notice:

The department recommends that a party aggrieved by the issuance, denial, conditioning, or modification of an HPA contact the department employee responsible for making the decision on the HPA before initiating a formal appeal. Discussion of concerns with the department employee often results in a resolution of the problem without the need for a formal appeal.

The department encourages aggrieved parties to take advantage of the informal appeal process under WAC 220-110-340 before initiating a formal appeal. However, the informal appeal process is not mandatory, and a person may proceed directly to a formal appeal.

(1) This rule does not apply to any provisions or conditions in pamphlet HPAs or supplemental approvals as defined in WAC 220-110-020. A person who disagrees with a provision or condition in a pamphlet HPA or its supplemental approval may apply for an individual, written HPA.

(2) Any person with standing may request a formal appeal of the following department actions:

(a) The issuance, denial, conditioning, or modification of an HPA; or

(b) An order imposing civil penalties.

(3) As required by the Administrative Procedure Act, Chapter 34.05 RCW, the department shall inform the HPA permittee or applicant, or person subject to civil penalty order of the department, of the opportunity for appeal, the time within which to file a written request for an appeal, and the place to file it.

(4) A request for a formal appeal shall be in writing and shall be filed with the clerk of the pollution control hearings board (PCHB) and served on the department within thirty days from the date of receipt of the decision or order. "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

(5) Service on the department shall be mailed to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, 600 Capitol Way N., Olympia, Washington 98501-1091; e-mailed to HPAapplications@dfw.wa.gov; faxed to (360) 902-2946; or hand-delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth floor.

(6) The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal shall be within thirty days from the date of receipt of the department's written decision in response to the informal appeal.

(7) The request for formal appeal shall contain the information required by WAC 371-08-340.

(8) The department in its discretion may stay the effectiveness of any decision or order that has been appealed to the PCHB. The department will use the standards in WAC 371-08-415(4) to make a decision on any stay request. At any time during the appeal to the PCHB, the appellant may apply to the PCHB for a stay of the decision or order, or removal of a stay imposed by the department.

(9) If there is no timely request for an appeal, the department action shall be final and unappealable.

WSR 10-13-104
EMERGENCY RULES
DEPARTMENT OF EARLY LEARNING

[Filed June 17, 2010, 11:23 a.m., effective June 17, 2010, 11:23 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department of early learning (DEL) is amending WAC 170-151-230 (school-age child care centers), 170-295-3060 (child care centers), and 170-296-0870 (family home child care), regarding the use of hand sanitizer gels with children in DEL-licensed child care. The emergency rules would allow licensed child care providers to administer "over-the-counter" (OTC) hand sanitizer gels with

children over twelve months of age after obtaining written authorization from the child's parent or guardian. This filing continues the emergency rules filed on February 17, 2009, filing number WSR 10-05-120.

Citation of Existing Rules Affected by this Order: Amending WAC 170-151-230, 170-295-3060, and 170-296-0870.

Statutory Authority for Adoption: RCW 43.215.200.

Other Authority: Chapter 43.215 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: Continuation of these emergency rules is needed while DEL completes the permanent rule-making process. A CR-101 preproposal notice was filed as WSR 09-22-012, and the department continues to solicit recommendations on these rules from health professionals, child care providers, parents and the public. DEL anticipates filing proposed rules, holding public hearings, and adopting the permanent rules by autumn 2010.

The rule is needed to protect the health and safety of children in DEL-licensed child care. Controlling the spread of pandemic influenza - such as the H1N1 flu virus - remains a statewide, national and worldwide concern. A June 3, 2010, statement from the World Health Organization (WHO) Emergency Committee noted that while the most intense incidence of H1N1 appears to have passed, "… it remains critical for countries to continue to maintain vigilance concerning the pandemic, including all necessary public health measures for disease control as well as influenza virus and disease surveillance." The WHO plans to reassess the H1N1 pandemic in July 2010 as countries in southern hemisphere will be in their annual flu seasons.*

According to the federal Centers for Disease Control and Prevention (CDC), in 2009 children under five years old had the highest hospitalization rate for H1N1 influenza nationwide, and in 2009 this age group had the second highest rates of H1N1 infection overall. The CDC also notes that children under two years old also face a highest risk of severe complications from flu viruses.**

If used when hand washing with soap and warm water is not available, alcohol-based hand sanitizer gels are considered effective in limiting the spread of viruses and bacteria. However, the current DEL child care licensing rules present a barrier to using hand sanitizing gels.

Alcohol-based hand sanitizer gels are regulated by the U.S. Food and Drug Administration as OTC drugs. Under DEL rules, OTC drugs are considered "nonprescription medications." The current rules list specific nonprescription medications that may be administered in DEL-licensed child care with parent or guardian written permission. For any OTC medication not listed, including OTC hand sanitizer gels, the licensee must obtain a physician's written authorization - specific to each child - before the child care provider may use them with children in care. The emergency rules would permit use of hand sanitizer gels with children over twelve months old with the child's parent or guardian written permission.

The Washington state department of health filed emergency rules (WSR 10-03-053, filed January 15, 2010) requiring heightened surveillance of H1N1 cases statewide, and DOH has urged DEL to revise its rules on an emergency basis regarding the administration of alcohol-based OTC hand sanitizer in DEL-licensed child care facilities during the current outbreak of H1N1 and other seasonal influenza.

*Source: "Director-General statement following the eighth meeting of the Emergency Committee." World Health Organization. June 3, 2010. http://www.who.int/csr/disease/swineflu/en/

** Source: *"Technical Report for State and Local Public Health Officials and Child Care and Early Childhood Providers on CDC Guidance on Helping Child Care and Early Learning Programs Respond during the 2009-2010 Influenza Season."* Centers for Disease Control and Prevention. September 4, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: June 17, 2010.

Dr. Elizabeth M. Hyde
Director

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

WAC 170-151-230 What requirements must I meet for medication management? You may have a policy of not giving medication to the child in care. If your center's health care plan includes giving medication to the child in care, you:

(1) Must give medications, prescription and nonprescription, only on the written approval of a parent, person, or agency having authority by court order to approve medical care;

(2) Must give prescription medications:

(a) Only as specified on the prescription label; or

(b) As authorized, in writing, by a physician or other person legally authorized to prescribe medication.

(3) Must give the following classifications of nonprescription medications, with written parent authorization, only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication:

(a) Antihistamines;

(b) Nonaspirin fever reducers/pain relievers;
(c) Nonnarcotic cough suppressants;
(d) Decongestants;
(e) Anti-itching ointments or lotions, intended specifically to relieve itching;
(f) Diaper ointments and powders, intended specifically for use in the diaper area of the child; ((~~and~~))
(g) Sun screen; and
(h) Hand sanitizers.
(4) Must give other nonprescription medication:
(a) Not included in the categories listed in subsection (3) of this section; or
(b) Taken differently than indicated on the manufacturer's label; or
(c) Lacking labeled instructions, only when disbursement of the nonprescription medication is as required under subsection (4)(a), (b), and (c) of this section:
(i) Authorized, in writing, by a physician; or
(ii) Based on established medical policy approved, in writing, by a physician or other person legally authorized to prescribe medication.
(5) Must accept from the child's parent, guardian, or responsible relative only medicine in the original container, labeled with:
(a) The child's first and last names;
(b) The date the prescription was filled; or
(c) The medication's expiration date; and
(d) Legible instructions for administration, such as manufacturer's instructions or prescription label.
(6) Must keep medication, refrigerated or nonrefrigerated, in an orderly fashion and inaccessible to the child;
(7) Must store external medication in a compartment separate from internal medication;
(8) Must keep a record of medication disbursed;
(9) Must return to the parent or other responsible party, or must dispose of medications no longer being taken; and
(10) May, at your option, permit self-administration of medication by a child in care if:
(a) The child is physically and mentally capable of properly taking medication without assistance;
(b) You include in the child's file a parental or physician's written statement of the child's capacity to take medication without assistance; and
(c) You have stored the child's medications and other medical supplies so the medications and medical supplies are inaccessible to other children in care.

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

WAC 170-295-3060 Who can provide consent for me to give medication to the children in my care? (1) Parents must give written consent before you give any child any medication. The parent's written consent must include:
(a) Child's first and last name;
(b) Name of medication;
(c) Reason for giving medication;
(d) Amount of medication to give;
(e) How to give the medication (route);
(f) How often to give the medication;
(g) Start and stop dates;
(h) Expected side effects; and
(i) How to store the medication consistent with directions on the medication label.
(2) The parent consent form is good for the number of days stated on the medication bottle for prescriptions. You may not give medication past the days prescribed on the medication bottle even if there is medication left.
(3) You may give the following medications with written parent consent if the medication bottle label tells you how much medication to give based on the child's age and weight:
(a) Antihistamines;
(b) Nonaspirin fever reducers/pain relievers;
(c) Nonnarcotic cough suppressants;
(d) Decongestants;
(e) Ointments or lotions intended to reduce or stop itching or dry skin;
(f) Diaper ointments and nontalc powders, intended only for use in the diaper area; ((~~and~~))
(g) Sun screen for children over six months of age; and
(h) Hand sanitizers for children over twelve months of age.
(4) All other over the counter medications must have written directions from a health care provider with prescriptive authority before giving the medication.
(5) You may not mix medications in formula or food unless you have written directions to do so from a health care provider with prescriptive authority.
(6) You may not give the medication differently than the age and weight appropriate directions or the prescription directions on the medication label unless you have written directions from a health care provider with prescriptive authority before you give the medication.
(7) If the medication label does not give the dosage directions for the child's age or weight, you must have written instructions from a health care provider with prescriptive authority in addition to the parent consent prior to giving the medication.
(8) You must have written consent from a health care provider with prescriptive authority prior to providing:
(a) Vitamins;
(b) Herbal supplements; and
(c) Fluoride.

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

WAC 170-296-0870 How do I manage medications for children? You must meet specific requirements for managing prescription and nonprescription medication for children under your care. Only you or another, primary staff person may perform the functions described in this section.
(1) You must have written approval of the child's parent or legal guardian to give the child any medication. This approval must not exceed thirty days.
(2) You must:
(a) Keep a written record of all medications you give a child;
(b) Return any unused medication to the parent or legal guardian of the child;

(c) Give certain classifications of nonprescription medications, only with the dose and directions on the manufacturer's label for the age or weight of the child needing the medication. These nonprescribed medications include but are not limited to:

(i) Nonaspirin, fever reducers or pain relievers;

(ii) Nonnarcotic cough suppressants;

(iii) Decongestants;

(iv) Anti-itching ointments or lotions intended specifically to relieve itching;

(v) Diaper ointments and talc free powders intended specifically for use in the diaper area of children; ((~~and~~))

(vi) Sun screen; and

(vii) Hand sanitizers for children over twelve months of age.

(3) You must not administer any nonprescribed medication for the purpose of sedating a child;

(4) You must not administer any prescribed medication in an amount or frequency other than that prescribed by a physician, psychiatrist or dentist;

(5) You must not give one child's medications to another child; and

(6) You must not use any prescribed medication to control a child's behavior unless a physician prescribes the medication for management of the child's behavior.

WSR 10-13-110
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-157—Filed June 18, 2010, 1:53 p.m., effective June 18, 2010, 1:53 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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: Corrects the mesh size for the fishery to 8-inch minimum mesh instead of 8-inch maximum mesh for the second fishing period. Based on the preseason run size, there are 5,400 upper Columbia summer chinook available for commercial harvest in the mainstem. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules, consistent with the compact action taken on June 10, 2010. There is insufficient time to adopt permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: June 18, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000F Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed:

1. Mainstem Columbia River

a) Dates: 7:00 p.m. June 22 to 5:00 a.m. June 23, 2010.

b) Area: SMCRA 1A, 1B, 1C, 1D and 1E (Zones 1-5)

c) Sanctuaries: Grays River, Elokomin-A, Cowlitz River, Kalama-A, Lewis-A, Washougal, and Sandy Rivers as applicable.

d) Gear: Drift gill nets. 8-inch minimum mesh. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater

e) Allowable sales: Chinook, coho, shad and white sturgeon (43-54 inch fork length). A maximum of three white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

f) The 24-hour quick reporting rule is in effect for Washington buyers.

REPEALER

The following section of the Washington Administrative Code is repealed: (10-153)

WAC 220-33-01000E	Columbia River seasons below Bonneville.

WSR 10-13-114
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed June 21, 2010, 9:15 a.m., effective June 21, 2010, 9:15 a.m.]

Effective Date of Rule: Immediately.

Purpose: To delay the effective date of the permanent order filed as WSR 10-03-115 on January 20, 2010 (2009 edition of the Washington State Energy Code, chapter 51-11 WAC). Effective date is delayed from July 1, 2010, to October 29, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 51-11-0101, 51-11-0105, 51-11-0201, 51-11-0302, 51-11-0303, 51-11-00401, 51-11-0402, 51-11-0501, 51-11-0502, 51-11-0503, 51-11-0504, 51-11-0505, 51-11-0525, 51-11-0527, 51-11-0530, 51-11-0540, 51-11-0541, 51-11-0601, 51-11-0602, 51-11-0603, 51-11-0604, 51-11-0625, 51-11-0701, 51-11-0800, 51-11-0900, 51-11-1001, 51-11-1004, 51-11-1005, 51-11-1006, 51-11-1007, 51-11-1008, 51-11-1009, 51-11-1120, 51-11-1131, 51-11-1132, 51-11-1133, 51-11-1141, 51-11-1310, 51-11-1311, 51-11-1312, 51-11-1313, 51-11-1314, 51-11-1322, 51-11-1323, 51-11-1331, 51-11-1332, 51-11-1334, 51-11-1402, 51-11-1410, 51-11-1411, 51-11-1412, 51-11-1413, 51-11-1414, 51-11-1416, 51-11-1421, 51-11-1423, 51-11-1431, 51-11-1432, 51-11-1433, 51-11-1435, 51-11-1436, 51-11-1437, 51-11-1438, 51-11-1439, 51-11-1440, 51-11-1454, 51-11-1510, 51-11-1512, 51-11-1513, 51-11-1521, 51-11-1530, 51-11-1531, 51-11-1532, 51-11-99901, 51-11-99902, 51-11-99903[, and 51-11-99904]; and new sections WAC 15-11-1135, 51-11-1200, 51-11-1444, 51-11-1445, 51-11-1446, and 15-11-1460.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.025, and 19.27A.045.

Other Authority: Chapters 19.27 and 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.

Reasons for this Finding: The recovery of the construction industry is central to the continuing recovery of the Washington state economy from the recent unprecedented recession.

Temporary delay in the effective date of the 2009 Washington State Energy Code is necessary to allow the construction industry to stabilize.

The state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate delay in implementation of the 2009 edition of the Washington State Energy Code, revised chapter 51-11 WAC, is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the citizens of the state of Washington is based on the following findings:

The Washington State Energy Code 2009 edition (2009 Energy Code) as adopted by the council pursuant to chapter 34.05 RCW was originally set to become effective on July 1, 2010.

The amendment to the 2009 Energy Code contained herein as adopted by the council under emergency rule making pursuant to RCW 34.05.350, extending the effective date, will avoid unintended consequences, and will provide economic relief to the state's construction industry and property owners from rising costs at a time when the state's economy is suffering. Recovery of the construction industry is central to the recovery of the state's economy. This amendment to the effective date of the 2009 Energy Code is consistent with the legislature's direction to the council in RCW 19.27A.045 to "maintain the state energy code for residential structures in a status which is consistent with the state's interest." This amendment results in temporarily extending the 2006 edition of the Washington State Energy Code. As this amendment reflects, the council has directed that the effective date of the

2009 Energy Code be delayed for one hundred twenty days after filing of the emergency rule, temporarily extending the 2006 edition of the Washington State Energy Code.

The original effective date of the 2009 Energy Code may have unanticipated consequences for the construction industry. This could ultimately result in undue expense for residential and commercial construction under the 2009 Energy Code. The council finds this may be an economic burden that may jeopardize the state's economic recovery, and immediate adoption of this amendment is necessary so as to delay the new regulations coming into place July 1, 2010. The council finds it should not impose the new standards until the economy and the construction industry has had further opportunity to stabilize. The amendment herein takes into consideration the general welfare of the public by temporarily extending the 2006 edition of the Washington State Energy Code. The council also has directed staff to pursue rule making to adopt a permanent rule establishing an effective date for the 2009 Energy Code.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: June 11, 2010.

John C. Cochran
Council Chair

WSR 10-13-123
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed June 22, 2010, 11:08 a.m., effective June 24, 2010]

Effective Date of Rule: June 24, 2010.

Purpose: Under sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244) for fiscal years 2010 and 2011, funding for dental services is reduced from current levels. The department is amending language in sections in chapter 388-535 WAC in order to meet these targeted budget expenditure levels. The changes include, for clients through age twenty, reducing coverage of restorative services (crowns) and reducing coverage for repairs to partial dentures; for clients age twenty-one and older, reducing coverage for endodontic treatment and oral and maxillofacial surgery; and for all clients, reducing coverage for partial dentures.

Citation of Existing Rules Affected by this Order: Amending WAC 388-535-1084, 388-535-1090, 388-535-1100, 388-535-1261, 388-535-1266, 388-535-1267, 388-535-1269, and 388-535-1271.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Emergency rule adoption is required in order for the department to comply with sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 with respect to dental services. This emergency filing is necessary to continue the current emergency rule filed as WSR 10-06-030 on February 23, 2010. A public hearing for the permanent rule was held on June 8, 2010.

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 8, 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 8, Repealed 0.

Date Adopted: June 15, 2010.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-14 issue of the Register.

WSR 10-13-124
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-158—Filed June 22, 2010, 1:32 p.m., effective June 22, 2010, 1:32 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule opens Catch Areas 20B and 21A to beam trawl fishing. 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: June 22, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-52-05100E Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) Effective immediately all waters of Shrimp Management Areas 1A, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all shrimp species, until further notice, except as provided for in this section:

(i) All waters of the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Area 2E are closed to the harvest of all shrimp species other than spot shrimp.

(b) Effective immediately until further notice, only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite knot of one mesh, when the mesh is stretched vertically.

(c) The shrimp accounting week is Tuesday through Monday.

(d) Effective immediately until 11:59 p.m. June 28, 2010, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week.

(e) Effective 12:01 a.m. June 29, 2010, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week.

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

(i) The number of pots being moved to a new area; and

(ii) The Marine Fish-Shellfish Management and Catch Reporting Area the pots are being moved to.

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

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, immediately until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) Those portions of Catch Areas 20B and 22A within SMA 1B are open, immediately until further notice.

(c) Effective 6:00 a.m. July 1, 2010, until further notice, that portion of Catch Area 21A within SMA 1B is open.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100D	Puget Sound shrimp pot and beam trawl fishery—Season. (10-139)

WSR 10-13-126
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-159—Filed June 22, 2010, 2:43 p.m., effective July 5, 2010]

Effective Date of Rule: July 5, 2010.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-40-021.

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 emergency rule is needed to meet the original intent of the regulations developed through the 2010 North of Falcon process. 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 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: June 22, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-40-02100A Willapa Bay salmon—Summer fishery. Notwithstanding the provisions of WAC 220-40-021, effective July 5 through August 15, 2010, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing Periods:

(1) Gill net gear may be used to fish for salmon and white sturgeon only as shown below. All non-legal sturgeon, all steelhead, and all other species, including Chinook, coho, chum and white sturgeon, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay:

Free Zone): That portion of SMCRA 2G lying within the following boundary lines:

Time:	Area:
6:00 p.m. August 8 through 6:00 p.m. August 9, 2010.	**Areas 2G** east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, except: **Closed Waters Area (Net Free Zone):** That portion of SMCRA 2G lying within the following boundary lines: Western Boundary: Those waters east of a line drawn from the most waterward exposed end of the jetty at Toke Point (46°42.446'N, 123°57.973'W), to Willapa Marker 2 (46°41.529'N, 123°57.973'W), then 180 degrees true to Goose Point (46°38.184'N, 123°57.584'W). Eastern boundary: Those waters west of a North-South line through Marker 29.
Time:	
6:00 p.m. August 8 through 6:00 p.m. August 9, 2010.	**Area 2H** west of Willapa Channel Marker 40. **Area 2J** north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2). **Area 2M.**

(2) The Tokeland Boat basin is closed to commercial fishing during the openings in Salmon Management and Catch Reporting Area (SMCRA) 2G, described in this section. The Tokeland Boat basin is that portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-seconds), to Tokeland Channel Marker "4," to the tip of the seawall.

Gear:

(3) Gill net gear restrictions - All areas:

(a) Drift gill net gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

It is unlawful to use a gill net to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, provided that it is lawful to have a gill net with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transit through Willapa Bay.

(b) Mesh size must not exceed six-inch minimum mesh to nine-inch maximum mesh.

(c) Only one net may be fished at a time; other nets must be properly stored.

(d) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2G, 2H, 2J, 2K, and 2M. Each box must be operating during any time the net is being retrieved or picked.

The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter.

The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(e) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water.

(f) All wild (unmarked) coho, wild (unmarked) Chinook, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas 2G, 2H, 2J, 2K, and 2M.

(g) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

(h) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other: (4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(5) NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the Columbia River stock, which is part of the southern population. Therefore, the retention of green sturgeon is prohibited to protect this federally listed stock.

(6) It is unlawful to fish for salmon with gill net gear in Areas 2G, 2H, 2J, 2K, and 2M unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

Reviser's note: The unnecessary underscoring 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 10-13-131
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed June 22, 2010, 3:01 p.m., effective June 26, 2010]

Effective Date of Rule: June 26, 2010.

Purpose: These amendments are required to meet the 2009-2011 final legislative budget reductions in sections 201 and 209 of ESHB 1244. Specifically, the department will restrict alien medical services to a federal emergency services component and limit state-only coverage to end-stage renal dialysis, cancer treatment, and nursing facility care.

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

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090.

Other Authority: Section 1109, chapter 564, Laws of 2009 (ESHB 1244, sections 201 and 209).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Emergency rule adoption is required in order for the department to fully meet the legislatively mandated appropriation reduction in ESHB 1244 for the alien emergency medical program for state fiscal years 2010-2011. This emergency filing is necessary to continue the current emergency rule filed as WSR 10-06-060 on February 25, 2010, while the department completes the permanent rule-making process. The permanent rule has been proposed under WSR 10-08-085 and the public hearing was held on May 11, 2010. The department anticipates filing the permanent rule adoption order in July 2010.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, 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 3, Amended 1, Repealed 0.

Date Adopted: June 14, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-07-024, filed 3/9/07, effective 4/9/07)

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

~~(2) Except for the Social Security number, citizenship, or alien status requirements, an alien must meet categorical medicaid eligibility requirements as described in:~~

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

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

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

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

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

~~(4) To qualify for the AEM program, the alien must meet one of the criteria described in subsection (2) of this section and have a qualifying emergency medical condition as described in WAC 388-500-0005.~~

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

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

~~(7) Under the AEM program, covered services are limited to those medical services necessary for treatment of the person's emergency medical condition. The following services are not covered:~~

~~(a) Organ transplants and related services;~~

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

~~(c) School based services;~~

~~(d) Personal care services;~~

~~(e) Waiver services;~~

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

~~(g) Hospice services, unless they are approved by the department's medical consultant.~~

~~(8) The medical service limitations and exclusions described in subsection (7) also apply under the MN program.~~

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

~~(10) A person is not eligible for the AEM program if that person entered the state specifically to obtain medical care~~)) To qualify for an alien medical or long-term care (AMLTC) program a person must:

(a) Be ineligible for medicaid or other DSHS medical program due to the citizenship or alien status requirements described in WAC 388-424-0010;

(b) Meet the requirements described in WAC 388-438-0115, 388-438-0120, or 388-438-0125; and

(c) Meet categorical eligibility criteria for one of the following programs, except for the social security number, citizenship, or alien status requirements:

(i) WAC 388-475-0050, for an SSI-related person;

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

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

(iv) WAC 388-462-0015, for a pregnant woman;

(v) WAC 388-462-0020, for the breast and cervical cancer treatment program for women; or

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

(2) AMLTC medically needy (MN) coverage is available for children, adults age sixty-five or over, or persons who meet SSI disability criteria. See WAC 388-519-0100 for MN eligibility and 388-519-0110 for spending down excess income under the MN program.

(3) The department does not consider a person's date of arrival in the United States when determining eligibility for AMLTC.

(4) The department does not consider a sponsor's income and resources when determining eligibility for AMLTC, unless the sponsor makes the income or resources available.

(5) A person is not eligible for AMLTC if that person entered the state specifically to obtain medical care.

(6) A person who the department determines is eligible for AMLTC may be eligible for retroactive coverage as described in WAC 388-416-0015.

(7) Once the department determines financial and categorical eligibility for AMLTC, the department then determines whether a person meets the requirements described in WAC 388-438-0115, 388-438-0120, or 388-438-0125.

NEW SECTION

WAC 388-438-0115 Alien emergency medical program (AEM). (1) A person nineteen years of age or older who is not pregnant and meets the eligibility criteria under WAC 388-438-0110 is eligible for the alien emergency medical program's scope of covered services described in this section if the person meets (a) and (b) below, or (c) below:

(a) The department's health and recovery services administration (HRSA) determines that the primary condition requiring treatment meets the definition of an emergency medical condition as defined in WAC 388-500-0005, and the condition is confirmed through review of clinical records; and

(b) The person's qualifying emergency medical condition is treated in one of the following hospital settings:

(i) Inpatient;

(ii) Outpatient surgery;

(iii) Emergency room services, which must include an evaluation and management (E&M) visit by a physician; or

(c) An Involuntary Treatment Act (ITA) or voluntary inpatient community hospital psychiatric admission prior authorized by the department's inpatient mental health designee (see subsection (5) of this section).

(2) If a person meets the criteria in subsection (1), the department will cover and pay for all related medically nec-

essary health care services and professional services provided during this specific emergency room visit, outpatient surgery or inpatient admission. These services include, but are not limited to:

(a) Medications;

(b) Laboratory, x-ray, and other diagnostics and the professional interpretations;

(c) Medical equipment and supplies;

(d) Anesthesia, surgical, and recovery services;

(e) Physician consultation, treatment, surgery, or evaluation services;

(f) Therapy services;

(g) Emergency medical transportation; and

(h) Non-emergency ambulance transportation to transfer the person from a hospital to a long term acute care (LTAC) or an inpatient physical medicine and rehabilitation (PM&R) unit, if that admission is prior authorized by the department as described in subsection (3) of this section.

(3) The department will cover admissions to an LTAC facility or an inpatient PM&R unit if:

(a) The original admission to the hospital meets the criteria as described in subsection (1) of this section;

(b) The person is transferred directly to this facility from the community hospital; and

(c) The admission is prior authorized according to LTAC and PM&R program rules (see WAC 388-550-2590 for LTAC and WAC 388-550-2561 for PM&R).

(4) The department does not cover any services, regardless of setting, once the person is discharged from the hospital after being treated for a qualifying emergency medical condition authorized by the department under this program. Exception: Pharmacy services, drugs, devices, and drug-related supplies listed in WAC 388-530-2000, prescribed on the same day and associated with the qualifying visit or service (as described in subsection (1) of this section) will be covered for a one-time fill and retrospectively reimbursed according to pharmacy program rules.

(5) Medical necessity of inpatient psychiatric care must be determined, and any admission must be prior authorized by the department's inpatient mental health designee according to the requirements in WAC 388-550-2600.

(6) There is no precertification or prior authorization for eligibility under this program.

(7) Under this program, certification is only valid for the period of time the person is receiving services under the criteria described in subsection (1) of this section. The exception for pharmacy services is also applicable as described in subsection (4) of this section.

(a) For inpatient care, the period of eligibility is only for the period of time the person is in the hospital, LTAC, or PM&R facility - the admission date through the discharge date. Upon discharge the person is no longer eligible for coverage.

(b) For an outpatient surgery or emergency room service the period of eligibility is only for the date of service. If the person is in the hospital overnight, the eligibility period will be the admission date through the discharge date. Upon release from the hospital, the person is no longer eligible for coverage.

(8) Under this program, any visit or service not meeting the criteria described in subsection (1) of this section is not within the scope of covered services as described in WAC 388-501-0060. This includes, but is not limited to:

(a) Hospital services, care, surgeries, or inpatient admissions to treat any condition which is not considered by the department to be a qualifying emergency medical condition, including but not limited to:

(i) Laboratory x-ray, or other diagnostic procedures;

(ii) Physical, occupational, speech therapy, or audiology services;

(iii) Hospital clinic services; or

(iv) Emergency room visits, surgery, or hospital admissions.

(b) Any services provided during a hospital admission or visit (meeting the criteria described in subsection (1) of this section), which are not related to, or consistent with best practices in treating, the qualifying emergency medical condition;

(c) Organ transplants, including pre-evaluations, post operative care, and anti-rejection medication;

(d) Services provided outside the hospital settings described in subsection (1) of this section, including but not limited to:

(i) Office or clinic-based services rendered by a physician, an ARNP, or any other licensed practitioner;

(ii) Prenatal care, except labor and delivery;

(iii) Laboratory, radiology, and any other diagnostic testing;

(iv) School-based services;

(v) Personal care services;

(vi) Physical, respiratory, occupational, and speech therapy services;

(vii) Waiver services;

(viii) Nursing facility services;

(ix) Home health services;

(x) Hospice services;

(xi) Vision services;

(xii) Hearing services;

(xiii) Dental services;

(xiv) Durable and non durable medical supplies;

(xv) Non-emergency medical transportation;

(xvi) Interpreter services; and

(xvii) Pharmacy services, except as described in subsection (4).

(9) The services listed in subsection (8) of this section are not part of the scope of covered services for this program and therefore the exception to rule process is not available.

(10) Providers must not bill the department for visits or services that do not meet the qualifying criteria described in this section. The department will identify and recover payment for claims paid in error.

NEW SECTION

WAC 388-438-0120 Alien medical for dialysis and cancer treatment (state-only). (1) A person nineteen years of age or older who is not pregnant and meets the eligibility criteria under WAC 388-438-0110 may be eligible for the

scope of covered services under this program if the condition requires:

(a) Surgery, chemotherapy, and/or radiation therapy to treat cancer;

(b) Dialysis to treat acute renal failure or end stage renal disease (ESRD); or

(c) Anti-rejection medication, if the person has had an organ transplant.

(2) When related to treating the qualifying medical condition, covered services include but are not limited to:

(a) Physician and ARNP services, except when providing a service that is not within the scope of this medical program (as described in subsection (7) of this section);

(b) Inpatient and outpatient hospital care;

(c) Dialysis;

(d) Surgical procedures and care;

(e) Office or clinic based care;

(f) Pharmacy services;

(g) Laboratory, x-ray, or other diagnostic studies;

(h) Oxygen services;

(i) Respiratory and intravenous (IV) therapy;

(j) Anesthesia services;

(k) Hospice services;

(l) Home health services, limited to two visits;

(m) Durable and non durable medical equipment;

(n) Non-emergency transportation; and

(o) Interpreter services.

(3) All hospice, home health, durable and non durable medical equipment, oxygen and respiratory, IV therapy, and dialysis for acute renal disease services require prior authorization. Any prior authorization requirements applicable to the other services listed above must also be met according to specific program rules.

(4) To be qualified and eligible for coverage for cancer treatment under this program, the diagnosis must be already established or confirmed. There is no coverage for cancer screening or diagnostics for a workup to establish the presence of cancer.

(5) Coverage for dialysis under this program starts the date the person begins dialysis treatment, which may include fistula placement. There is no coverage for diagnostics or pre-dialysis intervention, such as surgery for fistula placement anticipating the need for dialysis, or any services related to preparing for dialysis.

(6) Certification for eligibility will range between one to twelve months depending on the qualifying condition.

(7) The following are not included in the scope of covered services of this program:

(a) Cancer screening or work-ups to detect or diagnose the presence of cancer;

(b) Fistula placement while the person waits to see if dialysis will be required;

(c) Services by any healthcare professional provided to treat a condition not related to, or required to, treat the qualifying condition;

(d) Organ transplants, including preevaluations and post operative care;

(e) Health department services;

(f) School-based services;

(g) Personal care services;

(h) Physical, occupational, and speech therapy services;

(i) Audiology services;

(j) Neurodevelopmental services;

(k) Waiver services;

(l) Nursing facility services;

(m) Home health services, more than two visits;

(n) Vision services;

(o) Hearing services;

(p) Dental services, unless prior authorized and directly related to dialysis or cancer treatment;

(q) Mental health services;

(r) Podiatry services;

(s) Substance abuse services; and

(t) Smoking cessation services.

(8) The services listed in subsection (7) of this section are not part of the scope of covered services for this program and therefore the exception to rule process is not available.

(9) Providers must not bill the department for visits or services that do not meet the qualifying criteria described in this section. The department will identify and recover payment for claims paid in error.

NEW SECTION

WAC 388-438-0125 Alien nursing facility program (state-funded). (1) The state-funded alien nursing facility program is subject to caseload limits determined by legislative funding. Services cannot be authorized for eligible persons prior to a determination by the aging and disability services administration (ADSA) that caseload limits will not be exceeded as a result of the authorization.

(2) To be eligible for the state-funded alien nursing facility program described in this section, an adult nineteen years of age or older must meet all of the following conditions:

(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a), (b), (e), and (f);

(b) Reside in a nursing facility as defined in WAC 388-97-0001;

(c) Attain institutional status as described in WAC 388-513-1320;

(d) Meet the functional eligibility described in WAC 388-106-0355 for nursing facility level of care;

(e) Not have a penalty period due to a transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366;

(f) Equity interest in a primary residence must be less than five hundred thousand dollars as described in WAC 388-513-1350; and

(g) Annuities owned by the adult or spouse must meet the requirements described in chapter 388-561 WAC.

(3) An adult who is related to the supplemental security income (SSI) program as described in WAC 388-475-0050 (1), (2), and (3) must meet the financial requirements described in WAC 388-513-1325, 388-513-1330, and 388-513-1350.

(4) An adult who does not meet the SSI-related criteria in subsection (2) of this section may be eligible under the family institutional medical program rules described in WAC 388-505-0250 or 388-505-0255.

(5) An adult who is not eligible for CN coverage may qualify for medically needy (MN) coverage under the state-funded alien nursing facility program described in:

(a) WAC 388-513-1395 for adults related to SSI; or

(b) WAC 388-505-0255 for adults related to family institutional medical.

(6) All adults qualifying for the state-funded alien nursing facility program will receive CN scope of medical coverage described in WAC 388-501-0060.

(7) The department determines how much an individual is required to pay toward the cost of care using the following rules:

(a) For an SSI-related individual, see rules described in WAC 388-513-1380.

(b) For an individual eligible under the family institutional program, see WAC 388-505-0265.

(8) A person is not eligible for state-funded nursing facility care if that person entered the state specifically to obtain medical care.

(9) A person eligible for the state-funded alien nursing facility program is certified for a twelve month period.

WSR 10-13-132
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed June 22, 2010, 3:27 p.m., effective June 26, 2010]

Effective Date of Rule: June 26, 2010.

Purpose: To implement necessary language regarding:

(1) Exemption of certain property from resources for medicaid and CHIP eligibility for Native Americans, as required under the American Recovery and Reinvestment Act (ARRA) of 2009 (recovery act); and

(2) Payments or interest accrued on payments made under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) listed as excluded resources for SSI-related medical programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0040, 388-450-0080, 388-455-0005, 388-455-0015, 388-470-0045, 388-475-0350, 388-475-0550, and 388-475-0600.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: ARRA of 2009 (recovery act), Public Law 111-5, Section 5006(b); 42 C.F.R. 435.601, EEOICPA of 2000, Public Law 106398, Sec. 1, app., Title XXXVI (Oct. 30, 2000) (Section 1 adopting as Appendix H.R. 5408), Section 3646 of the Appendix.

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: Amendments to these WAC sections are needed to be in compliance with federal requirements of the ARRA of 2009 (recovery act), which provides protections for American natives in medicaid and children's health insurance program (CHIP), and the EEOICPA of 2000 which provides exemption of payments or interest accrued on payments received under the EEOICPA as countable resources for SSI-related medical programs. This emergency filing is necessary to continue the current emergency rules filed as WSR 10-06-059 on February 25, 2010. The permanent rules are scheduled for public hearing on July 6, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 8, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: June 15, 2010.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-14 issue of the Register.

WSR 10-13-138
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-155—Filed June 22, 2010, 4:15 p.m., effective June 22, 2010, 4:15 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-16-490.

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 description of the Bonilla-Tatoosh line is essential to differentiating between adjacent management areas located on the northwest coast at Cape Flattery. The current rule does not include latitude and longitude coordinates for each reference point and is not consistent with the description in the federal regulation. The changes simplify the description of the line and will make it easier for recreational fishers and enforcement to use. This rule conforms to federal action taken by the Pacific Fisheries Management Council.

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

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

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

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

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

Date Adopted: June 22, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-16-49000A Bonilla-Tatoosh line. Effective immediately until further notice, the Bonilla-Tatoosh Line is defined as a line projected from the most westerly point on Cape Flattery to the light on Tatoosh Island, WA (48º23.600'N. lat., 124º44.200'W. long.) then to the light on Bonilla Point on Vancouver Island, British Columbia (at 48º35.73'N. lat., 124º43.00'W. long.)

WSR 10-13-140
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed June 22, 2010, 4:50 p.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: To amend the fire code, clarifying the requirements for fire sprinklers in certain furniture stores.

Citation of Existing Rules Affected by this Order: Amending WAC 51-50-0903 and 51-54-0900.

Statutory Authority for Adoption: RCW 19.27.074.

Other Authority: 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.

Reasons for this Finding: This amendment would provide a square foot threshold (5000 sq. ft.) above which sprinklers would be required in Occupancy Group M where upholstered furniture is sold, including mattresses. Under the current provisions there is no threshold; as currently written sprinklers would be required whenever a piece of upholstered furniture is present for sale, regardless of the square footage; this is essentially unenforceable by local officials. This was not intended to apply to all furniture stores, and could result in extreme economic impacts to small businesses, if this editorial error is not corrected. The change would make the code consistent with the most current life safety code for firefighters.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 11, 2010.

John C. Cochran
Chair

AMENDATORY SECTION (Amending WSR 10-03-097, filed 1/20/10, effective 7/1/10)

WAC 51-50-0903 Section 903—Automatic sprinkler systems.

903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code. ((~~An existing nightclub constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.~~))

903.2.3 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS:
1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m^2); and clusters of portable school classrooms shall be separated as required by the building code.
2. Group E occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.1.

903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:

1. A Group M fire area exceeds 12,000 square feet (1115 m^2).

2. A Group M fire area is located more than three stories above grade plane.

3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m^2).

4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m^2).

903.2.8 Group R. An automatic fire sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION: Group R-1 if all of the following conditions apply:
1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

AMENDATORY SECTION (Amending WSR 10-03-100, filed 1/20/10, effective 7/1/10)

WAC 51-54-0900 Chapter 9—Fire protection systems.

902.1 Definitions.

ALERT SIGNAL. See Section 402.1.

ALERTING SYSTEM. See Section 402.1.

PORTABLE SCHOOL CLASSROOM. A structure, transportable in one or more sections, which requires a chassis to be transported, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be trailerable and capable of being demounted and relocated to other locations as needs arise.

903.2.3 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS: 1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m^2); and clusters of portable school classrooms shall be separated as required by the building code.
2. Group E Occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.1.

903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:

1. A Group M fire area exceeds 12,000 square feet (1115 m^2).

2. A group M fire area is located more than three stories above grade plane.

3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m^2).

4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m^2).

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION: Group R-1 if all of the following conditions apply:
1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is on only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

903.6.3 Nightclub. Existing nightclubs constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.

SECTION 906—PORTABLE FIRE EXTINGUISHERS

906.1 Where required. Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.

2. Within 30 feet (9144 mm) of commercial cooking equipment.

3. In areas where flammable or combustible liquids are stored, used or dispensed.

4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.

5. Where required by the sections indicated in Table 906.l.

6. Special-hazard areas, including, but not limited to, laboratories, computer rooms and generator rooms, where required by the fire code official.

SECTION 907—FIRE ALARM AND DETECTION SYSTEMS

[F] 907.2.8 Group R-1. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-1 occupancies as required in this section and Section 907.2.8.4.

[F] 907.2.8.4. Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed by January 1, 2011, outside of each separate sleeping area in the immediate vicinity of the bedroom in sleeping units. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries.

[F] 907.2.8.4.1 Existing sleeping units. Existing sleeping units shall be equipped with carbon monoxide alarms by July 1, 2011.

[F] 907.2.8.4.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

[F] 907.2.9 Group R-2. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 through 907.2.9.3.

907.2.9.1 Group R-2 boarding homes. A manual fire alarm system shall be installed in Group R-2 occupancies where the building contains a boarding home licensed by the state of Washington.

EXCEPTION: In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story

exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

[F] 907.2.9.3 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed by January 1, 2011, outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries.

[F] 907.2.9.3.1 Existing dwelling units. Existing dwelling units shall be equipped with carbon monoxide alarms by July 1, 2011.

[F] 907.2.10 Group R-3. Carbon monoxide alarms shall be installed in Group R-3 occupancies as required in Sections 907.2.10.1 through 907.2.10.3.

[F] 907.2.l0.1 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed by January 1, 2011, outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries.

[F] 907.2.10.2 Existing dwelling units. Existing dwelling units shall be equipped with carbon monoxide alarms by July 1, 2011.

EXCEPTION: Owner-occupied Group R-3 residences legally occupied prior to July 1, 2010.

[F] 907.2.10.3 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

909.6.3 Elevator shaft pressurization. Where elevator shaft pressurization is required to comply with Exception 6 of IBC Section 708.14.1, the pressurization system shall comply with and be maintained in accordance with IBC 708.14.2.

909.6.3.1 Activation. The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire code official. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

909.6.3.2 Power system. The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

SECTION 915 ALERTING SYSTEMS

915.1 General. An approved alerting system shall be provided in buildings and structures as required in chapter 4 and this section, unless other requirements are provided by another section of this code.

EXCEPTION: Approved alerting systems in existing buildings, structures or occupancies.

915.2 Power source. Alerting systems shall be provided with power supplies in accordance with Section 4.4.1 of NFPA 72 and circuit disconnecting means identified as "EMERGENCY ALERTING SYSTEM."

EXCEPTION: Systems which do not require electrical power to operate.

915.3 Duration of Operation. The alerting system shall be capable of operating under nonalarm condition (quiescent load) for a minimum of 24 hours and then shall be capable of operating during an emergency condition for a period of 15 minutes at maximum connected load.

915.4 Combination system. Alerting system components and equipment shall be allowed to be used for other purposes.

915.4.1 System priority. The alerting system use shall take precedence over any other use.

915.4.2 Fire alarm system. Fire alarm systems sharing components and equipment with alerting systems must be in accordance with Section 6.8.4 of NFPA 72.

915.4.2.1 Signal priority. Recorded or live alert signals generated by an alerting system that shares components with a fire alarm system shall, when actuated, take priority over fire alarm messages and signals.

915.4.2.2 Temporary deactivation. Should the fire alarm system be in the alarm mode when such an alerting system is actuated, it shall temporarily cause deactivation of all fire alarm-initiated audible messages or signals during the time period required to transmit the alert signal.

915.4.2.3 Supervisory signal. Deactivation of fire alarm audible and visual notification signals shall cause a supervisory signal for each notification zone affected in the fire alarm system.

915.5 Audibility. Audible characteristics of the alert signal shall be in accordance with Section 7.4.1 of NFPA 72 throughout the area served by the alerting system.

EXCEPTION: Areas served by approved visual or textual notification, where the visible notification appliances are not also used as a fire alarm signal, are not required to be provided with audibility complying with Section 915.6.

915.6 Visibility. Visible and textual notification appliances shall be permitted in addition to alert signal audibility.

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

WSR 10-13-141
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed June 22, 2010, 5:02 p.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: To amend the building code, adding an exception to the required means of egress width consistent with the latest 2012 amendments of the International Building Code.

Citation of Existing Rules Affected by this Order: New section WAC 51-50-1005 and amending WAC 51-54-1005 [51-54-1000].

Statutory Authority for Adoption: RCW 19.27.074.

Other Authority: 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.

Reasons for this Finding: The council finds that enforcement of the 2009 IBC section 1005 Egress Width would be extremely problematic and cause extensive confusion in the application of the building code statewide. The exception provided in the emergency rule makes the requirement consistent with the latest standard for health and safety. Enforcing the code as published in 2009 would require building designs to meet a significantly expanded prescriptive width requirement. The design changes would result in a period of time in which buildings use a radically different egress system, resulting in major economic impacts for building owners and designers and confusion resulting in a lack of compliance compromising public health and safety. The latest code as adopted by the International Code Council for publication in 2012 requires alternative safety systems which provide greater safety without radical and costly design changes.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 2 [1], Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New [1], Amended 2 [1], Repealed 0.

Date Adopted: June 11, 2010.

John C. Cochran
Chair

NEW SECTION

WAC 51-50-1005 Section 1005—Egress width.

1005.1 Minimum required egress width. The means of egress width shall not be less than required by this section. The total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.3 inches (7.62 mm) per occupant for stairways and by 0.2 inches (5.08 mm) per occupant for other egress components. The width shall not be less than specified elsewhere in this code. Multiple means of egress shall be sized such that the loss of any one means of egress shall not reduce the available capacity to less than 50 percent of the required capacity. The maximum capacity required from any story of a building shall be maintained to the termination of the means of egress.

EXCEPTIONS:
1. Means of egress complying with Section 1028.
2. For other than H and I-2 occupancies, the total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.2 inches (5.1 mm) per occupant for stairways and by 0.15 inches (3.8 mm) per occupant for other egress components in buildings that are provided with sprinkler protection in accordance with 903.3.1.1 or 903.3.1.2 and an emergency voice/alarm communication system in accordance with 907.5.2.2.

AMENDATORY SECTION (Amending WSR 09-04-027, filed 1/28/09, effective 7/1/10)

WAC 51-54-1000 Chapter 10—Means of egress.

Section 1005-Egress width.

1005.1 Minimum required egress width. The means of egress width shall not be less than required by this section. The total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.3 inches (7.62 mm) per occupant for stairways and by 0.2 inches (5.08 mm) per occupant for other egress components. The width shall not be less than specified elsewhere in this code. Multiple means of egress shall be sized such that the loss of any one means of egress shall not reduce the available capacity to less than 50 percent of the required capacity. The maximum capacity required from any story of a building shall be maintained to the termination of the means of egress.

EXCEPTIONS:
1. Means of egress complying with Section 1028.
2. For other than H and I-2 occupancies, the total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.2 inches (5.1 mm) per occupant for stairways and by 0.15 inches (3.8 mm) per occupant for other egress components in buildings that are provided with sprinkler protection in accordance with 903.3.1.1 or 903.3.1.2 and an emergency voice/alarm communication system in accordance with 907.5.2.2.

1007.1 Accessible means of egress required. Accessible means of egress shall comply with this section. Accessible spaces shall be provided with not less than one accessible means of egress. Where more than one means of egress are required by Section 1015.1 or 1021.1 from any accessible space, each accessible portion of the space shall be served by not less than two accessible means of egress.

EXCEPTIONS:
1. Accessible means of egress are not required in alterations to existing buildings.
2. One accessible means of egress is required from an accessible mezzanine level in accordance with Section 1007.3, 1007.4 or 1007.5.
3. In assembly areas with sloped or stepped aisles, one accessible means of egress is permitted where the common path of travel is accessible and meets the requirements in Section 1028.8.
4. In parking garages, accessible means of egress are not required to serve parking areas that do not contain accessible parking spaces.

1007.8 Two-way communication. A two-way communication system shall be provided at the elevator landing on each accessible floor that is one or more stories above or below the

story of exit discharge complying with Sections 1007.8.1 and 1007.8.2.

EXCEPTIONS:
1. Two-way communication systems are not required at the elevator landing where two-way communication is provided within the areas of refuge in accordance with Section 1007.6.3.
2. Two-way communication systems are not required on floors provided with exit ramps conforming to provisions of Section 1010.

1007.8.1 System requirements. Two-way communication systems shall provide communication between each required location and the fire command center or a central control point location approved by the fire department. Where the central control point is not constantly attended, a two-way communication system shall have a timed automatic telephone dial-out capability to a monitoring location. The two-way communication system shall include both audible and visible signals. The two-way communication system shall have a battery backup or an approved alternate source of power that is capable of 90 minutes use upon failure of the normal power source.

1008.1.2 Door swing. Egress doors shall be side-hinged swinging.

EXCEPTIONS:
1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.
2. Group I-3 Occupancies used as a place of detention.
3. Critical or intensive care patient rooms within suites of health care facilities.
4. Doors within or serving a single dwelling unit in Groups R-2 and R-3 as applicable in Section 101.2.
5. In other than Group H Occupancies, revolving doors complying with Section 1008.1.3.1.
6. In other than Group H Occupancies, horizontal sliding doors complying with Section 1008.1.3.3 are permitted in a means of egress.
7. Power-operated doors in accordance with Section 1008.1.3.2.
8. Doors serving a bathroom within an individual sleeping unit in Group R-1.
9. In other than Group H Occupancies, manually operated horizontal sliding doors are permitted in a means of egress from spaces with an occupant load of 10 or less.

Doors shall swing in the direction of egress travel where serving an occupant load of 50 or more persons or a Group H Occupancy.

The opening force for interior side-swinging doors without closers shall not exceed a 5-pound (22 N) force. For other side-swinging, sliding, and folding doors, the door latch shall release when subjected to a 15-pound (67 N) force. The door shall be set in motion when subjected to a 30-pound (133 N) force. The door shall swing to a full-open position when subjected to a 15-pound (67 N) force. Forces shall be applied to the latch side.

((**1008.1.8.3 Locks and latches.** Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.

2. In buildings in occupancy Group A having an occupant load of 300 or less, Group B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

2.1 The locking device is readily distinguishable as locked.

2.2 A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and

2.3 The use of the key-operated locking device is revocable by the fire code official for due cause.

3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no doorknob or surface-mounted hardware.

4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt or security chain, provided such devices are openable from the inside without the use of a key or tool.

5. Approved, listed locks without delayed egress shall be permitted in nursing homes or portions of nursing homes, and boarding homes licensed by the state of Washington, provided that:

5.1 The clinical needs of one or more patients require specialized security measures for their safety;

5.2 The doors unlock upon actuation of the automatic sprinkler systems or automatic fire detection system;

5.3 The doors unlock upon loss of electrical power controlling the lock or lock mechanism;

5.4 The lock shall be capable of being deactivated by a signal from a switch located in an approved location; and

5.5 There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

1009.12 Stairways in individual dwelling units. Stairs or ladders within an individual dwelling unit used for access to areas of 200 square feet (18.6 m^2) or less, and not containing the primary bathroom or kitchen, are exempt from the requirements of Section 1009.

1014.2.2 Group I-2. Habitable rooms or suites in Group I-2 Occupancies shall have an exit access door leading directly to a corridor.

EXCEPTION: Rooms with exit doors opening directly to the outside at ground level.

1014.2.2.1 Definition. For the purposes of this section, a suite is defined as a cluster of rooms or spaces sharing common circulation. Partitions within a suite are not required to have smoke or fire-resistance-rated construction unless required by another section of this Code.

1014.2.3 Suites in patient sleeping areas. Patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites if one of the following conditions is met:

1. The intervening room within the suite is not used as an exit access for more than eight patient beds.

2. The arrangement of the suite allows for direct and constant visual supervision by nursing personnel.

1014.2.3.1 Area. Suites of sleeping rooms shall not exceed 5,000 square feet (465 m²).

1014.2.3.2 Exit access. Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m²) shall have at least two exit access doors remotely located from each other.

1014.2.3.3 Travel distance. The travel distance between any point in a suite of sleeping rooms and an exit access door of that suite shall not exceed 100 feet (30,480 mm).

1014.2.4 Suites in areas other than patient sleeping areas. Areas other than patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites.

1014.2.4.1 Area. Suites of rooms, other than patient rooms, shall not exceed 10,000 square feet (929 m²).

1014.2.4.2 Exit access. Any rooms or suite of rooms, other than patient sleeping rooms, of more than 2,500 square feet (232 m²) shall have at least two exit access doors remotely located from each other.

1014.2.4.3 One intervening room. For rooms other than patient sleeping rooms, suites of rooms are permitted to have one intervening room if the travel distance within the suite is not greater than 100 feet (30,480 mm).

1014.2.4.4 Two intervening rooms. For rooms other than patient sleeping rooms located within a suite, exit access travel from within the suite shall be permitted through two intervening rooms where the travel distance to the exit access door is not greater than 50 feet (15,240 mm).

1014.2.5 Travel distance. The travel distance between any point in a Group I-2 Occupancy patient room and an exit access door in that room shall not exceed 50 feet (15,240 mm).

1014.2.6 Separation. Suites in Group I-2 Occupancies shall be separated from other portions of the building by a smoke partition complying with Section 710.

1015.1 Exits or exit access doorways from spaces. Two exits or exit access doorways from any space shall be provided where one of the following conditions exists:

1. The occupant load of the space exceeds one of the values in Table 1015.1.

EXCEPTION: One means of egress is permitted within and from dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

2. The common path of egress travel exceeds one of the limitations of Section 1014.3.

3. Where required by Sections 1015.3, 1015.4, 1015.5, 1015.6 or 1015.6.1.

EXCEPTION: Group I-2 Occupancies shall comply with Section 1014.2.2.

TABLE 1015.1
SPACES WITH ONE MEANS OF EGRESS

OCCUPANCY	MAXIMUM OCCUPANT LOAD
A, B, E[a], F, M, U	49
H-1, H-2, H-3	3
H-4, H-5, I-1, I-3, I-4, R	10
S	29

a. Day care maximum occupant load is 10.

1015.1.1 Three or more exits or exit access doorways. Three exits or exit access doorways shall be provided from any space with an occupant load of 501-1,000. Four exits or exit access doorways shall be provided from any space with an occupant load greater than 1,000.

1019.1 Exits from stories. All spaces within each story shall have access to the minimum number of exits as specified in Table 1019.1 based on the occupant load of the story, except as modified in Section 1019.2. For the purposes of this chapter, occupied roofs shall be provided with exits as required for stories. The required number of exits from any story, including basements, shall be maintained until arrival at grade or the public way.

EXCEPTION: One means of egress is permitted within and from dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

TABLE 1019.1
MINIMUM NUMBER OF EXITS FOR OCCUPANT LOAD

OCCUPANT LOAD (persons per story)	MINIMUM NUMBER OF EXITS (per story)
1-500	2
501-1,000	3
More than 1,000	4

1019.2 Buildings with one exit. Only one exit shall be required in buildings as specified below:

1. Buildings meeting the limitations of Table 1019.2, provided the building has not more than one level below the first story above grade plane.

2. Buildings of Group R-3 Occupancy.

3. Single-level buildings with occupied spaces at the level of exit discharge provided each space complies with Section 1015.1 as a space with one exit or exit access doorway.

~~TABLE 1019.2~~
~~BUILDINGS WITH ONE EXIT~~

~~OCCUPANCY~~	~~MAXIMUM HEIGHT OF BUILDING ABOVE GRADE PLANE~~	~~MAXIMUM OCCUPANTS (OR DWELLING UNITS) PER FLOOR AND TRAVEL DISTANCE~~
~~A, B[d], E[c], F, M, U~~	~~1 Story~~	~~49 occupants and 75 feet travel distance~~
~~H-2, H-3~~	~~1 Story~~	~~3 occupants and 25 feet travel distance~~
~~H-4, H-5, I, R~~	~~1 Story~~	~~10 occupants and 75 feet travel distance~~
~~S[a]~~	~~1 Story~~	~~29 occupants and 100 feet travel distance~~
~~B[b], F, M, S[a]~~	~~2 Stories~~	~~30 occupants and 75 feet travel distance~~
~~R-2~~	~~2 Stories[e]~~	~~4 dwelling units and 50 feet travel distance~~

~~For SI: 1 foot = 304.8 mm.~~
~~a. For the required number of exits for open parking structures, see Section 1019.1.1.~~
~~b. For the required number of exits for air traffic control towers, see Section 412.1.~~
~~c. Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and provided with emergency escape and rescue openings in accordance with Section 1026 shall have a maximum height of three stories above grade plane.~~
~~d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 with an occupancy in Group B shall have a maximum travel distance of 100 feet.~~
~~e. Day care maximum occupant load is 10.~~))

1008.1.9.3 Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.

2. In buildings in occupancy Group A having an occupant load of 300 or less, Groups B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

2.1 The locking device is readily distinguishable as locked;

2.2 A readily visible sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and

2.3 The use of the key-operated locking device is revocable by the building official for due cause.

3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no doorknob or surface-mounted hardware.

4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt, or security chain, provided such devices are openable from the inside without the use of a key or a tool.

5. Fire doors after the minimum elevated temperature has disabled the unlatching mechanism in accordance with listed fire door test procedures.

6. Approved, listed locks without delayed egress shall be permitted in Group R-2 boarding homes licensed by Washington state, provided that:

6.1. The clinical needs of one or more patients require specialized security measures for their safety.

6.2. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

6.3. The doors unlock upon loss of electrical power controlling the lock or lock mechanism.

6.4. The lock shall be capable of being deactivated by a signal from a switch located in an approved location.

6.5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

1008.1.9.6 Special locking arrangements in Group I-2. Approved locks shall be permitted in a Group I-2 Occupancy where the clinical needs of persons receiving care require such locking. Locks shall be permitted in such occupancies where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors unlock in accordance with Items 1 through 6 below.

1. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

2. The doors unlock upon loss of power controlling the lock or lock mechanism.

3. The door locks shall have the capability of being unlocked by a signal from the fire command center, a nursing station or other approved location.

4. The procedures for the operation(s) of the unlocking system shall be described and approved as part of the emergency planning and preparedness required by Chapter 4 of the International Fire Code.

5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

6. Emergency lighting shall be provided at the door.

EXCEPTION: Items 1, 2, 3, and 5 shall not apply to doors to areas where persons which because of clinical needs require restraint or containment as part of the function of a Group I-2 mental hospital provided that all clinical staff shall have the keys, codes or other means necessary to operate the locking devices.

1009.15 Stairways in individual dwelling units. Stairs or ladders within an individual dwelling unit used for access to areas of 200 square feet (18.6 m^2) or less, and not containing

the primary bathroom or kitchen, are exempt from the requirements of Section 1009.

1010.1 Scope. The provisions of this section shall apply to ramps used as a component of a means of egress.

EXCEPTIONS:
1. Other than ramps that are part of the accessible routes providing access in accordance with Sections 1108.2 through 1108.2.4 and 1108.2.6, ramped aisles within assembly rooms or spaces shall conform with the provisions in Section 1028.11.
2. Curb ramps shall comply with ICC A117.1.
3. Vehicle ramps in parking garages for pedestrian exit access shall not be required to comply with Sections 1010.3 through 1010.9 when they are not an accessible route serving accessible parking spaces or other required accessible elements.
4. In a parking garage where one accessible means of egress serving accessible parking spaces or other accessible elements is provided, a second accessible means of egress serving that area may include a vehicle ramp that does not comply with Sections 1010.4 through 1010.8.

1014.2.2 Group I-2. General. Habitable spaces and suites in Group I-2 Occupancies are permitted to comply with this Section 1014.2.2.

1014.2.2.1 Exit access doors. Habitable spaces and suites in Group I-2 Occupancies shall have an exit access door leading directly to a corridor.

EXCEPTION: Rooms with exit doors opening directly to the outside at ground level.

1014.2.2.2 Exit access through suites. Exit access from areas not classified as a Group I-2 Occupancy suite shall not pass through a suite. In a suite required to have more than one exit, one exit access may pass through an adjacent suite if all other requirements of Section 1014.2 are satisfied.

1014.2.2.3 Separation. Suites in Group I-2 Occupancies shall be separated from other portions of the building by a smoke partition complying with Section 711. Partitions within suites are not required to be smoke-resistant or fire-resistance-rated unless required by another section of this Code.

1014.2.2.4 Suites containing patient sleeping areas. Patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites with one intervening room if one of the following conditions is met:

1. The intervening room within the suite is not used as an exit access for more than eight patient beds.

2. The arrangement of the suite allows for direct and constant visual supervision by nursing personnel.

1014.2.2.4.1 Area. Suites of sleeping rooms shall not exceed 5,000 square feet (465 m^2).

1014.2.2.4.2 Exit access. Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m^2) shall have at least two exit access doors located in accordance with Section 1015.2.

1014.2.2.4.3 Travel distance. The travel distance between any point in a suite of sleeping rooms and an exit access door of that suite shall not exceed 100 feet (30,480 mm). The travel distance between any point in a Group I-2 Occupancy patient sleeping room and an exit access door in that room shall not exceed 50 feet (15,240 mm).

1014.2.2.5 Suites not containing patient sleeping areas. Areas other than patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites that comply with Sections 1014.2.2.5.1 through 1014.2.2.5.4.

1014.2.2.5.1 Area. Suites of rooms, other than patient sleeping rooms, shall not exceed 10,000 square feet (929 m^2).

1014.2.2.5.2 Exit access. Any room or suite of rooms, other than patient sleeping rooms, of more than 2,500 square feet (232 m^2) shall have at least two exit access doors located in accordance with Section 1015.2.

1014.2.2.5.3 One intervening room. For rooms other than patient sleeping rooms, suites of rooms are permitted to have one intervening room if the travel distance within the suite to the exit access door is not greater than 100 feet (30,480 mm).

1014.2.2.5.4 Two intervening rooms. For rooms other than patient sleeping rooms located within a suite, exit access travel from within the suite shall be permitted through two intervening rooms where the travel distance to the exit access door is not greater than 50 feet (15,240 mm).

1018.5 Air movement in corridors. Corridors shall not serve as supply, return, exhaust, relief or ventilation air ducts.

EXCEPTIONS:
1. Use of a corridor as a source of makeup air for exhaust systems in rooms that open directly onto such corridors, including toilet rooms, bathrooms, dressing rooms, smoking lounges and janitor closets, shall be permitted, provided that each such corridor is directly supplied with outdoor air at a rate greater than the rate of makeup air taken from the corridor.
2. Where located within a dwelling unit, the use of corridors for conveying return air shall not be prohibited.
3. Where located within tenant spaces of one thousand square feet (93 m^2) or less in area, utilization of corridors for conveying return air is permitted.
4. Incidental air movement from pressurized rooms within health care facilities, provided that a corridor is not the primary source of supply or return to the room.
5. Where such air is part of an engineered smoke control system.
6. Air supplied to corridors serving residential occupancies shall not be considered as providing ventilation air to the dwelling units subject to the following:
6.1 The air supplied to the corridor is one hundred percent outside air; and
6.2 The units served by the corridor have conforming ventilation air independent of the air supplied to the corridor; and
6.3 For other than high-rise buildings, the supply fan will automatically shut off upon activation of corridor smoke detectors which shall be spaced at no more than thirty feet (9,144 mm) on center along the corridor; or
6.4 For high-rise buildings, corridor smoke detector activation will close required smoke/fire dampers at the supply inlet to the corridor at the floor receiving the alarm.

1018.6 Corridor continuity. Fire-resistance-rated corridors shall be continuous from the point of entry to an exit, and shall not be interrupted by intervening rooms.

EXCEPTIONS:

1. Foyers, lobbies or reception rooms constructed as required for corridors shall not be construed as intervening rooms.

2. In Group R-2 boarding homes and residential treatment facilities licensed by Washington state, seating areas shall be allowed to be open to the corridor provided:

2.1 The seating area is constructed as required for the corridor;

2.2 The floor is separated into at least two compartments complying with Section 407.4;

2.3 Each individual seating area does not exceed 150 square feet, excluding the corridor width;

2.4 The combined total space of seating areas per compartment does not exceed 300 square feet, excluding the corridor width;

2.5 Combustible furnishings located within the seating area shall be in accordance with the International Fire Code Section 805; and

2.6 Emergency means of egress lighting is provided as required by Section 1006 to illuminate the area.

WSR 10-13-181
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed June 23, 2010, 11:28 a.m., effective June 23, 2010, 11:28 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending WAC 388-850-045 on an emergency basis to revise the county funding formula to comply with state budget appropriations.

Citation of Existing Rules Affected by this Order: Amending WAC 388-850-045.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040, 71A.14.030.

Other Authority: Chapter 564, Laws of 2009 PV 61st legislature section 205 (1)(n); chapter 34.05 RCW.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: This emergency rule implements changes made to the county funding formula as a result of changes in the state budget appropriation for county programs. An initial public notice was filed December 22, 2008, as WSR 09-01-132. Stakeholder work has been ongoing. A CR-102 has been filed as WSR 10-08-081 and a hearing was held on May 11, 2010. DDD filed to make this WAC permanent on June 10, 2010. It is anticipated that this WAC will become permanent in July of 2010.

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: June 21, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-015, filed 5/9/05, effective 6/9/05)

WAC 388-850-045 ((~~Funding formula—Developmental disabilities.~~)) What is the formula for distribution of funding to the counties? (1) For the purposes of this section, "county" shall mean the legal subdivision of the state, regardless of any agreement with another county to provide developmental disabilities services jointly.

(2) The allocation of funds to counties shall be based on the following criteria:

(a) ((~~Each county shall receive a base amount of funds. The amount shall be based on the prior biennial allocation, including any funds from budget provisos from the prior biennium, and subject to the availability of state and federal funds;~~

~~(b)~~)) The distribution of ((~~any additional~~)) funds provided by the legislature or other sources shall be based on a distribution formula which best meets the needs of the population to be served ((~~as follows:~~

~~(i) On a basis which~~)).

(b) The distribution formula takes into consideration ((~~minimum grant amounts,~~)) requirements of clients residing in an ICF/MR or clients on one of the division's Title XIX home and community-based waivers, ((~~and the general population of the county; and~~)) eligible birth to three, special education enrollment and the general population of the county as well as the population ((~~eligible for~~)) receiving county-funded developmental disabilities services((~~;~~)).

(((~~(ii) On a basis that takes into consideration the population numbers of minority groups residing within the county;~~

~~(iii) A biennial adjustment shall be made after these factors are considered; and~~

~~(iv) Counties not receiving any portion of additional funds pursuant to this formula shall not have their base allocation reduced due to application of this formula.~~

~~(c) Funding appropriated through legislative proviso, including vendor rate increases, shall be distributed to the population directed by the legislature utilizing a formula as directed by the legislature or using a formula specific to that population or distributed to identified people;~~

~~(d)~~)) (c) The ability of the community to provide funds for the developmental disability program provided in chapter 71A.14 RCW may be considered with any or all of the above.

(3) A county may utilize seven or less percent of the county's allocated funds for county administrative expenses. A county may utilize more than seven percent for county administration with approval of the division director. ((~~A county electing to provide all services directly, in addition to county administration, is exempt from this requirement.~~))

(((~~4) The department may withhold five or less percent of allocated funds for new programs, for statewide priority programs, and for emergency needs.~~))