

WSR 11-14-078
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 30, 2011, 3:16 p.m., effective June 30, 2011, 3:16 p.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The United States Department of Health and Human Services Administration for Children and Families enforces provisions as enacted in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312). The law includes a provision that disregards tax refunds received after December 31, 2009, as income and resources (for a period of twelve months) in programs funded in whole or part with federal funds.

Purpose: These amendments are necessary to comply with the United States Department of Health and Human Services instructions dated January 28, 2011, and the United States Department of Agriculture Food and Nutrition Service memo dated February 1, 2011, requiring states to disregard federal income tax refunds received after December 31, 2009, as income and resources for a period of twelve months when determining eligibility for federal funded programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0015, 388-455-0005, 388-470-0045, 388-470-0055, 388-475-0550, and 388-475-0860.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.57 [74.04.057].

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The department already disregards tax refunds received after December 31, 2009, as income and resources (for a period of twelve months) in programs funded in whole or part with federal funds income. This amendment is already in place via an emergency adoption by WSR 11-07-001 dated March 2, 2011, which expires on June 30, 2011. The department continues the permanent rule-making process. The department has filed a preproposal statement of inquiry as WSR 11-08-071 on April 6, 2011, and plans to file a proposed rule-making notice in early July.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.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 30, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-17-103, filed 8/17/10, effective 8/19/10)

WAC 388-450-0015 What types of income does the department not use to figure out my benefits? This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal income tax refunds and earned income tax credit (EITC) payments for up to twelve months from the date of receipt;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(f) Energy assistance payments;

(g) Educational assistance we do not count under WAC 388-450-0035;

(h) Native American benefits and payments we do not count under WAC 388-450-0040;

(i) Income from employment and training programs we do not count under WAC 388-450-0045;

(j) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

(k) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

(l) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

(m) Payments we are directly told to exclude as income under state or federal law.

(n) **For cash and Basic Food:** Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household;

(o) **For Basic Food only:** The total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of

the assistance unit responsible for paying the child support on their behalf.

(p) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

AMENDATORY SECTION (Amending WSR 10-15-069, filed 7/16/10, effective 8/16/10)

WAC 388-455-0005 How do lump sum payments affect benefits? (1) A lump sum payment is money that someone receives but does not expect to receive on a continuing basis.

(2) For cash assistance and family medical programs, we count a lump sum payment:

(a) As a resource, under WAC 388-455-0010, if it was awarded for wrongful death, personal injury, damage, or loss of property.

(b) As income, under WAC 388-455-0015, if it was received for any other reason, with the exception of subsection (3) and (4) of this section.

(3) For medical programs, receipt of a lump sum by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources is considered an exempt resource in the month of receipt. Any amounts remaining on the first of the next month will be counted if they remain in the form of a countable resource. Any amounts remaining the first of the month after conversion will remain exempt if they are in the form of an exempt resource.

(4) For cash and family medical programs, tax refunds and earned income tax lump sums are excluded as income and excluded as a resource for twelve months from the date of receipt.

(5) For Basic Food, we count lump sum payments for a previous period as a resource under WAC 388-470-0055. We count any amount for current or future months as income to your assistance unit.

AMENDATORY SECTION (Amending WSR 10-15-069, filed 7/16/10, effective 8/16/10)

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs? (1) We count the following resources toward your assistance unit's resource limits for cash assistance and family medical programs to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;
- (iv) Available retirement funds or pension benefits, less any withdrawal penalty;
- (v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(vi) Available trusts or trust accounts;

(vii) Lump sum payments as described in chapter 388-455 WAC; or

(viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

- (i) A household good;
- (ii) Needed for self-employment; or
- (iii) Of "great sentimental value," due to personal attachment or hobby interest.

(i) Resources of a sponsor as described in WAC 388-470-0060.

(j) For cash assistance only, sales contracts.

(2) The following types of liquid resources do not count when we determine your eligibility:

- (a) Bona fide loans, including student loans;
- (b) Basic Food benefits;
- (c) Income tax refunds (~~in the month~~) for twelve months from the date of receipt;
- (d) Earned income tax credit (EITC) in the month received and ~~((the following))~~ for up to twelve months;
- (e) Advance earned income tax credit payments;
- (f) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;
- (g) Individual development accounts (IDAs) established under RCW 74.08A.220;
- (h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;
- (i) Underpayments received under chapter 388-410 WAC;
- (j) Educational benefits that are excluded as income under WAC 388-450-0035;
- (k) The income and resources of an SSI recipient;
- (l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;
- (m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;
- (n) Adoption support payments;
- (o) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect;
- (p) Resources specifically excluded by federal law; and
- (q) For medical benefits, receipts from exercising federally protected rights or extracted exempt resources (fishing,

shell-fishing, timber sales, etc.) during the month of receipt for a member of a federally recognized tribe.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

- (i) Employment;
- (ii) Training for future employment;
- (iii) Illness; or
- (iv) Natural disaster or casualty.

(c) Property that:

- (i) You are making a good faith effort to sell;
- (ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

AMENDATORY SECTION (Amending WSR 08-18-043, filed 8/29/08, effective 10/1/08)

WAC 388-470-0055 How do my resources count toward the resource limit for Basic Food? (1) For Basic Food, if your assistance unit (AU) is not categorically eligible (CE) under WAC 388-414-0001, we count the following resources toward your AU's resource limit to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources. These are resources that are easily changed into cash. Some examples of liquid resources are:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

(iv) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(v) Available trusts or trust accounts; or

(vi) Lump sum payments. A lump sum payment is money owed to you from a past period of time that you get but do not expect to get on a continuing basis.

(b) Nonliquid resources, personal property, and real property not specifically excluded in subsection (2) below.

(c) Vehicles as described in WAC 388-470-0075.

(d) The resources of a sponsor as described in WAC 388-470-0060.

(2) The following resources do not count toward your resource limit:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

- (i) Employment;
- (ii) Training for future employment;
- (iii) Illness; or
- (iv) Natural disaster or casualty.

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis;

(iv) Is essential to the employment or self-employment of a household member. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing; or

(v) Is essential for the maintenance or use of an income-producing vehicle; or

(vi) Has an equity value equal to or less than half of the resource limit as described in WAC 388-470-0005.

(d) Household goods

(e) Personal effects;

(f) Life insurance policies, including policies with cash surrender value (CSV);

(g) One burial plot per household member;

(h) One funeral agreement per household member, up to fifteen hundred dollars;

(i) Pension plans or retirement funds not specifically counted in subsection (1) above;

(j) Sales contracts, if the contract is producing income consistent with its fair market value;

(k) Government payments issued for the restoration of a home damaged in a disaster;

(l) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs;

(m) Nonliquid resources that have a lien placed against them;

(n) Earned Income Tax Credits (EITC):

(i) For twelve months, if you were a Basic Food recipient when you got the EITC and you remain on Basic Food for all twelve months; or

(ii) The month you get it and the month after, if you were not getting Basic Food when you got the EITC.

(o) Energy assistance payments or allowances;

(p) The resources of a household member who gets SSI, TANF/SFA, or GA benefits;

(q) Retirement funds or accounts that are tax exempt under the Internal Revenue Code;

(r) Education funds or accounts in a tuition program under section 529 or 530 of the Internal Revenue Code; ~~(and)~~

(s) Resources specifically excluded by federal law; and

(t) Federal income tax refunds for twelve months whether or not you were receiving Basic Food assistance at the time you got the refund.

(3) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit. **Exception: Federal tax refunds are not counted for twelve months even when mixed with countable resources.**

(4) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

AMENDATORY SECTION (Amending WSR 10-15-069, filed 7/16/10, effective 8/16/10)

WAC 388-475-0550 SSI-related medical—All other excluded resources. All resources described in this section are excluded resources for SSI-related medical programs. Unless otherwise stated, interest earned on the resource amount is counted as unearned income.

(1) Resources necessary for a client who is blind or disabled to fulfill a department approved self-sufficiency plan.

(2) Retroactive payments from SSI or RSDI, including benefits a client receives under the interim assistance reimbursement agreement with the Social Security Administration, are excluded for nine months following the month of receipt. This exclusion applies to:

(a) Payments received by the client, spouse, or any other person financially responsible for the client;

(b) SSI payments for benefits due for the month(s) before the month of continuing payment;

(c) RSDI payments for benefits due for a month that is two or more months before the month of continuing payment; and

(d) Proceeds from these payments as long as they are held as cash, or in a checking or savings account. The funds may be commingled with other funds, but must remain identifiable from the other funds for this exclusion to apply. This exclusion does not apply once the payments have been converted to any other type of resource.

(3) All resources specifically excluded by federal law, such as those described in subsections (4) through (12) as long as such funds are identifiable.

(4) Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(5) Payments made to Native Americans as listed in 20 CFR 416.1182, Appendix to subpart K, section IV, paragraphs (b) and (c), and in 20 CFR 416.1236.

(6) The following Native American/Alaska Native funds are excluded resources:

(a) Resources received from a native corporation under the Alaska Native Claims Settlement Act, including:

(i) Shares of stock held in a regional or village corporation;

(ii) Cash or dividends on stock received from the native corporation up to two thousand dollars per person per year;

(iii) Stock issued by a native corporation as a dividend or distribution on stock;

(iv) A partnership interest;

(v) Land or an interest in land; and

(vi) An interest in a settlement trust.

(b) All funds contained in a restricted individual Indian money (IIM) account.

(7) Exercise of federally protected rights, including extraction of exempt resources by a member of a federally recognized tribe during the month of receipt. Any funds from the conversion of the exempt resource which are retained on the first of the month after the month of receipt will be considered exempt if they are in the form of an exempt resource, and will be countable if retained in the form of a countable resource.

(8) Restitution payment and any interest earned from this payment to persons of Japanese or Aleut ancestry who were relocated and interned during war time under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act.

(9) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims.

(10) Payments or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(11) Payments or interest accrued on payments received under the Energy Employees Occupational Illness Compensation Act of 2000 (EEOICA) received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(12) Payments from:

(a) The Dutch government under the Netherlands' Act on Benefits for Victims of Persecution (WUV).

(b) The Victims of Nazi Persecution Act of 1994 to survivors of the Holocaust.

(c) Susan Walker vs. Bayer Corporation, et al., 96-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds.

(d) Ricky Ray Hemophilia Relief Fund Act of 1998 P.L. 105-369.

(13) The unspent social insurance payments received due to wage credits granted under sections 500 through 506 of the Austrian General Social Insurance Act.

(14) Tax refunds and earned income tax credit refunds and payments are excluded as resources for ~~((nine))~~ twelve months after the month of receipt.

(15) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

(16) Cash or in-kind items received as a settlement for the purpose of repairing or replacing a specific excluded resource are excluded:

(a) For nine months. This includes relocation assistance provided by state or local government.

(b) Up to a maximum of thirty months, when:

(i) The client intends to repair or replace the excluded resource; and

(ii) Circumstances beyond the control of the settlement recipient prevented the repair or replacement of the excluded resource within the first or second nine months of receipt of the settlement.

(c) For an indefinite period, if the settlement is from federal relocation assistance.

(d) Permanently, if the settlement is assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States, or is comparable assistance received from a state or local government or from a disaster assistance organization. Interest earned on this assistance is also excluded from resources. Any cash or in-kind items received as a settlement and excluded under this subsection are considered as available resources when not used within the allowable time periods.

(17) Insurance proceeds or other assets recovered by a Holocaust survivor as defined in WAC 388-470-0026(4).

(18) Pension funds owned by an ineligible spouse. Pension funds are defined as funds held in a(n):

(a) Individual retirement account (IRA) as described by the IRS code; or

(b) Work-related pension plan (including plans for self-employed individuals, known as Keogh plans).

(19) Cash payments received from a medical or social service agency to pay for medical or social services are excluded for one calendar month following the month of receipt.

(20) SSA- or DVR-approved plans for achieving self-support (PASS) accounts, allowing blind or disabled individuals to set aside resources necessary for the achievement of the plan's goals, are excluded.

(21) Food and nutrition programs with federal involvement. This includes Washington Basic Food, school reduced and free meals and milk programs and WIC.

(22) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that code, as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

(23) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children.

(24) The following are among assets that are not considered resources and as such are neither excluded nor counted:

(a) Home energy assistance/support and maintenance assistance;

(b) Retroactive in-home supportive services payments to ineligible spouses and parents; and

(c) Gifts of domestic travel tickets. For a more complete list please see POMS @ <http://policy.ssa.gov/poms.nsf/lnx/0501130050>.

AMENDATORY SECTION (Amending WSR 06-04-046, filed 1/26/06, effective 2/26/06)

WAC 388-475-0860 SSI-related medical—Income exclusions under federal statute or other state laws. The Social Security Act and other federal statutes or state laws list income that the department excludes when determining eligibility for SSI-related medical programs. These exclusions include, but are not limited to:

(1) Income tax refunds;

(2) Federal earned income tax credit (EITC) payments for ~~((nine))~~ twelve months after the month of receipt;

(3) Compensation provided to volunteers in the Corporation for National and Community Service (CNCS), formerly known as ACTION programs established by the Domestic Volunteer Service Act of 1973. P.L. 93-113;

(4) Assistance to a person (other than wages or salaries) under the Older Americans Act of 1965, as amended by section 102 (h)(1) of Pub. L. 95-478 (92 Stat. 1515, 42 U.S.C. 3020a);

(5) Federal, state and local government payments including assistance provided in cash or in-kind under any government program that provides medical or social services;

(6) Certain cash or in-kind payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(7) Value of food provided through a federal or nonprofit food program such as WIC, donated food program, school lunch program;

(8) Assistance based on need, including:

(a) Any federal SSI income or state supplement payment (SSP) based on financial need;

(b) Food stamps;

(c) GA-U;

(d) CEAP;

- (e) TANF; and
- (f) Bureau of Indian Affairs (BIA) general assistance.
- (9) Housing assistance from a federal program such as HUD if paid under:
 - (a) United States Housing Act of 1937 (section 1437 et seq. of 42 U.S.C.);
 - (b) National Housing Act (section 1701 et seq. of 12 U.S.C.);
 - (c) Section 101 of the Housing and Urban Development Act of 1965 (section 1701s of 12 U.S.C., section 1451 of 42 U.S.C.);
 - (d) Title V of the Housing Act of 1949 (section 1471 et seq. of 42 U.S.C.); or
 - (e) Section 202(h) of the Housing Act of 1959;
 - (f) Weatherization provided to low-income homeowners by programs that consider income in the eligibility determinations;
- (10) Energy assistance payments including:
 - (a) Those to prevent fuel cutoffs, and
 - (b) To promote energy efficiency.
- (11) Income from employment and training programs as specified in WAC 388-450-0045.
- (12) Foster grandparents program;
- (13) Title IV-E and state foster care maintenance payments if the foster child is not included in the assistance unit;
- (14) The value of any childcare provided or arranged (or any payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act, as amended by section 8(b) of P.L. 102-586 (106 Stat. 5035).
- (15) Educational assistance as specified in WAC 388-450-0035.
- (16) Up to two thousand dollars per year derived from an individual's interest in Indian trust or restricted land.
- (17) Native American benefits and payments as specified in WAC 388-450-0040 and other Native American payments excluded by federal statute. For a complete list of these payments, see 20 CFR 416, Subpart K, Appendix, IV.
- (18) Payments from *Susan Walker v. Bayer Corporation*, et al., 96-c-5024 (N.D. Ill) (May 8, 1997) settlement funds;
- (19) Payments from Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369;
- (20) Disaster assistance paid under Federal Disaster Relief P.L. 100-387 and Emergency Assistance Act, P.L. 93-288 amended by P.L. 100-707 and for farmers P.L. 100-387;
- (21) Payments to certain survivors of the Holocaust as victims of Nazi persecution; payments excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, P.L. 103-286 (108 Stat. 1450);
- (22) Payments made under section 500 through 506 of the Austrian General Social Insurance Act;
- (23) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);
- (24) Restitution payments and interest earned to Japanese Americans or their survivors, and Aleuts interned during World War II, established by P.L. 100-383;
- (25) Payments made from the Agent Orange Settlement Funds or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

(26) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;

(27) Any interest or dividend is excluded as income, except for the community spouse of an institutionalized individual.

WSR 11-15-024

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-148—Filed July 8, 2011, 3:58 p.m., effective July 9, 2011, 12:01 a.m.]

Effective Date of Rule: July 9, 2011, 12:01 a.m.

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 232-28-61900M; 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: The closure date for retention of sturgeon was adopted because Washington and Oregon fish managers estimate that the harvest guideline of two thousand fish has been reached. Closing the fishery on July 9 is the soonest action can be taken and still allow the agencies to provide at least twenty-four-hour notice to anglers. 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.

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Date Adopted: July 8, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from John Day Dam upstream to McNary Dam.

(2) Effective immediately until August 31, 2011, it is unlawful to fish for or possess sturgeon in those waters of the Columbia River upstream from a line crossing the Columbia from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to a boundary marker on the Washington shore.

(3) Effective immediately, until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to the Wauna powerlines, and all adjacent Washington tributaries, except a person may retain white sturgeon through July 31, 2011. Minimum size when open to retain white sturgeon in this area is 41 inches fork length through July 31, 2011.

(4) Effective July 9, 2011, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900M Exceptions to statewide rules—Columbia River sturgeon. (11-135)

**WSR 11-15-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-149—Filed July 8, 2011, 3:58 p.m., effective July 11, 2011, 6:00 a.m.]

Effective Date of Rule: July 11, 2011, 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 220-32-05100B; 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 fifth weekly gillnet fishing period for the 2011 summer season. Continues to allow the sale of platform and hook and line caught fish from mainstem tribal fisheries (above and below Bonneville Dam), and fish caught in Yakama Nation tributary fisheries. Summer chinook and steelhead remain available for harvest based on harvest guidelines and management agreements. Sockeye sales will be discontinued after July 10. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 10 and July 7, 2011. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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. A court order sets the current parameters. *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 salmon and steelhead stocks in the Columbia River 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 allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. 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.

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: July 8, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100C 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, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken 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, and Drano Lake, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: 6:00 AM July 11 through 6:00 PM July 15, 2011

b. Gear: Gill nets only. Minimum mesh size is 7.25.

c. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Sockeye sales are not allowed.

d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except the Spring Creek Hatchery sanctuary

2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

e. Season: Immediately until further notice.

f. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

g. Allowable sale: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John

Day pools may be retained for subsistence purposes only. Sockeye caught after 6PM July 10 may not be sold.

h. River mouth sanctuaries (WAC 220-32-058) remain in effect, except the Spring Creek Hatchery sanctuary.

3. Open Area: SMCRA 1E; Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Immediately until further notice.

c. Gear: Hook and line, or as defined by each tribe's MOU or MOA.

d. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sockeye caught after 6PM July 10 may not be sold. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

4. Open Area: Columbia River Tributaries above Bonneville Dam:

a. Season: Immediately until further notice, and 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.

b. Area: Drano Lake, and the Wind, White Salmon, and Klickitat 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.

d. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sockeye caught after 6PM July 10 may not be sold.

24-Hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas. Commercial buyers may only purchase sturgeon in the round.

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.

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 11, 2011:

| | |
|-------------------|--|
| WAC 220-32-05100B | Columbia River salmon seasons above Bonneville Dam. (11-147) |
|-------------------|--|

WSR 11-15-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-151—Filed July 8, 2011, 3:58 p.m., effective July 8, 2011, 3:58 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100U; 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 2011 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 (1) closes SMA 2E to nonspot shrimp harvest and closes SMA 1C to spot shrimp harvest as the quotas will be reached; and (2) reduces the spot shrimp weekly limit in Catch Area 23A-E. 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: July 8, 2011.

Philip Anderson
 Director

NEW SECTION

WAC 220-52-05100V 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) All waters of Shrimp Management Areas (SMA) 1A, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all shrimp species effective immediately, until further notice, except as provided for in this section:

i) All waters of SMA 1B and the Discovery Bay Shrimp District are closed.

ii) Effective 6:00 p.m. July 9, 2011, all waters of SMA 2E are closed to the harvest of all shrimp species other than spot shrimp.

iii) Effective 12:00 p.m. July 14, 2011, all waters of SMA 1C are closed to the harvest of spot shrimp.

(b) The shrimp catch accounting week is Wednesday through Tuesday.

(c) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week except as follows:

i) Effective 12:01 a.m. July 13, 2011, 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 Catch Area 23A-E.

(d) It is unlawful to pull shellfish pots in more than one Catch Area per day.

(e) 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 vertical knot of one mesh, when the mesh is stretched vertically.

(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, effective 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, 21A and 22A within SMA 1B are open, effective immediately, until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|-------------------|--|
| WAC 220-52-05100U | Puget Sound shrimp beam trawl fishery—Season. (11-130) |
|-------------------|--|

WSR 11-15-031

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed July 12, 2011, 11:27 a.m., effective July 12, 2011, 11:27 a.m.]

Effective Date of Rule: Immediately.

Purpose: To reserve Chapter 12 of the Washington State Energy Code, WAC 51-11-1200, to suspend requirements for energy metering.

Citation of Existing Rules Affected by this Order: Suspending WAC 51-11-1200.

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 council finds that the rule causes potential economic hardship on building owners. Further, the rule has unintended and unanticipated consequences on the required installation of standby power for emergency systems. To preserve safety and public health in newly constructed and renovated buildings, the rule must be suspended to assure properly installed standby power for emergency systems, and to allow the council to examine the costs of installing the energy metering systems.

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: July 12, 2011.

Kristyn Clayton
Council Chair

WSR 11-15-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-150—Filed July 12, 2011, 2:43 p.m., effective July 18, 2011]

Effective Date of Rule: July 18, 2011.

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 repairs of an instream weir and fish ladder on Cook Slough require the installation of a cofferdam upstream of the weir and restriction of flows to thirty cubic feet per second through Cook Slough. A fish exclusion device at the downstream end will prevent fish from entering Cook Slough. Closing these areas will ensure public safety. 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: July 12, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Cook (Koch) Slough - side channel of Stillaguamish River. Notwithstanding the provisions of WAC 232-28-619, effective July 18 through October 15, 2011, it is unlawful to fish in the following waters:

(1) All of Cook (Koch) Slough (a side channel of the Stillaguamish River beginning approximately 1/2 mile west of Interstate 5). The closure area begins 350 feet upstream of the diversion dam and continues approximately 3.5 river miles to the downstream confluence with the Stillaguamish River

(2) The North Meander (a side channel that connects the mainstem Stillaguamish with Cook Slough).

(3) The Stillaguamish River from the downstream confluence with Cook Slough to 1,000 feet downstream.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2011:

| | |
|-------------------|---|
| WAC 232-28-61900R | Exceptions to statewide rules—Cook (Koch) Slough - side channel of Stillaguamish River. |
|-------------------|---|

WSR 11-15-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-153—Filed July 13, 2011, 10:23 a.m., effective July 14, 2011]

Effective Date of Rule: July 14, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900T; 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: Sockeye salmon returns above Priest Rapids Dam are predicted to be well in excess of needs for wild fish escapement to the spawning grounds. The population is not listed under the Endangered Species Act (ESA). Opening the sockeye fishery 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: July 13, 2011.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Columbia, Okanogan, Similkameen rivers and Lake Osoyoss. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) In the following waters during the specified time periods, special daily limit of 4 sockeye; minimum size 12 inches in length. All coho and steelhead must be released. Release all sockeye and Chinook with floy (anchor) tag attached.

(a) July 14, 2011 through October 15, 2011, Columbia River from Hwy 395 Bridge at Pasco to Wells Dam. Anti-

snagging and night closure in effect for Rocky Reach Dam to Turtle Rock.

(b) July 16, 2011 through August 31, 2011, Columbia River from Wells Dam to Hwy 173 Bridge in Brewster.

(c) July 14, 2011 through October 15, 2011, Columbia River from Hwy 173 Bridge in Brewster to Hwy 17 Bridge in Bridgeport.

(d) July 14, 2011 through October 15, 2011, Okanogan River from the mouth to Hwy 97 Bridge immediately upstream of the mouth. Anti-snagging and night closure in effect.

(e) July 14, 2011 through September 15, 2011, Okanogan River from Hwy 97 Bridge immediately upstream of the mouth to Hwy 97 Bridge crossing at Oroville. Anti-snagging and night closure in effect.

(f) July 14, 2011 through September 15, 2011, Similkameen River from the mouth to 400 feet downstream of Enloe Dam. Anti-snagging and night closure in effect.

(g) July 14, 2011 through September 15, 2011, Lake Osoyoss from Zosel Dam upstream to 300 yards south of the 49th parallel (US-Canadian border, which is marked with large fluorescent orange signs).

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

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2011:

| | |
|-------------------|--|
| WAC 232-28-61900T | Exceptions to statewide rules—Columbia, Okanogan, Similkameen rivers and Lake Osoyoss. |
|-------------------|--|

WSR 11-15-041
EMERGENCY RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

[Filed July 13, 2011, 11:46 a.m., effective July 13, 2011, 11:46 a.m.]

Effective Date of Rule: Immediately.

Purpose: Chapter 16, Laws of 2011 1st sp. sess. (2ESSB 5742) transferred administration of chapter 47.64 RCW from the marine employees' commission (MEC) to the public employment relations commission (PERC). Section 16 of 2ESSB 5742 requires that the rules of procedure previously adopted by PERC are to be applied to cases processed under chapter 47.64 RCW, except that the MEC commissioners appointed under that section shall act in place of the PERC commissioners in the event an unfair labor practice, unit clarification, or representation case is appealed. Section 8 of the bill also requires the "ferry captains" to be placed in a separate bargaining unit and instructs PERC to conduct an election to determine the exclusive bargaining representative of the ferry captains by August 31, 2011. Title 316 WAC is repealed as it conflicts with Title 391 WAC.

Citation of Existing Rules Affected by this Order: Repealing Title 316 WAC; and amending WAC 391-08-001, 391-08-007, 391-08-520, 391-08-630, 391-08-640, 391-08-650, 391-08-670, 391-25-002, 391-35-002, 391-45-002, 391-55-002, 391-55-200, 391-65-002, and 391-65-110.

Statutory Authority for Adoption: For WAC 391-08-001 and 391-08-007 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 49.39.060, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-08-520 is RCW 28B.52.080, 34.05.240, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 49.39.060, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-08-630 is RCW 28B.52.080, 41.56.090, 41.58.010, 41.58.015, 41.58.050, 41.59.110, 41.76.060, 49.39.060, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-08-640 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 49.39.060, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-08-650 and 391-08-670 is RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 49.39.060, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-25-002 is RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 49.39.060, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-25-034, 391-25-074, 391-25-114, and 391-25-674 is RCW 41.58.050, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-35-002 is RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 49.39.060, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-35-254 and 391-35-344 is RCW 41.58.050, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-45-002, is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120, 49.39.060, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-45-394 is RCW 41.58.050, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-55-002 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.090, 49.39.060, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-55-200 is RCW 41.56.090, 41.58.050, 74.39A.270, sections 16 and 21, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-65-002 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.130, 49.39.060, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-65-074 is RCW 41.58.050, section 16, chapter 16, Laws of 2011 1st sp. sess.; for WAC 391-65-110 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.130, 49.39.060, section 16, chapter 16, Laws of 2011 1st sp. sess.; and for WAC 391-95-002 is RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 49.39.060, section 16, chapter 16, Laws of 2011 1st sp. sess.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Chapter 16, Laws of 2011 1st sp. sess. (2ESSB 5742) transferred administration of chapter 47.64 RCW from the MEC to the PERC, and takes effect July 1, 2011. Because the legislature mandated that PERC rules of procedure are to be the rules of procedure applied to cases under chapter 47.64 RCW, immediate passage of these rules

is necessary to avoid delay in the processing of cases filed under that statute. The immediate repeal of Title 316 WAC is necessary to avoid confusion as to which case processing rules apply.

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 9, Amended 14, Repealed 189.

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: July 12, 2011.

Dario de la Rosa
Appeals Administrator

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-08-001 Application and scope of chapter 391-08 WAC. Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively); and section 232, chapter 354, Laws of 2002 (RCW 41.06.340); section 15, chapter 356, Laws of 2002 (RCW 41.76.060); (~~and~~) section 7, chapter 6, Laws of 2010 (RCW 49.39.060); and section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess., to promulgate comprehensive and uniform rules for practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency, and should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95 WAC, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-083, which is replaced by detailed requirements in WAC 391-08-010;

(d) WAC 10-08-110, which is replaced by detailed requirements in WAC 391-08-120;

(e) WAC 10-08-120, which is replaced by detailed requirements in WAC 391-08-040, 391-08-300 and 391-08-310;

(f) WAC 10-08-140, which is limited by WAC 391-08-040, 391-08-300 and 391-08-310;

(g) WAC 10-08-150, which is limited by WAC 391-08-315;

(h) WAC 10-08-211, which is replaced by WAC 391-08-640 and detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-210, 391-35-250, 391-45-350, 391-45-390, 391-95-270, and 391-95-290;

(i) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270, 391-35-070, 391-35-080, 391-45-070, 391-45-090, 391-45-260, and 391-95-170; and

(j) WAC 10-08-250, 10-08-251, and 10-08-252 which are replaced by detailed requirements in WAC 391-08-520.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

In the event of a conflict between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern.

AMENDATORY SECTION (Amending WSR 90-06-070, filed 3/7/90, effective 4/7/90)

WAC 391-08-007 Definitions. As used in Title 391 WAC:

(1) "Agency" means the public employment relations commission, its officers and agents;

(2) "Commission" means the public employment relations commission;

(3) "Executive director" means the officer of that title appointed by the commission pursuant to RCW 41.58.015(2);

(4) "Labor dispute" means any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(5) "Marine employees' commission" means the marine employees' commission appointed under section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.

(6) "Presiding officer" means an agency official(s), examiner, hearing officer or other person authorized to act on behalf of the agency.

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-08-520 Declaratory orders. Any person may petition the commission for a declaratory order, under RCW 34.05.240, with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission. For purposes of this section, the term person includes natural persons, employee organizations, and employers.

(1) A petition for a declaratory order shall generally adhere to the following form:

(a) At the top of the page shall appear the wording "Before the Public Employment Relations Commission," a caption setting out "In the Matter of the Petition of (name of petitioner to be inserted) for a Declaratory Order," and the title "Petition."

(b) The body of the petition shall set out, in numbered paragraphs:

(i) The name and address of the petitioner and the name and address, if any, of the representative appearing on behalf of the petitioner.

(ii) The name(s) and address(es) of any other party which the petitioner seeks to have bound by any declaratory order issued by the commission, and the name(s) and address(es) of their representatives, if known.

(iii) The rule(s), order(s) or statute(s) from which the controversy arises.

(iv) The facts which the petitioner wishes the commission to consider in issuing a declaratory order.

(v) The issues which the petitioner wishes the commission to address in its order.

(vi) The relief requested by the petitioner.

(vii) The reasons on which the petitioner relies to show that: Uncertainty necessitating resolution exists; there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion; the uncertainty adversely affects the petitioner; and the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

(c) The petition shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on other parties named in the petition as required by WAC 391-08-120 (3) and (4).

(2) Within fifteen days after receipt of a petition for a declaratory order, the executive director or designee shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person he or she deems desirable. The notice shall establish a deadline for necessary parties other than the petitioner to file written consent to the determination of the matter by a declaratory order.

(3) The petition and any responses from parties shall be forwarded to the commission for consideration. The commission shall not issue a declaratory order if:

(a) The matter is or could have been the subject of any other adjudicative proceeding before the commission; or

(b) A necessary party whose rights would be substantially prejudiced does not consent, in writing, to the determination of the matter by a declaratory order.

(4) The commission may consider the petition without argument and shall, within thirty days after receipt of the petition, do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set a reasonable time and place for a hearing to be held within ninety days after receipt of the petition, including submission of evidence by the parties if deemed necessary by the commission, or submission of written argument upon the matter if the material facts are not in dispute. The commission shall give seven days or more advance written notice to the petitioner and other persons who have been given notice of the petition pursuant to subsection (2) of this section of the time, date, and place for the hearing or submission and of the issues it will be considering;

(c) Set a specified time within ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(5) The commission may extend the time limits of subsection (4)(b) and (c) of this section, for good cause.

(6) The commission may, at any time before taking final action on a petition under this section, request submission of additional facts or argument, including setting the case for oral argument.

(7) If the commission proceeds in the manner provided in subsection (4)(b) of this section, it shall within a reasonable time after conclusion of the proceeding:

(a) Issue a declaratory order; or

(b) Notify the petitioner and any other party to the proceeding that no declaratory order will be issued and state the reasons for such action.

(8) A declaratory order entered by the commission or a decision to decline to enter a declaratory order shall be in writing, and shall be served upon all parties identified in subsection (2) of this section. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

(9) A declaratory order has the same status as any other order entered in an adjudicative proceeding conducted by the commission.

(10) In the event a declaratory order is filed involving the application of the provisions of chapter 47.64 RCW, the marine employees' commission shall act in place of the commission.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-08-630 Agency structure—Substitution for executive director. (1) The public employment relations commission and its staff maintain an impartial role in all proceedings pending before the agency.

(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to RCW 41.58.010. Commission members serve on a part-time basis only. All commission members represent the interests of the public. The commission reserves to itself a policy-making and appellate function.

(3) The executive director appointed by the commission pursuant to RCW 41.58.015(2) is the full-time agency head, with authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases.

(4) The commission's professional staff is appointed pursuant to RCW 41.58.015(3). A "multifunctional" staffing pattern is used, whereby individual members of the commission's professional staff are assigned from time to time to conduct any or all of the types of dispute resolution services provided by the agency. Authority is delegated to members of the professional staff to make decisions as "examiner" under chapters 391-45 and 391-95 WAC. The executive director may also delegate authority to members of the professional staff to make decisions in certain situations under chapters 391-25 and 391-35 WAC.

(5) In the event the executive director is disqualified from participation in a decision, the most senior (in terms of length of service with this agency) dispute resolution manager authorized to act as the designee of the executive director to make preliminary rulings on unfair labor practice cases under WAC 391-45-110, who has not been directly involved in the particular circumstances shall make decisions and rulings otherwise required of the executive director. Thereafter, this authority passes to the other dispute resolution managers in agency seniority order.

(6) The marine employees' commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to and consistent with section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-08-640 Adjudicative proceedings—Appeals. Actions by the executive director and other agency staff members in adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, 391-45 and 391-95 WAC) are taken under authority delegated by the commission.

(1) The parties shall have the right to appeal to the commission, as follows:

(a) Under chapter 391-25 WAC, a direction of election or direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election or cross-check.

(b) Under chapter 391-25 WAC, an order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission under WAC 391-25-660.

(c) Under chapter 391-35 WAC, an order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-35-210.

(d) Under chapter 391-45 WAC, an order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the

proceedings up to the issuance of the order may be appealed to the commission under WAC 391-45-350.

(e) Under chapter 391-95 WAC, an order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-95-270.

(2) For cases decided under chapter 47.64 RCW, the marine employees' commission shall act in place of the commission.

(3) The commission will only consider amicus (friend of the forum) briefs filed in conformity with this subsection.

(a) The person or organization desiring to file an amicus brief must:

(i) Obtain a copy of the decision on appeal, the notice of appeal, and the briefs of the parties;

(ii) Limit any amicus brief to particular issues on appeal;

(iii) Limit any legal analysis to arguments that differ from those advanced by the parties;

(iv) Exclude restatement or reargument of the facts, except as necessary to legal arguments under (a)(iii) of this subsection;

(v) Limit any amicus brief to twenty-five pages in total length (double-spaced, 12-point type); and

(vi) File the amicus brief with the commission within fourteen days following filing and service of the briefs of the parties, and serve copies of any such brief on each of the original parties in the case.

(b) The commission may extend the deadline for a party wishing to file an amicus brief if the petitioning party demonstrates good cause for such extension.

(c) The original parties to the case may, within fourteen days following the filing and service of an amicus brief, file and serve written responses to the amicus brief.

(d) A person or organization that files an amicus brief does not thereby acquire any right to reply to the responses filed by the original parties to the case.

(e) A person or organization that files an amicus brief does not thereby become a party to the case for purposes of any further proceedings or appeal.

~~((3))~~ (4) The commission may, on its own motion, review any order which is subject to appeal under subsection (1) of this section, by giving written notice to all parties within thirty days following the issuance of the order.

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-08-650 Case docketing and numbering.

The agency maintains a computerized case docketing system which is used to track and manage all requests for the dispute resolution service provided by the agency.

(1) Each case processed by the agency is identified by a unique number consisting of four components.

(a) The first component, consisting of a five-digit number, indicates the sequential number of cases docketed since the agency commenced operations on January 1, 1976.

(b) The second component, consisting of one alphabetic code, indicates the type of dispute being processed, as follows:

"A" indicates a grievance arbitration proceeding under chapter 391-65 WAC, wherein an agency staff member is to interpret or apply an existing collective bargaining agreement.

"C" indicates a unit clarification proceeding under chapter 391-35 WAC.

"D" indicates a declaratory ruling or declaratory order proceeding under the Administrative Procedure Act, and formerly included proceedings under chapter 391-95 WAC concerning assertion of the right of nonassociation by employees subject to union security obligations.

"E" indicates a representation proceeding under chapter 391-25 WAC.

"F" indicates a fact-finding proceeding under chapter 391-55 WAC, to recommend the terms of a collective bargaining agreement.

"G" indicates a grievance mediation proceeding under chapter 391-55 WAC after January 1, 1996, concerning the interpretation or application of an existing collective bargaining agreement.

"I" indicates an interest arbitration proceeding under chapter 391-55 WAC, to establish the terms of a collective bargaining agreement.

"M" indicates a mediation proceeding under chapter 391-55 WAC, limited after January 1, 1996, to disputes concerning the terms of a collective bargaining agreement.

"N" indicates a proceeding under chapter 391-95 WAC after January 1, 1996, concerning assertion of the right of nonassociation by employees subject to union security obligations.

"P" indicates a request for a list of arbitrators from the commission's dispute resolution panel for grievance arbitration proceedings under chapter 391-65 WAC.

"S" indicates a settlement mediation proceeding for cases under chapters 391-45 and 391-95 WAC.

"U" indicates an unfair labor practice proceeding under chapter 391-45 WAC.

(c) The third component, consisting of a two-digit number, indicates the calendar year in which the case is docketed.

(d) The fourth component, consisting of a five-digit number, indicates the sequential number of the case within the type of dispute identified in the second component, since the agency commenced operations on January 1, 1976.

(2) Cases involving various departments or divisions of an employer entity are docketed under the name of the employer entity.

(3) Cases filed by an employee organization or labor organization are docketed under the name of the organization, even if employees represented by that organization are named individually in the pleadings or are affected by the outcome of the proceedings.

(4) Cases filed by two or more individual employees are docketed separately for each employee.

(5) Cases filed by an individual employee involving multiple respondents are docketed separately for each respondent.

AMENDATORY SECTION (Amending WSR 03-11-029, filed 5/15/03, effective 6/15/03)

WAC 391-08-670 Decision numbering—Citation of cases—Indexing of decisions. (1) Each decision issued by the agency in an adjudicative proceeding under the Administrative Procedure Act is assigned a unique number consisting of two or three components, as follows:

(a) The first component, consisting of a number, indicates the sequential number of adjudicative proceedings in which one or more decisions has been issued since the agency commenced operations on January 1, 1976.

(b) The second component (where appropriate) consisting of an alphabetic code in ascending alphabetical order, indicates the second and subsequent decisions issued in the case to which the numerical component was originally assigned.

(c) The third component, consisting of a four-letter alphabetic code, indicates the statute under which the decision was issued:

"CCOL" indicates cases decided under chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges).

"EDUC" indicates cases decided under chapter 41.59 RCW (Educational Employment Relations Act).

"FCBA" indicates cases decided under chapter 41.76 RCW (faculty at public four-year institutions of higher education).

"MRNE" (~~((no longer in use) was formerly used to))~~) indicates cases decided under chapter 47.64 RCW, relating to the Washington state ferries system.

"PECB" indicates cases decided under chapter 41.56 RCW (Public Employees' Collective Bargaining Act), including some cases involving port districts.

"PORT" indicates cases decided exclusively under chapter 53.18 RCW (Employment Relations—Collective Bargaining and Arbitration), relating to port districts.

"PRIV" indicates cases decided under chapter 49.08 RCW, relating to private sector employers and employees.

"PSRA" indicates cases decided under RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act).

(2) All citations of agency decisions in subsequent agency decisions, in publications of agency decisions, and in briefs and written arguments filed by parties with the agency shall conform to the formats specified in this section:

GENERAL RULE: Citations shall list only the name of the employer *italicized*, the word "Decision" followed by the decision number, and the statute and year the decision was issued (in parenthesis).

Examples:

City of Roe, Decision 1234 (PECB, 1992)

City of Roe, Decision 1234-A (PECB, 1993)

City of Roe, Decision 1234-B (PECB, 1994)

EXCEPTION: For decisions in which an employee organization or labor organization was named as the respondent in an unfair labor practice case, the citation shall list the name of

the union (in parenthesis) following the name of the employer.

Example:

City of Roe (Doe Union), Decision 2345 (PECB, 1995)

(3) The agency encourages the publication and indexing of its decisions by private firms, but does not contribute financial support to any such firm and declines to declare any private firm as the "official reporter" of agency decisions.

(4) To satisfy the requirements of RCW 42.17.260(5), the agency publishes its decisions, together with a search engine, on its web site at: "www.perc.wa.gov".

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-25-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

~~((5))~~ (6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

~~((6))~~ (7) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

NEW SECTION

WAC 391-25-034 Special provision—Marine employees. For marine employees:

(1) The "window" period specified in WAC 391-25-030(1) shall be computed as not more than one hundred twenty nor less than ninety days prior to the stated expiration date of the collective bargaining agreement.

(2) The "protected" period specified in WAC 391-25-030 (1)(c) shall be computed as ninety days.

(3) The duration of any collective bargaining agreement negotiated under chapter 47.64 RCW shall not exceed one fiscal biennium.

NEW SECTION

WAC 391-25-074 Special provision—Marine employees. Any labor organization that desires to be on the ballot for the election to determine the exclusive bargaining representative for a newly formed captains-only bargaining unit as provided for in section 8, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess. shall file notice with the agency stating such desire by no later than July 15, 2011.

NEW SECTION

WAC 391-25-114 Special provision—Marine employees. A labor organization that desires to be on the ballot to determine the exclusive bargaining representative for a newly formed captains-only bargaining unit as provided for in section 8, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess. shall not be required to provide a showing of interest as required by WAC 391-25-110.

NEW SECTION

WAC 391-25-674 Special provision—Marine employees. If there are objections under WAC 391-25-590 or an order is appealed under WAC 391-25-660 involving employees covered by chapter 47.64 RCW, the marine employees' commission shall act in place of the commission, and the entire record in the proceedings shall be transmitted to the marine employees' commission members. The marine employees' commission may request the parties to appear before it to make oral arguments as to any or all of the issues in the matter. The marine employees' commission shall determine the objections or appeal and any challenged ballots referred to the marine employees' commission pursuant to WAC 391-25-510, and shall issue appropriate orders.

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-35-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that spe-

cial provision is set forth in a separate rule, numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

~~((5))~~ (6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

~~((6))~~ (7) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

NEW SECTION

WAC 391-35-254 Special provision—Marine employees. If an order is appealed under WAC 391-35-210 involving employees covered by chapter 47.64 RCW, the marine employees' commission shall act in place of the commission, and the entire record in the proceedings shall be transmitted to the marine employees' commission members. The marine employees' commission may request the parties to appear before it to make oral arguments as to any or all of the issues in the matter. The marine employees' commission shall determine the status of each position, classification or group covered by the appeal, and shall issue appropriate orders.

NEW SECTION

WAC 391-35-344 Special provision—Marine employees. The captains of a Washington state ferry vessel, also known as the master of a vessel or the commanding officer, are "supervisors," and shall be placed in a separate bargaining in accordance with section 8, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess. and WAC 391-35-340.

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-45-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

~~((5))~~ (6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

~~((6))~~ (7) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (Private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

NEW SECTION

WAC 391-45-394 Special provision—Marine employees. If an order is appealed under WAC 391-45-350 involving employees covered by chapter 47.64 RCW, the marine employees' commission shall act in place of the commission, and the entire record in the proceedings shall be transmitted to the marine employees' commission members. The marine employees' commission may request the parties to appear before it to make oral arguments as to any or all of the issues in the matter. The marine employees' commission shall determine the status of each position, classification or group covered by the appeal, and shall issue appropriate orders.

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-55-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

Special provisions relating to bargaining units eligible for interest arbitration are set forth beginning with WAC 391-55-200.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter. Special provisions relating to fact finding are set forth beginning with WAC 391-55-300.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

~~((5))~~ (6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

~~((6))~~ (7) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-55-200 Interest arbitration—Certification of issues. (1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(7), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 47.64.300, or 74.39A.270 (2)(c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that his or her further efforts will not result in an agreement, the following procedure shall be implemented:

(a) The mediator shall notify the parties of his or her intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and serve on the other party a written list (including article and section references to parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (2)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration shall be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

WAC 391-65-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set

forth in WAC sections numbered four digits greater than the general rule on that subject matter.

~~((5))~~ (6) Special provisions relating to chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

~~((5))~~ (6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

~~((6))~~ (7) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

NEW SECTION

WAC 391-65-075 Special provision—Marine employees. Grievance arbitration cases filed under chapter 47.64 RCW shall be mediated by agency staff under chapter 391-55 WAC. Absent settlement, the grievance arbitration proceeding may be conducted by the marine employees' commission in a manner consistent with this chapter.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

WAC 391-65-110 Grievance arbitration—Conduct of proceedings. The arbitrator assigned or selected shall conduct the arbitration proceedings in the manner provided in the collective bargaining agreement under which the dispute arises, subject to the following:

(1) Arbitration cases handled by members of the agency staff shall be kept in the public files of the agency.

(2) ~~((The services of a member of the commission staff as arbitrator shall be subject to interruption for reassignment of the staff member to other functions of the agency having a higher priority.~~

~~((3))~~ Except as provided in subsections (1) and (2) of this section, all arbitrators shall maintain compliance with the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" as last amended with approval of the Federal Mediation and Conciliation Service.

~~((4))~~ (3) Rulings, actions, and decisions issued by staff arbitrators under this chapter shall not be subject to appeal to the commission or the marine employees' commission.

NEW SECTION

WAC 391-95-002 Sequence and numbering of rules—Special provisions. This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chap-

ter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective bargaining—Academic personnel in community colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 47.64 RCW (Marine employees—Public employment relations) are set forth in WAC sections numbered four digits greater than the general rule on that subject matter.

(5) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(7) Special provisions relating to chapter 49.39 RCW (Symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

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|----------------|---|
| WAC 316-02-001 | Application and scope of chapter 316-02 WAC. |
| WAC 316-02-003 | Policy—Construction—Waiver. |
| WAC 316-02-005 | Commission policy—Labor relations. |
| WAC 316-02-007 | Definitions. |
| WAC 316-02-010 | Appearance and practice before commission—Who may appear. |
| WAC 316-02-020 | Appearance and practice before commission—Standards of conduct. |
| WAC 316-02-030 | Appearance and practice before commission—Appearance by former employee of commission or former member of attorney general's staff. |
| WAC 316-02-040 | Appearance and practice before commission—Former employee as witness. |

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| WAC 316-02-100 | Service of process—Computation of time. |
| WAC 316-02-103 | Service of process—Additional time after service by mail. |
| WAC 316-02-105 | Service of process—Extension of time. |
| WAC 316-02-110 | Service of process—By whom served. |
| WAC 316-02-120 | Service of process—Upon whom served. |
| WAC 316-02-135 | Service of process—Method and completion of service on parties. |
| WAC 316-02-150 | Service of process—Filing with commission. |
| WAC 316-02-160 | Service of process—Opportunity for hearing. |
| WAC 316-02-170 | Service of process—Notice of hearing. |
| WAC 316-02-180 | Service of process—Continuances. |
| WAC 316-02-200 | Definition of issues—Before hearing. |
| WAC 316-02-210 | Definition of issues—Pre-hearing conference authorized. |
| WAC 316-02-220 | Definition of issues—Record of action taken during pre-hearing conference. |
| WAC 316-02-230 | Summary judgment. |
| WAC 316-02-300 | Subpoenas—Discovery. |
| WAC 316-02-400 | Evidence—Examination of witnesses. |
| WAC 316-02-410 | Evidence—Application of rules of evidence. |
| WAC 316-02-420 | Evidence—Objections and rulings. |
| WAC 316-02-440 | Evidence—Official notice. |
| WAC 316-02-450 | Evidence—Stipulations and admissions of record. |
| WAC 316-02-460 | Evidence—Submission of documentary evidence. |
| WAC 316-02-470 | Evidence—Excerpts from documentary evidence. |
| WAC 316-02-490 | Evidence—Refusal of witness to answer. |

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| WAC 316-02-500 | Declaratory rulings authorized. | WAC 316-25-030 | Petition—Time for filing. |
| WAC 316-02-510 | Declaratory orders—Petition. | WAC 316-25-050 | Petition form—Number of copies—Filing—Service. |
| WAC 316-02-520 | Declaratory orders—Rights and disposition. | WAC 316-25-070 | Petition contents. |
| WAC 316-02-560 | Intervention and consolidation of proceedings. | WAC 316-25-090 | Contents of petition filed by department. |
| WAC 316-02-600 | Adjudicative proceedings (contested cases)—Exceptions. | WAC 316-25-110 | Supporting evidence. |
| WAC 316-02-610 | Adjudicative proceedings—Commencement. | WAC 316-25-130 | List of employees. |
| WAC 316-02-620 | Adjudicative proceedings—Denial of application. | WAC 316-25-140 | Notice to employees. |
| WAC 316-02-630 | Adjudicative proceedings—Commission action upon filing. | WAC 316-25-150 | Amendment and withdrawal. |
| WAC 316-02-640 | Adjudicative proceedings—Ex parte communications. | WAC 316-25-170 | Intervention—By incumbent representative. |
| WAC 316-02-650 | Commission decisions in adjudicative proceedings—Form and content. | WAC 316-25-190 | Intervention—By organization other than incumbent. |
| WAC 316-02-660 | Commission decisions in adjudicative proceedings—Service. | WAC 316-25-210 | Showing of interest confidential. |
| WAC 316-02-700 | Commission structure. | WAC 316-25-220 | Prehearing conferences. |
| WAC 316-02-800 | Commission records—Public access. | WAC 316-25-230 | Election agreements. |
| WAC 316-02-820 | Commission offices. | WAC 316-25-250 | Cross-check agreements. |
| WAC 316-02-900 | Petitions for rule making—Who may petition. | WAC 316-25-270 | Supplemental agreements. |
| WAC 316-02-910 | Petitions for rule making—Form. | WAC 316-25-290 | Notice of hearing. |
| WAC 316-02-920 | Petitions for rule making—Commission must consider. | WAC 316-25-310 | Hearings—Who shall conduct. |
| WAC 316-02-930 | Petitions for rule making—Notice of disposition. | WAC 316-25-330 | Authority of hearing officer. |
| | | WAC 316-25-350 | Hearings—Nature and scope. |
| | | WAC 316-25-370 | Blocking charges—Suspension of proceedings—Request to proceed. |
| | | WAC 316-25-390 | Proceedings before a hearing officer. |
| | | WAC 316-25-410 | Cross-check of records. |
| | | WAC 316-25-430 | Notice of election. |
| | | WAC 316-25-450 | Disclaimers. |
| | | WAC 316-25-470 | Electioneering. |
| | | WAC 316-25-490 | Election procedures—Balloting. |
| | | WAC 316-25-510 | Challenged ballots. |
| | | WAC 316-25-530 | Votes needed to determine election. |
| | | WAC 316-25-550 | Tally sheet. |
| | | WAC 316-25-570 | Procedure following inconclusive election. |
| | | WAC 316-25-590 | Filing and service of objections. |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

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| WAC 316-25-001 | Scope—Contents—Other rules. |
| WAC 316-25-010 | Petition for investigation of a question concerning representation of employees—Who may file. |

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| WAC 316-25-610 | Procedure where no objections are filed. | WAC 316-45-020 | Unfair labor practice complaint—Time limitations. |
| WAC 316-25-630 | Procedure where objections are filed. | WAC 316-45-030 | Complaint—Number of copies—Filing—Service. |
| WAC 316-25-650 | Briefs and written arguments on objections. | WAC 316-45-050 | Contents of complaint charging unfair labor practices. |
| WAC 316-25-670 | Commission action on objections. | WAC 316-45-070 | Amendment. |
| | | WAC 316-45-090 | Withdrawal. |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

| | | | |
|----------------|---|----------------|---|
| WAC 316-35-001 | Scope—Contents—Other rules. | WAC 316-45-110 | Initial processing of complaint. |
| WAC 316-35-010 | Petition for clarification of an existing bargaining unit—Who may file. | WAC 316-45-130 | Examiner—Who may act. |
| WAC 316-35-030 | Petition form—Number of copies—Filing—Service. | WAC 316-45-150 | Authority of examiner. |
| WAC 316-35-050 | Petition contents. | WAC 316-45-170 | Notice of hearing. |
| WAC 316-35-070 | Amendment and withdrawal. | WAC 316-45-190 | Answer—Filing and service. |
| WAC 316-35-090 | Notice of hearing. | WAC 316-45-210 | Answer—Contents and effect of failure to answer. |
| WAC 316-35-110 | Consolidation of proceedings. | WAC 316-45-230 | Amendment of answer. |
| WAC 316-35-130 | Hearings—Who shall conduct. | WAC 316-45-250 | Motion to make complaint more definite and certain. |
| WAC 316-35-150 | Authority of hearing officer. | WAC 316-45-270 | Hearings—Nature and scope. |
| WAC 316-35-160 | Prehearing conferences. | WAC 316-45-290 | Briefs and proposed findings. |
| WAC 316-35-170 | Hearings—Nature and scope. | WAC 316-45-310 | Unfair labor practice—Decision. |
| WAC 316-35-190 | Proceedings before a hearing officer. | WAC 316-45-330 | Withdrawal or modification of examiner decision. |
| WAC 316-35-210 | Proceedings before the commission—Petition for review. | WAC 316-45-350 | Petition for review of examiner decision. |
| WAC 316-35-230 | Filing and service of cross-petition for review. | WAC 316-45-370 | Filing and service of cross-petition for review. |
| WAC 316-35-250 | Commission action. | WAC 316-45-390 | Commission action. |
| | | WAC 316-45-410 | Unfair labor practice remedies. |
| | | WAC 316-45-430 | Motion for temporary relief. |
| | | WAC 316-45-550 | Collective bargaining—Mandatory subjects. |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

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|----------------|---|
| WAC 316-45-001 | Scope—Contents—Other rules. |
| WAC 316-45-003 | Unfair labor practices—Defined. |
| WAC 316-45-010 | Complaint charging unfair labor practices—Who may file. |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

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|----------------|---|
| WAC 316-55-001 | Scope—Contents—Other rules. |
| WAC 316-55-005 | Impasse procedures—Adoption. |
| WAC 316-55-010 | Resolution of impasses—Request for mediation. |

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| WAC 316-55-020 | Mediation request—Information required. | WAC 316-65-535 | Arbitration in the absence of a party. |
| WAC 316-55-030 | Impasse resolution—Appointment of mediator. | WAC 316-65-538 | Withdrawal of grievance. |
| WAC 316-55-050 | Impasse resolution—Mediation—Submission of written proposals. | WAC 316-65-540 | Closing of hearing. |
| WAC 316-55-070 | Impasse resolution—Function of mediator. | WAC 316-65-545 | Grievance arbitration decision. |
| WAC 316-55-090 | Impasse resolution—Confidential nature of function. | WAC 316-65-550 | Petition for review of commissioner decision. |
| WAC 316-55-160 | Salary survey. | WAC 316-65-555 | Commission action. |
| WAC 316-55-170 | Waiver of mediation. | WAC 316-65-560 | Grievance arbitration remedies. |
| WAC 316-55-500 | Binding arbitration. | WAC 316-65-600 | Other law. |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

REPEALER

The following chapter of the Washington Administrative Code is repealed:

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| WAC 316-65-001 | Scope—Contents—Other rules. | WAC 316-75-001 | Scope—Contents—Other rules. |
| WAC 316-65-005 | Grievance defined. | WAC 316-75-010 | Union security—Obligation of exclusive bargaining representative. |
| WAC 316-65-010 | Grievance—Who may file. | WAC 316-75-030 | Union security—Assertion of right of nonassociation. |
| WAC 316-65-020 | Grievances—Arbitration request—Limitations. | WAC 316-75-050 | Union security—Response by exclusive bargaining representative. |
| WAC 316-65-030 | Grievance arbitration—Filing—Service. | WAC 316-75-070 | Union security—Filing of dispute with commission. |
| WAC 316-65-050 | Grievance arbitration—Contents of request. | WAC 316-75-090 | Union security—Petition form—Number of copies—Filing—Service. |
| WAC 316-65-060 | Amendment of grievance. | WAC 316-75-110 | Union security—Contents of petition. |
| WAC 316-65-070 | Grievance arbitration—Designation of arbitrator. | WAC 316-75-130 | Union security—Escrow of disputed funds by department. |
| WAC 316-65-080 | Grievance arbitration—Notice of hearing. | WAC 316-75-150 | Union security—Investigation—Settlement. |
| WAC 316-65-150 | Grievance arbitration—Expenses. | WAC 316-75-170 | Union security—Notice of hearing. |
| WAC 316-65-510 | Intervention and consolidation of grievances. | WAC 316-75-190 | Union security—Hearings—Who shall conduct. |
| WAC 316-65-515 | Conduct of grievance arbitration proceedings. | WAC 316-75-210 | Authority of hearing officer. |
| WAC 316-65-525 | Grievance hearing waiver. | WAC 316-75-230 | Hearings—Nature and scope. |
| WAC 316-65-530 | Order of proceedings and evidence. | WAC 316-75-250 | Proceedings before the hearing officer. |

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| WAC 316-75-270 | Proceedings before the commission—Petition for review. |
| WAC 316-75-310 | Implementation. |

REPEALER

The following chapter of the Washington Administrative Code is repealed:

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|----------------|---|
| WAC 316-85-001 | Scope—Contents—Other rules. |
| WAC 316-85-010 | Policy—Purpose. |
| WAC 316-85-020 | Salary survey—Content—Coverage. |
| WAC 316-85-030 | Salary survey—Geographic limits. |
| WAC 316-85-040 | Salary survey—Timing. |
| WAC 316-85-050 | Washington state ferry system employee data required. |
| WAC 316-85-060 | Salary survey—Conduct. |
| WAC 316-85-070 | Preliminary salary survey findings—Public review. |
| WAC 316-85-080 | Salary survey—Final report. |
| WAC 316-85-090 | Additional salary survey findings. |
| WAC 316-85-100 | Salary survey report—Public documents. |

WSR 11-15-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-152—Filed July 13, 2011, 3:27 p.m., effective July 22, 2011]

Effective Date of Rule: July 22, 2011.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-052.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Other Authority: SHB 1148 (2011).

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 1148 (2011) establishes a coastal spot shrimp license limitation program. These rules are needed to implement the program and are currently being adopted by the department. These rules 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 1, 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: July 13, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-05200A Ocean spot shrimp pot fishery—Coastal waters. Notwithstanding the provisions of Chapter 220-88B, effective July 22, 2011, until further notice, it is unlawful to fish for, possess, or deliver ocean spot shrimp (*Pandalus platyceros*) taken for commercial purposes from state waters west of the Bonilla-Tatoosh line, or from offshore waters, except as provided for in this section:

License and area

(1) It is unlawful to fish for, possess, or deliver spot shrimp taken for commercial purposes from state waters west of the Bonilla-Tatoosh line, or from offshore waters, unless the fisher has a valid Washington-coastal spot shrimp pot fishery license. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

(2) It is unlawful to fish for or possess spot shrimp or to set spot shrimp gear in waters of the Pacific Ocean adjacent to the state of Oregon without the licenses or permits required to commercially fish for spot shrimp within the state waters of Oregon. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Season

(3) It is unlawful to fish for, take, or possess spot shrimp on board a commercial fishing vessel, except from March 15 through September 15 of each year. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(4) The total allowable catch of spot shrimp taken from waters west of the Bonilla-Tatoosh line and from offshore waters during a calendar year is 200,000 pounds round weight. Of this 200,000 pounds round weight, no more than 100,000 pounds can be taken south of 47 degrees 04.00' N. latitude, and no more than 100,000 pounds can be taken north of 47 degrees 04.00' N. latitude.

Gear

(5) It is unlawful to fish with spot shrimp pot gear for commercial purposes if the pots exceed a maximum 153-inch

bottom perimeter and a maximum 24-inch height. It is unlawful to possess spot shrimp taken with spot shrimp pot gear that exceeds a maximum 153-inch bottom perimeter and a maximum 24-inch height.

(a) Shrimp pot gear must be constructed with net webbing or rigid mesh. At least 50 percent of the net webbing or mesh covering the sides of the pot must easily allow passage of a seven-eighths inch diameter dowel.

(b) Pot gear is required to have an escape mechanism as provided for in WAC 220-52-035.

(c) Set line end marker buoys must be floating and visible on the surface of the water, equipped with a pole, flag, radar reflector, and operating light, and marked with the clear identification of the license holder and the vessel designated on the coastal spot shrimp pot license.

(6) It is unlawful to fish for spot shrimp for commercial purposes with more than a maximum of 500 pots. It is unlawful to possess spot shrimp taken for commercial purposes with more than a maximum of 500 pots.

(7) A violation of subsection (5) or (6) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

Incidental catch

(8) It is unlawful for persons fishing in any coastal spot shrimp fishery to deliver spot shrimp while having on board the fishing vessel any bottomfish taken in the coastal bottomfish fishery under WAC 220-44-050.

(9) It is unlawful to retain any species of finfish or shellfish taken with spot shrimp pot gear, except octopus, squid, or up to 50 pounds round weight of other shrimp species taken incidentally with spot shrimp pot gear.

(10) A violation of subsection (8) or (9) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Harvest logs

(11) It is unlawful for any spot shrimp pot fishery license holder or vessel operator engaged in fishing for spot shrimp in the coastal commercial spot shrimp fishery to fail to complete a department-issued harvest log for all fishing activity in state or offshore waters.

(12) It is unlawful for any vessel operator engaged in fishing for spot shrimp for commercial purposes to fail to comply with the following method and time frame related to harvest-log submittal and recordkeeping:

(a) Completed harvest logs must be submitted so that the department receives them within ten days following any calendar month in which fishing occurred. Washington-coastal spot shrimp pot license holders can submit the completed harvest logs to a WDFW employee upon request, or mail the completed harvest logs to Washington Department of Fish and Wildlife, Attention: Coastal Spot Shrimp Manager, 48 Devonshire Rd., Montesano, WA 98563.

(b) Washington-coastal spot shrimp pot license holders or vessel operators engaged in fishing for spot shrimp in the coastal commercial fishery must complete a harvest log entry for each day fished, prior to offloading the spot shrimp. Washington-coastal spot shrimp pot license holders must maintain a copy of all submitted harvest log entries for no less than three years after the fishing activity ended.

(c) Washington-coastal spot shrimp pot license holders or vessel operators can obtain a harvest logbook by contacting the department's coastal spot shrimp manager at 360-249-4628.

(13) A violation of subsection (11) or (12) of this section is a misdemeanor, punishable under RCW 77.15.280, Reporting of fish or wildlife harvest—Rules violation—Penalty.

Permit

(14) It is unlawful to fish for, retain, land, or deliver spot shrimp taken with pot gear for commercial purposes without a valid coastal spot shrimp pot fishery permit.

(15) It is unlawful to take, retain, land, or deliver any spot shrimp taken with pot gear without complying with all provisions of a coastal spot shrimp pot fishery permit.

(16) A violation of subsection (14) or (15) of this section is punishable under RCW 77.15.750, unlawful use of a department permit—Penalty.

WSR 11-15-043

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 11-154—Filed July 14, 2011, 1:56 p.m., effective July 18, 2011, 6:00 a.m.]

Effective Date of Rule: July 18, 2011.

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 220-32-05100C; 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 sixth weekly gillnet fishing period for the 2011 summer season. Continues to allow the sale of platform and hook-and-line caught fish from mainstem tribal fisheries (above and below Bonneville Dam), and fish caught in Yakama Nation tributary fisheries. Summer chinook and steelhead remain available for harvest based on harvest guidelines and management agreements. Sockeye sales are prohibited. Fisheries are consistent with the 2008-2017 management agreement and the associated biological

opinion. Rule is consistent with action of the Columbia River compact on May 10 and July 13, 2011. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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. A court order sets the current parameters. *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 salmon and steelhead stocks in the Columbia River 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 allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. 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.

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: July 14, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100D 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 fur-

ther notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken 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, and Drano Lake, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: 6:00 AM July 18 through 6:00 PM July 21, 2011

b. Gear: Gill nets only. Minimum mesh size is 7.25 inches (stretched).

c. Allowable Sales: Chinook, coho, steelhead, shad, yellow perch, bass, carp and catfish. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only. Sockeye sales are not allowed but may be retained for subsistence purposes.

d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except for the Spring Creek Hatchery sanctuary.

2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: Immediately until further notice.

b. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

c. Allowable sale: Chinook, coho, steelhead, shad, yellow perch, bass, carp and catfish. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only. Sockeye sales are not allowed but may be retained for subsistence purposes.

d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except for the Spring Creek Hatchery sanctuary.

3. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Immediately until further notice.

c. Gear: Hook and line, or as defined by each tribe's MOU or MOA.

d. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sockeye sales are not allowed but may be retained for subsistence purposes. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale

of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

4. Open Area: Columbia River Tributaries above Bonneville Dam:

a. Season: Immediately until further notice, and 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.

b. Area: Drano Lake, and the Wind, White Salmon, and Klickitat 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.

d. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sockeye may not be sold but may be retained for subsistence purposes.

5. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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.

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 18, 2011.

WAC 220-32-05100C Columbia River salmon seasons above Bonneville Dam. (11-149)

**WSR 11-15-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-156—Filed July 14, 2011, 3:29 p.m., effective July 14, 2011, 3:29 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000C and 220-24-04000D; 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 there is a sufficient harvestable quota of salmon that remains to be caught for the troll fleet. Reducing the landing limit on chinook should allow the fishery to harvest more of the coho quota. 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: July 14, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-24-04000D 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:

July 15 through July 19, 2011.

July 22 through July 26, 2011.

July 29 through August 2, 2011.

August 5 through August 9, 2011.

August 12 through August 16, 2011.

August 19 through August 23, 2011.

August 26 through August 30, 2011.

September 2 through September 6, 2011.

September 9 through September 13, 2011.

(2) Landing and possession limit of 30 Chinook and 50 coho per boat per each entire open period for the entire catch areas 1, 2, 3 and 4 through September 13.

(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. Minimum size for coho salmon is 16 inches in length. No minimum size for pink, sockeye, or chum salmon, except no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild 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 fish-

ing 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) The Columbia Control Zone is defined as the 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) The Mandatory Yelloweye Rockfish Conservation Area is defined as 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:

WAC 220-24-04000C All-citizen commercial salmon troll. (11-146)

The following section of the Washington Administrative Code is repealed effective September 15, 2011:

WAC 220-24-04000D All-citizen commercial salmon troll.

WSR 11-15-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-155—Filed July 15, 2011, 11:12 a.m., effective July 18, 2011]

Effective Date of Rule: July 18, 2011.

Purpose: Amend commercial fishing rules.

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

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: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. 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: July 15, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-52-07100L Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective July 18, 2011, until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 3 on Monday and Tuesday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 5 seven days per week.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 18, 2011:

WAC 220-52-07100K Sea cucumbers. (11-128)

WSR 11-15-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-157—Filed July 15, 2011, 11:12 a.m., effective July 15, 2011,
11:12 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend person use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900V; 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 Yakama Nation and Washington department of fish and wildlife are continuing the pilot study for reintroduction of anadromous sockeye salmon in the upper Cle Elum Basin that began in 2009. This year approximately three thousand adult sockeye salmon trapped at Priest Rapids Dam on the Columbia River have been released into Cle Elum Lake. An additional five hundred sockeye have been transported to Cooper Lake near Salmon La Sac. Very few, if any, anadromous sockeye will be smaller than sixteen inches, and few landlocked kokanee are greater than twelve inches; therefore, a 14-inch size threshold will allow the kokanee fisheries in both lakes to proceed this summer without inadvertently harvesting valuable sockeye dedicated to the reintroduction effort. 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: July 15, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900V Exceptions to statewide rules—Cooper Lake and Cle Elum Lake (Reservoir). Notwithstanding the provisions of WAC 232-28-619, effective immediately through October 31, 2011, in waters of Cle Elum and Cooper Lakes, the maximum size for kokanee is 14 inches in length.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2011:

WAC 232-28-61900V Exceptions to statewide rules—Cooper Lake and Cle Elum Lake (Reservoir).

WSR 11-15-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-158—Filed July 15, 2011, 4:09 p.m., effective July 18, 2011]

Effective Date of Rule: July 18, 2011.

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 232-28-61900J and 232-28-61900W; 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: The summer chinook allocation for the sport fishery downstream of Bonneville Dam has been achieved and closing the fishery to retention of adult chinook will ensure that upriver fisheries are not constrained. Closing fisheries below the mouth of the Snake River for sockeye retention are necessary because the non-Indian limit for sockeye has been 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 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: July 15, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900W Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619:

a) The Columbia River from the Megler-Astoria Bridge upstream to Bonneville Dam: Effective July 18 through July 31, 2011, is closed to retention of adult Chinook and sockeye. Daily salmonid limit is 6 fish (hatchery steelhead or hatchery jack Chinook), of which no more than 2 may be steelhead. Salmon minimum size is 12 inches.

b) The Columbia River from Bonneville Dam upstream to the Highway 395 Bridge in Pasco: Effective July 18 through July 31, is closed to the retention of sockeye. Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adult Chinook or hatchery steelhead or one of each. Salmon minimum size is 12 inches.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 18, 2011:

WAC 232-28-61900J Exceptions to statewide rules—Columbia River. (11-117)

The following section of the Washington Administrative Code is repealed effective August 1, 2011:

WAC 232-28-61900W Exceptions to statewide rules—Columbia River

**WSR 11-15-078
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-159—Filed July 19, 2011, 3:48 p.m., effective July 23, 2011]

Effective Date of Rule: July 23, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
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 return of Baker Lake sockeye is expected to meet hatchery and natural escapement goals; and surplus sockeye salmon are available for harvest. 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: July 19, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900X Exceptions to statewide rules—Baker Lake (Whatcom Co.) Notwithstanding the provisions of WAC 232-28-619, effective July 23, 2011, until further notice, in waters upstream of the log boom barrier in front of upper Baker Dam, upstream to the mouth of the Baker River, a person may fish for and possess sockeye salmon. Daily limit three adult sockeye salmon; minimum size 18 inches in length.

WSR 11-15-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-161—Filed July 19, 2011, 3:48 p.m., effective July 23, 2011]

Effective Date of Rule: July 23, 2011.

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: Chinook brood stock collection at the Wallace River Hatchery is well behind the goal of 3,200 fish. As of July 18, 2011, only 597 chinook brood stock have been trapped at the hatchery. The closure of the selective chinook sport fishery on the Skykomish River is necessary in order to fulfill brood stock collection requirements. 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: July 19, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900A Exceptions to statewide rules—Skykomish River. Notwithstanding the provisions of WAC 232-28-619, effective July 23 through July 31, 2011, it is unlawful to retain Chinook salmon in those waters of the Skykomish River from the mouth upstream to the Wallace River.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2011:

WAC 232-28-61900A Exceptions to statewide rules—Skykomish River.

WSR 11-15-083
EMERGENCY RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-13—Filed July 20, 2011, 8:24 a.m., effective July 21, 2011]

Effective Date of Rule: July 21, 2011.

Purpose: Chapter 31, Laws of 2011 (HB 1694) amended RCW 48.15.040 and 48.15.090. The commissioner no longer requires an affidavit of due diligence to be filed by surplus line brokers, and instead receives a certification. Unauthorized insurers must meet the minimum financial requirements before business can be placed with the insurer. These emergency rules will amend the existing rules to conform to these statutory changes. The permanent rule is scheduled for completion by: October 31, 2011.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-15-090; and amending WAC 284-15-020, 284-15-030, and 284-15-050.

Statutory Authority for Adoption: RCW 48.02.060 and 48.15.015.

Other Authority: Chapter 31, Laws of 2011.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The Nonadmitted and Reinsurance Reform Act (NRRRA) was enacted by congress as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. The NRRRA included sections on Surplus Lines insurance which preempt state laws. These provisions become effective July 21, 2011. Chapter 31, 2011 (HB 1694) was enacted to conform state law to the NRRRA and made certain provisions effective on July 21, 2011, to coincide with the effective date of the NRRRA.

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

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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 3, Repealed 1.

Date Adopted: July 20, 2011.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2008-04, filed 7/2/08, effective 8/2/08)

WAC 284-15-020 Surplus line broker—Solvent insurer required. (1) A surplus line broker must not knowingly place surplus line insurance with financially unsound insurers. Foreign ((and alien)) insurers must meet or exceed the minimum financial and other conditions required by RCW 48.15.090 ((and WAC 284-15-090)).

(2) A surplus line broker must substantiate the financial condition of ((an)) a foreign unauthorized insurer before placing insurance with the insurer. The broker must also maintain evidence of the financial condition of the insurer for at least five years.

((a)-(f)) (3) A surplus line broker may place((s)) insurance with an alien unauthorized insurer shown on the National Association of Insurance Commissioners (NAIC) Quarterly Listing of Alien Insurers ((dated within three months after placement of the risk, it will be deemed that the insurer meets the financial requirements of RCW 48.15.090 and WAC 284-15-090 and that the financial condition of the insurer is)). The financial condition of an insurer named on the listing is deemed to be adequately documented.

((b)) If a surplus line broker places insurance with an alien unauthorized insurer that is not shown on the NAIC Quarterly Listing of Alien Insurers, the broker must maintain information for at least five years adequate to show that the requirements of subsection (1) of this section have been met or exceeded. This documentation shall include at least the following:

- (i) A copy of the unauthorized insurer's most recent available annual financial statement, in English with United States dollar equivalents;
(ii) Any other information obtained by the broker that verifies the financial condition of the alien unauthorized insurer; and
(iii) The current NAIC annual statement or its equivalent on file for any alien unauthorized insurer used.)

AMENDATORY SECTION (Amending Matter No. R 2006-04, filed 6/6/06, effective 7/7/06)

WAC 284-15-030 Surplus line brokers' form to be filed—Contract ((stamp)) statement to be used. (1) ((RCW 48.15.040 requires that a surplus line broker execute an affidavit at the time of procuring insurance from an unauthorized insurer, and to file such affidavit with the commissioner within thirty days after the insurance is procured.)) For the purpose of complying with the requirements of section 5, chapter 31 (HB 1694), Laws of 2011, and RCW 48.15.040, the date insurance is procured is the date coverage is bound or the date coverage is effective, whichever is later. The ((form for filing such affidavit shall)) certification required by RCW 48.15.040 must be in substantially the following form, and

may include additional information to satisfy requirements of the Surplus Line Association of Washington:

Policy or Certificate No: Premium, including any policy fee:

- 1. Name and license number of filing Surplus Line Broker:
2. Name and address of ((producing agent or broker)) referring insurance producer (if any):
3. Name(s) of unauthorized insurer(s):
4. Name and address of insured:
5. Binding or effective date, whichever is later:
6. Brief statement of coverages (common trade terms may be used, e.g. "furrrier's block"):

((STATE OF WASHINGTON) SURPLUS LINE
COUNTY) SS. BROKER'S AFFIDAVIT))

7. Certification:

I have procured insurance from an unauthorized insurer or insurers, in accordance with the laws and regulations of the state of Washington under my surplus line broker's license. Details of such transaction are set forth above.

((Such)) The insurance could not be procured, after diligent effort was made to do so from among a majority of the insurers authorized to transact that kind of insurance in this state, and placing the insurance in such unauthorized insurer(s) was not done for the purpose of securing a lower premium rate than would be accepted by any authorized insurer.

I certify that I am duly authorized to place this coverage on behalf of the insured, that the risk has been duly accepted by the insurer(s), and that ((I ascertained)) the financial condition of the unauthorized insurer(s) before placing the insurance therewith meets or exceeds the financial requirements provided by law.

I certify that under the penalty of the suspension or revocation of my surplus line broker's license that the facts contained in this certification are true and correct.

(Signature of Surplus Line Broker)

((Subscribed and sworn to before me this day of, 20

Notary Public in and for the State of Washington, residing at) (Date)

(2) Every insurance contract, including those evidenced by a binder, procured and delivered on or after January 1, 2012, as a surplus line coverage ((pursuant to)) under chapter 48.15 RCW ((shall)) must have a conspicuous statement ((stamped)) upon its face, which ((shall)) must be initialed by or bear the name of the surplus line broker who procured it, as follows:

"This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, enacted in 1947. It is not ~~((issued by a company regulated by the Washington state insurance commissioner and is not))~~ protected by any Washington state guaranty ~~((fund))~~ association law."

(3) Every insurance contract, including those evidenced by a binder, procured and delivered on or before December 31, 2011, as a surplus line coverage under chapter 48.15 RCW must have a conspicuous statement upon its face, which must be initialed by or bear the name of the surplus line broker who procured it, either as set forth in subsection (2) of this section, or as follows:

"This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, enacted in 1947. It is not issued by a company regulated by the Washington state insurance commissioner and is not protected by any Washington state guaranty fund law."

NEW SECTION

WAC 284-15-035 Exempt commercial purchasers. A surplus line broker who has procured insurance with an unauthorized insurer for an exempt commercial purchaser must file with the commissioner within sixty days of the procurement (binding or effective date, whichever is later) of the insurance a report of the insurance. The report must be in a format acceptable to the commissioner. The report must include the following information:

- (1) Policy or certificate number;
- (2) Premium, including any policy fee;
- (3) Name and license number of the filing surplus line broker;
- (4) Name(s) of unauthorized insurer(s);
- (5) Name and address of insured;
- (6) Binding or effective date, whichever is later;
- (7) Brief statement of coverages (common terms may be used); and
- (8) Other information as required by the commissioner.

AMENDATORY SECTION (Amending Matter No. R 2008-04, filed 7/2/08, effective 8/2/08)

WAC 284-15-050 Surplus line—Waiver of financial requirements. (1) The commissioner may waive the financial requirements specified in RCW 48.15.090 ~~((and WAC 284-15-090))~~ in circumstances where insurance cannot be otherwise procured on risks located in this state. Except as set forth in (e) of this subsection ~~((5) of this section))~~, at least the following information must be submitted when a surplus line broker requests the commissioner to waive the financial requirements:

- ~~((4))~~ (a) A detailed letter explaining the need to waive the financial requirements;
- ~~((2))~~ (b) Documentation of the financial condition of the proposed insurer as reported in its annual statement as of the end of the preceding calendar year;
- ~~((3))~~ (c) Summary information showing the number of years the company has been writing the specific line of insurance;

~~((4))~~ (d) A written ~~((acknowledgment))~~ acknowledgment signed by the proposed insured confirming all of the following:

~~((a))~~ (i) The insured has been informed that the coverage will be issued by an insurer (or insurers) that is not an authorized insurer in the state of Washington;

~~((b))~~ (ii) The insured understands that financial requirements for surplus line insurers must be waived by all parties concerned to enable this coverage to be obtained; and

~~((e))~~ (iii) The insured understands that there is no protection for the insured under the Washington Insurance Guaranty Association because the coverage will be issued by an unauthorized insurer;

~~((5))~~ (e) For accounts requiring a multiplicity of insurers, in lieu of the requirements in ~~((subsections (2)))~~ (b) and ~~((3))~~ (c) of this ~~((section))~~ subsection, the commissioner may accept certification from a surplus line broker that the broker has investigated the financial condition of the prospective insurers and is satisfied that they are capable of underwriting the specified risks. Records and documents supporting the broker's certification must be maintained by the broker for the term of the policies and as long thereafter as a claim may be litigated, but in no case less than five years after completion of the transaction.

(2) In no event will the commissioner waive the financial requirements when the insurer's capital and surplus is less than four million five hundred thousand dollars.

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|----------------|---|
| WAC 284-15-090 | Financial requirements for unauthorized foreign and alien insurers increased. |
|----------------|---|

WSR 11-15-089
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING

[Filed July 20, 2011, 9:14 a.m., effective July 22, 2011]

Effective Date of Rule: July 22, 2011.

Purpose: The department is amending sections of the department of early learning (DEL) child care licensing, chapters 170-151, 170-295, and 170-296 WAC to implement SSB 5504 (chapter 296, Laws of 2011). Effective July 22, 2011, this bill revises civil penalty (fine) amounts that the department may levy for violation of chapter 43.215 RCW or requirements adopted pursuant to that chapter, and revises required notice and other provisions regarding individuals or entities suspected of providing child care without a license when a license is required under the statute. DEL rules must be made consistent with the new law.

Citation of Existing Rules Affected by this Order: Amending WAC 170-151-095, 170-295-0130, 170-296-0360, 170-296-0420, and 170-296-0430.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070 (2)(c); chapter 43.215 RCW.

Other Authority: SSB 5504 (chapter 296, Laws of 2001 [2011]).

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

Reasons for this Finding: Emergency adoption is needed to prevent potential confusion about the amount of civil penalty DEL may issued [issue] by law for violation of chapter 43.215 RCW or requirements adopted by DEL pursuant to this statute, and notice that DEL must provide when the department suspects an agency (individual or entity) of providing child care without a license. Amending the rules is expected to prevent errors in administrative hearing or judicial proceedings appealing a civil penalty issued by the department, and assure due process. SSB 5504 amends sections and adopts a new section of chapter 43.215 RCW, Department of early learning, effective July 22, 2011:

- Section 1 of the bill amends RCW 43.215.300 (3)(c), changing the amount of civil monetary penalty (fine) that may be imposed by the department on child care agencies for violation of provisions of chapter 43.215 RCW or requirements adopted by DEL pursuant to this statute.
- Section 2 of the bill amends RCW 43.215.370 by requiring DEL to post on its web site those agencies subject to licensing that have not initiated the licensing process within thirty days of the department's notification as required in RCW 43.215.300.
- Section 3 creates a new section of chapter 43.215 RCW specifying the content of the notice that DEL must provide when the department suspects an individual or entity of providing child care services without a license, including that DEL may impose a civil fine and the amount of fine per day that violations occur, and actions that DEL may take to inform the public about the suspected unlicensed care if the individual or entity does not cease providing child care without a license.

The provision of unlicensed child care is a significant public health, safety and welfare concern. The legislature defines in chapter 43.215 RCW the various types of child care that must be licensed. Without licensing oversight, unlicensed child care operators may:

- Be caring for children without adequate health or safety monitoring;
- Not have had their facilities inspected for fire safety and emergency evacuation of children, particularly infants and children who cannot walk;
- Be caring for more children than would be safe, even if licensed;
- Not be providing adequate early learning activities;
- Not have adequate child care or child development training; and/or
- Not have had background checks on individuals who have access to the children.

The legislature established DEL in part to "safeguard and promote the health, safety and well-being of children receiving child care and early learning assistance, which is paramount over the right of any person to provide care..." RCW 43.215.005 (4)(c). These rules are needed to provide the tools for the department to address suspected unlicensed child care, as well as to protect the safety, health and well-being of children who may be in unlicensed child care.

Proceeding with these rules is consistent with state office of financial management guidance regarding Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are, "required by federal or state law or required to maintain federally delegated or authorized programs," and "necessary to protect public health, safety, and welfare or necessary to avoid an immediate threat to the state's natural resources."

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 5, 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 5, Repealed 0.

Date Adopted: July 20, 2011.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-095 May the department assess civil penalties on unlicensed programs? (1) If the department receives information that a school-age program is operating without a license, the department will investigate. ~~((The department may contact the program, send a letter, or make an on-site visit to determine that the agency is operating without a license. Where the department has determined that an agency is operating without a license, the department must send written notification to the unlicensed program by certified mail or other means showing proof of service. This notification must contain the following:~~

(1) Notice to the agency of the basis for the department's determination that the agency is providing child care without a license and the need for the department to license the agency;

(2) The citation of the applicable law;

~~(3) The assessment of seventy-five dollars per day penalty for each day the agency provides unlicensed care. The department makes the fine effective and payable within thirty days of the agency's receipt of the notification;~~

(4) How to contact the department;

~~(5) The unlicensed agency's need to submit an application to the department within thirty days of receipt of the department's notification;~~

~~(6) That the department may forgive the penalty if the agency submits an application within thirty days of the notification; and~~

~~(7) The unlicensed agency's right to an adjudicative proceeding as a result of the assessment of a monetary penalty and the appropriate procedure for requesting an adjudicative proceeding-))~~ (2) If the department suspects that an individual is providing unlicensed child care, the department will send the individual written notice within ten calendar days to explain:

(a) Why the department suspects that the individual is providing child care without a license;

(b) That a license is required and why;

(c) That the individual must immediately stop providing child care;

(d) That if the individual seeks to obtain a license, within thirty calendar days from the date of the department's notice in this subsection, the individual must submit a written agreement on a department form stating that he or she agrees to:

(i) Attend the next available department child care licensing orientation; and

(ii) Submit a child care licensing application after completing orientation; and

(e) That the department has the authority to issue a fine of two hundred fifty dollars per day for each day that the individual continues to provide child care without a license.

(3) The department's written notice in subsection (2) of this section must inform the individual providing unlicensed child care:

(a) How to respond to the department;

(b) How to apply for a license;

(c) How a fine, if issued, may be suspended or withdrawn;

(d) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and

(e) How to ask for a hearing.

(4) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (2)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-0130 When can ((~~F~~) **an individual be fined for operating an unlicensed program? (1) If ((~~we~~) the department receives information that ((~~you are~~)) **an individual is operating a child care center without a license, ((~~we~~) the department investigates the allegation.****

~~(2) ((We contact you, send you a letter, or make an on-site visit to your center to determine whether you are operating without a license.~~

~~(3) If we determine that you personally or on behalf of another person are operating a child care center without a license, we send written notification by certified mail or other~~

method showing proof of service to the owner of the unlicensed center. This notification must contain the following:

~~(a) Notice to the center owner of our basis for determination that the owner is providing child care without a license and the need for us to license the center;~~

~~(b) Citation of the applicable law;~~

~~(c) The fine is effective and payable within thirty days of the agency's receipt of the notification;~~

~~(d) Information about how to contact the department;~~

~~(e) The requirement that the unlicensed center owner submit an application for a license to the department within thirty days of receipt of our notification;~~

~~(f) That we can forgive the fine if the center submits an application within thirty days of the notification; and~~

~~(g) The unlicensed center owner's right to an adjudicative proceeding (fair hearing) as a result of the assessment of a monetary fine and how to request an adjudicative proceeding-))~~ If the department suspects that an individual is providing unlicensed child care, the department will send the individual written notice within ten calendar days to explain:

(a) Why the department suspects that the individual is providing child care without a license;

(b) That a license is required and why;

(c) That the individual must immediately stop providing child care;

(d) That if the individual seeks to obtain a license, within thirty calendar days from the date of the department's notice in this subsection, the individual must submit a written agreement on a department form stating that he or she agrees to:

(i) Attend the next available department child care licensing orientation; and

(ii) Submit a child care licensing application after completing orientation; and

(e) That the department has the authority to issue a fine of two hundred fifty dollars per day for each day that the individual continues to provide child care without a license.

(3) The department's written notice in subsection (2) of this section must inform the individual providing unlicensed child care:

(a) How to respond to the department;

(b) How to apply for a license;

(c) How a fine, if issued, may be suspended or withdrawn;

(d) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and

(e) How to ask for a hearing.

(4) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (2)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-296-0360 What happens if ((~~F~~) **an individual fails to follow the rules? (1) If ((~~you~~)) **an individual fails to follow the rules, ((we notify you)) the department notifies the individual** of the violation in writing and unless the**

health, safety or welfare of children in care is threatened, ~~((we))~~ the department provides ~~((you))~~ the individual with an opportunity to come into compliance before ~~((we))~~ the department takes adverse licensing action. The notice provides:

- (a) A description of the violation and rule that was broken;
- (b) A statement of what is required to comply with the rules;
- (c) The date by which ~~((we))~~ the department requires compliance; and
- (d) The maximum financial penalty (civil fine) that ~~((you))~~ the individual must pay if ~~((you do))~~ the individual does not comply with the rules by the required date.

(2) ~~((We))~~ The department may fine ~~((you seventy five))~~ an individual one hundred fifty dollars a day for each violation of the licensing rules.

(3) ~~((We))~~ The department may assess and collect the ~~((penalty))~~ civil fine with interest for each day ~~((you))~~ an individual fails to follow the rules.

(4) ~~((We))~~ The department may impose a civil ~~((penalty))~~ fine in addition to other adverse actions against ~~((your))~~ an individual's license including probation, suspension and revocation.

(5) ~~((We))~~ The department may, but ~~((are))~~ is not required to, withdraw the fine if ~~((you))~~ the individual comes into compliance during the notification period.

(6) If ~~((we assess))~~ the department assesses a civil ~~((penalty you have))~~ fine, the individual has the right to an adjudicative proceeding (hearing) as governed by RCW 43.215.305 and chapter 170-03 WAC.

(7) If ~~((you do))~~ the individual does not request ~~((an adjudicative proceeding you))~~ a hearing he or she must pay the civil fine within twenty-eight days after ~~((you receive))~~ receiving the notice.

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

WAC 170-296-0420 Does the department assess a civil ~~((penalty))~~ fine if ~~((I))~~ an individual provides unlicensed child care? ~~((We))~~ The department may fine ~~((you seventy five))~~ an individual one hundred fifty dollars per day for each day ~~((you))~~ the individual provides unlicensed child care.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-296-0430 What will happen if the department believes ~~((I am))~~ an individual is providing unlicensed child care? ~~((We send written notice to you if we think you are providing unlicensed child care. The notice explains:~~

- ~~((1) Why we think you are providing unlicensed child care;~~
- ~~((2) The law that prohibits unlicensed child care;~~
- ~~((3) That you must stop providing child care until you get a license;~~
- ~~((4) How to contact the department;~~
- ~~((5) How to apply for a license;~~

~~((6) That the fine may be lifted if you apply for a license;~~
~~((7) Your right to an adjudicated proceeding if we assess a monetary penalty; and~~

~~((8) How you can ask for an adjudicative proceeding.))~~
(1) If the department suspects that an individual is providing unlicensed child care, the department will send the individual written notice within ten calendar days to explain:

(a) Why the department suspects that the individual is providing child care without a license;

(b) That a license is required and why;

(c) That the individual must immediately stop providing child care;

(d) That if the individual seeks to obtain a license, within thirty calendar days from the date of the department's notice in this subsection, the individual must submit a written agreement on a department form stating that he or she agrees to:

(i) Attend the next available department child care licensing orientation; and

(ii) Submit a child care licensing application after completing orientation; and

(e) That the department has the authority to issue a civil fine of one hundred fifty dollars per day for each day that the individual continues to provide child care without a license.

(2) The department's written notice in subsection (1) of this section must inform the individual providing unlicensed child care:

(a) How to respond to the department;

(b) How to apply for a license;

(c) How a fine, if issued, may be suspended or withdrawn;

(d) That the individual has a right to request an adjudicative proceeding (hearing) if a civil fine is assessed; and

(e) How to ask for a hearing.

(3) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (1)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

WSR 11-15-090

EMERGENCY RULES

DEPARTMENT OF

EARLY LEARNING

[Filed July 20, 2011, 9:15 a.m., effective July 22, 2011]

Effective Date of Rule: July 22, 2011.

Purpose: The department of early learning (DEL) is adopting new WAC 170-151-994, 170-295-0065, and 170-296-0172 to implement section 4 of 2SHB 1903 (chapter 295, Laws of 2011), requiring current DEL child care licensees to pay a one-time fee to be used only to fund DEL costs of creating, developing and administering an individual-based/portable background check clearance registry established in the bill. The registry is necessary for DEL to administer a portable background check process that would allow individual child care workers to change licensed child care employers or work in multiple child care facilities without having to

undergo a new DEL background check for each employer or facility as required now. The one-time fee is \$45 per DEL-licensed child care facility, and must be paid or postmarked before September 1, 2011.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070 (2)(c) and 43.43.832(6); chapter 43.215 RCW.

Other Authority: 2SHB 1903 (chapter 295, Laws of 2011), RCW 43.215.200 and 43.215.215.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that 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: Conducting a background check is integral to determining an individual's character and suitability to provide child care, and for protecting the safety and health of children in child care. RCW 43.215.200, 43.215.215, and 43.43.832(6) provide DEL authority to investigate the criminal background history of and other relevant information regarding individuals: Seeking a DEL child care license; wishing to work in child care; or who reside on the premises of a licensed child care center or home.

In adopting 2SHB 1903, the legislature established a new account in the state treasury specifically for the purpose of funding an individual-based/portable background check clearance registry. Section 4 of the bill states:

"Effective July 1, 2011, all agency licensees shall pay the department (DEL) a one-time fee established by the department. When establishing the fee, the department must consider the cost of developing and administering the (individual-based/portable background check clearance) registry, and shall not set a fee which is estimated to generate revenue beyond the estimated costs for the development and administration of the registry. Fee revenues must be deposited in the individual-based/portable background check clearance account created in section 5 of this act, and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of this act."

Section 5 of the bill states, in part, *"... Expenditures from the account may be made only for development, administration, and implementation of the individual-based/portable background check registry established in section 1 of this act. Only the director of the department of early learning or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures."*

The legislature determined that costs of developing, administering and implementing the individual-based/portable background check clearance registry must be funded through user fees. As provided in section 4 of the bill, DEL

has estimated that the initial SFY 2012 cost to create, develop, administer and implement the registry and related systems is approximately \$326,250. Divided by an estimated 7,250 current child care facilities licensed by DEL, the one-time fee amount would be \$45 per licensee - the amount provided in these rules ($\$326,250 / 7,250 = \45). See the DEL fiscal note for 2SHB 1903 as enacted filed with the state office of financial management. DEL must generate the one-time fee revenues early in fiscal year 2012 to develop the initial technology, administration, and fund management capacities of the registry.

The registry must be operational by July 1, 2012, when section 2 of 2SHB 1903 directs an estimated 41,500 current licensees, child care staff, and others associated with DEL-licensed child care facilities to renew their DEL background check utilizing the individual-based/portable background check clearance registry. Background checks clearances of an estimated 6,500 new licensees, staff and others who enter the child care industry in the state each year will also be entered on the new registry.

DEL plans to develop permanent rules to implement 2SHB 1903, and the department has filed a preproposal statement of inquiry, filing number WSR 11-12-076, to initiate regular rule making.

Filing this rule is consistent with state office of financial management guidance regarding Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are: *"Required by federal and state law or required to maintain federally delegated or authorized programs;"*

"Necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities;" and

"Beneficial to or requested or supported by the regulated entities, local governments or small businesses that it affects."

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 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 3, Amended 0, Repealed 0.

Date Adopted: July 20, 2011.

Elizabeth M. Hyde
Director

NEW SECTION

WAC 170-151-994 School-age child care centers—Individual-based/portable background check clearance registry—One-time fee. (1) As required by section 4, chapter 295, Laws of 2011 (2SHB 1903), beginning July 22, 2011,

all agency licensees who are licensed with the department as of July 1, 2011, shall pay a one-time fee of forty-five dollars in addition to any other fees imposed by this chapter.

(2) Fee payments made under this section shall be:

(a) By check, draft, or money order;

(b) Sent by mail; and

(c) Postmarked before September 1, 2011.

(3) Pursuant to RCW 43.215.300, the department may suspend the license of any agency licensee:

(a) Who fails to pay the fee required in subsection (2) of this section until the fee is paid; or

(b) Whose check, draft, or money order is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.

(4) All fees collected under this section shall be deposited in the individual-based/portable background check clearance account created in section 5, chapter 295, Laws of 2011 (2SHB 1903) and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of that act.

NEW SECTION

WAC 170-295-0065 Child care centers—Individual-based/portable background check clearance registry—One-time fee. (1) As required by section 4, chapter 295, Laws of 2011 (2SHB 1903), beginning July 22, 2011, all agency licensees who are licensed with the department as of July 1, 2011, shall pay a one-time fee of forty-five dollars in addition to any other fees imposed by this chapter.

(2) Fee payments made under this section shall be:

(a) By check, draft, or money order;

(b) Sent by mail; and

(c) Postmarked before September 1, 2011.

(3) Pursuant to RCW 43.215.300, the department may suspend the license of any agency licensee:

(a) Who fails to pay the fee required in subsection (2) of this section until the fee is paid; or

(b) Whose check, draft, or money order is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.

(4) All fees collected under this section shall be deposited in the individual-based/portable background check clearance account created in section 5, chapter 295, Laws of 2011 (2SHB 1903) and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of that act.

NEW SECTION

WAC 170-296-0172 Family home child care providers—Individual-based/portable background check clearance registry—One-time fee. (1) As required by section 4, chapter 295, Laws of 2011 (2SHB 1903), beginning July 22, 2011, all agency licensees who are licensed with the department as of July 1, 2011, shall pay a one-time fee of forty-five dollars in addition to any other fees imposed by this chapter.

(2) Fee payments made under this section shall be:

(a) By check, draft, or money order;

(b) Sent by mail; and

(c) Postmarked before September 1, 2011.

(3) Pursuant to RCW 43.215.300, the department may suspend the license of any agency licensee:

(a) Who fails to pay the fee required in subsection (2) of this section until the fee is paid; or

(b) Whose check, draft, or money order is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.

(4) All fees collected under this section shall be deposited in the individual-based/portable background check clearance account created in section 5, chapter 295, Laws of 2011 (2SHB 1903) and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of that act.

WSR 11-15-091

EMERGENCY RULES

DEPARTMENT OF

EARLY LEARNING

[Filed July 20, 2011, 9:16 a.m., effective July 22, 2011]

Effective Date of Rule: July 22, 2011.

Purpose: The department is amending sections in the department of early learning (DEL) child care licensing WAC chapters to establish a nonexpiring child care license process as required by SB 5625. The bill is effective July 22, 2011. This filing includes sections of WAC:

- Chapter 170-151 WAC, School-age child care center minimum licensing requirements;
- Chapter 170-295 WAC, Minimum licensing requirements for child care centers; and
- Chapter 170-296 WAC, Child care business regulations for family home child care (note, the sections of chapter 170-296 WAC included in this filing are proposed for repeal when new chapter 170-296A WAC is adopted and effective - see proposed rules filed as WSR 11-09-081. The sections of chapter 170-296 WAC in this filing will be in effect until replaced by comparable sections of new chapter 170-296A WAC).

Citation of Existing Rules Affected by this Order: Repealing WAC 170-296-0260; and amending WAC 170-151-010, 170-151-085, 170-151-097, 170-151-098, 170-151-992, 170-295-0010, 170-295-0090, 170-295-0110, 170-295-0140, 170-295-7040, 170-295-7080, 170-296-0020, 170-296-0330, 170-296-0340, 170-296-0350, 170-296-0410, 170-296-0440, 170-296-0540, and 170-296-0860.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070 (2)(c), chapter 43.215 RCW.

Other Authority: SB 5625 (chapter 297, Laws of 2011).

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: When SB 5625 takes effect on July 22, 2011, certain DEL licensing rules regarding child care license application, transition from "initial" to "full" license, license renewal, and enforcement will be obsolete and may conflict with the law. Failure of child care licensees to follow new requirements to obtain or retain a nonexpiring child care license may result in a prompt expiration of the license as provided in SB 5625. Emergency rules are needed so that child care business owners may understand the new annual licensing conditions and requirements for a nonexpiring license under SB 5625, and so prevent unnecessary child care license expirations that could impact the safety, health and welfare of the children in care or welfare of the child care licensee's business. Emergency rules are also expected to result in cost savings to the state by reducing most of the current administrative paperwork for DEL child care licensing staff surrounding the tri-annual license renewal process for each of the approximately 7,250 licensed child care facilities statewide. Achieving such efficiencies is consistent with the Governor's Executive Order 06-02 to develop innovative regulatory best practices, and to promote effective on-going regulatory improvement.

Establishment of a nonexpiring full license is generally supported by regulated child care licensee businesses. The process provided in SB 5625 and these rules is expected to significantly reduce the volume and complexity of license renewal paperwork that licensees must complete every three years now.

Proceeding with these rules is consistent with state office of financial management guidance regarding Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are, "required by federal or state law or required to maintain federally delegated or authorized programs," and "beneficial to or requested or supported by the regulated entities, local governments or small businesses that (the rule) effects."

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 2, Amended 19, Repealed 1.

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 2, Amended 19, Repealed 1.

Date Adopted: July 20, 2011.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-010 What definitions are important for the school-age child care center program? The following definitions are important under this chapter:

"Capacity" means the maximum number of children the licensee is authorized to have on the premises at a given time.

"Child abuse or neglect" means the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child as defined in RCW 26.44.020 and chapter 388-15 WAC.

"Department" means the state department of early learning (DEL), or its predecessor the department of social and health services (DSHS), the state agency with the legal authority to regulate and certify school-age child care centers.

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

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

"License" means a permit issued by the department to a person or organization to operate a school-age child care center and affirming the licensee meets requirements under licensure.

"Licensee" means the person, organization, or legal entity named on the facility license and responsible for operating the center.

"Licensor" means the person employed by the department to regulate and license a school-age child care center.

"Nonexpiring license" or "nonexpiring full license" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-151-087.

"Premises" means the building where the center is located and the adjoining grounds over which the licensee has control.

"School-age child" means a child five years of age through twelve years of age enrolled in a public or private school.

"School-age child care center" means a program operating in a facility other than a private residence, accountable for school-age children when school is not in session. The program must meet department licensing requirements, provide adult-supervised care, and a variety of developmentally appropriate activities.

"Staff" means a person or persons employed by the licensee to provide child care and to supervise children served at the center.

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

"We" or "our" refer to and mean the department of early learning (DEL), including DEL licensors.

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

WAC 170-151-085 ((How do I get an) Initial (license?) licenses. (1) The department may issue an initial

license ~~((to you if you are))~~ if an applicant is not currently licensed to provide child care, when ~~((you))~~ the applicant:

(a) Can demonstrate compliance with the rules contained in this chapter pertaining to the health and safety of the child in care; but

(b) Cannot demonstrate compliance with the rules pertaining to:

- (i) Staff-child interactions~~((:))~~;
- (ii) Group size and staff-child ratios~~((:))~~;
- (iii) Behavior management and discipline~~((:))~~;
- (iv) Activity programs~~((:))~~;
- (v) Child records and information~~((:))~~; and
- (vi) Other rules requiring department observation of the applicant's ability to comply with rules~~((:))~~; and

(c) Can provide a plan, acceptable to the department, to comply with rules found in subsection (1)(b) of this section.

(2) The department may issue an initial license ~~((to you))~~ for a period not to exceed six months, renewable for a period not to exceed two years, which may continue to remain valid so long as the licensee meets the requirements for a nonexpiring full license as provided in WAC 170-151-087.

(3) The department must evaluate ~~((your))~~ an applicant's ability to comply with all rules contained in this chapter during the period of initial licensure prior to issuing a nonexpiring full license.

~~((4) The department may issue a full license to you if you demonstrate your compliance with all rules contained in this chapter at any time during the period of initial licensure.~~

~~((5) The department must not issue a full license to you if you do not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.))~~

NEW SECTION

WAC 170-151-087 Nonexpiring licenses. (1) The department may issue a nonexpiring full license to a licensee operating under an initial license who:

(a) Demonstrates full compliance with the health and safety requirements of this chapter at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with the other requirements of this chapter at any time during the period of initial licensure; and

(c) Meets the other requirements for a nonexpiring full license as provided in this section.

(2) To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis:

- (a) An annual nonrefundable licensing fee;
- (b) A declaration to the department on a department-approved form indicating:
 - (i) The intent to continue operating a licensed child care program; or
 - (ii) The intent to cease operation on a date certain;
- (c) A declaration on a department-approved form of compliance with all licensing rules; and
- (d) Documentation of completed background check applications as determined by the department-established schedule.

(3) The requirements in this section must be met within one calendar year of the date on the initial license and every twelve months thereafter. The nonexpiring full license is valid for one calendar year from the date a first initial license or previous nonexpiring full license was issued, unless otherwise suspended or revoked, or the department issues a probationary license.

(4) If a licensee fails to meet the requirements in this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

(5) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practice.

(6) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a full nonexpiring license as a result of the licensee's failure to comply with the requirements of this section.

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

WAC 170-151-097 ~~((What if I do not pay the))~~ Civil ~~((penalty?))~~ penalties—Failure to pay. The department may suspend, revoke, or not ~~((renew))~~ continue a license for failure to pay a civil monetary penalty the department has assessed within ten days after such assessment becomes final.

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

WAC 170-151-098 ~~((Under what circumstances may the department issue a))~~ Probationary ~~((license?))~~ licenses. (1) The department may issue a probationary license to a licensee as provided in RCW 43.215.290, and must base the decision to issue a probationary license on the following factors:

(a) Willful or negligent noncompliance by ~~((you,))~~ the licensee;

(b) History of noncompliance~~((:))~~;

(c) Extent of deviation from the requirements~~((:))~~;

(d) Evidence of a good faith effort to comply~~((:))~~; and

(e) Any other factors relevant to the unique situation.

(2) Where the negligent or willful violation of the licensing law does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue, the department may issue a probationary license in addition to civil penalties or other sanctions. Such situations may include:

(a) Substantiation that a child (or children) was abused or neglected while in the care of the center~~((:))~~;

(b) Disapproved fire safety or sanitation report~~((:))~~;

(c) Use of unauthorized space for child care~~((:))~~;

(d) Inadequate supervision of children~~((:))~~;

(e) Understaffing for the number of children in care~~((:))~~;

or

(f) Noncompliance with requirements addressing:

(i) Children's health~~((:))~~;

(ii) Proper nutrition~~((:))~~;

(iii) Discipline~~((:))~~;

(iv) Emergency medical plan~~((:))~~; or

(v) Sanitation and personal hygiene practices.

(3) ~~((You))~~ The licensee must notify parents of all children in care or who may apply for care when the department issues a probationary license ~~((to you))~~. The licensee must:

(a) ~~((You must))~~ Notify the parents or guardians of all children in care of the program's probationary status within five working days of receiving the department's notification that the department has issued a probationary license;

(b) ~~((You must))~~ Notify parents and guardians in writing, and the department must approve the notice before ~~((you))~~ the licensee sends the notification; and

(c) ~~((You must))~~ Provide documentation to the department that ~~((you have))~~ he or she has notified parents or guardians of all children in care within ten working days after ~~((you))~~ the licensee receives notification that the department has issued a probationary license. Documentation must consist of a copy of the letter ~~((you have))~~ the licensee has sent to the parents ~~((;))~~ or guardians.

~~((4))~~ (4) The department may issue a probationary license for up to six months, and at the department's discretion, the department may extend the probationary license for an additional six months.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-992 Fee payment ~~((and refunds))~~. (1) Fees are due with applications for initial ~~((license or renewal))~~ licensure or continuations of a nonexpiring full license. The department will not proceed on applications or continuations until required fees are paid.

Except as otherwise provided in these rules, fees shall be paid for a minimum of one year.

(2) Fees for licenses issued for other than yearly periods shall be prorated based on the stated annual fee.

(3) When the department issues a license for more than one year:

(a) Fees may be paid for the entire licensing period by paying at the rate established at the time the application or continuation was submitted ~~((;))~~; or

(b) If the licensee does not pay the fee for the entire license period, annual fees shall be due thirty days prior to each annual anniversary date of the license, at the annual fee rate established by these rules at the time such fee is paid.

(4) ~~((Except as otherwise provided in these rules,))~~ If an application or continuation is withdrawn prior to issuance or denial, ~~((one-half of))~~ the fee shall not be refunded.

(5) If there is a change of or by the licensee requiring a new license, the fee paid for a period beyond the next license anniversary date shall not be refunded. Changes requiring a new license shall require a new application and payment of fee as provided herein.

(6) If there is a change by the applicant or licensee that requires an amendment placing the licensee in a higher fee category, the additional fee shall be prorated for the remainder of the license period.

(7) Fees becoming due on or after the effective date of this chapter shall be at the rates provided herein.

(8) ~~((To the extent fees are reduced through regular rule adoption of this chapter on or before December 31, 1982, fees shall be refunded.~~

~~((9))~~ Fee payments shall be by mail. Payment shall be by check, draft, or money order.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

WAC 170-295-0010 What definitions under this chapter apply to licensed child care providers? "American Indian child" means any unmarried person under the age of eighteen who is:

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

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

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

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

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

"**Capacity ~~((that you are licensed for))~~"** means the maximum number of children that ~~((you are))~~ a licensee is authorized to have on the premises of the child care at any one time.

"**Center**" means the same as "**child care center**."

"**Certification**" means department approval of a person, home, or facility that does not legally need to be licensed, but wants evidence that they meet the minimum licensing requirements (also see "**Tribal certification**").

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

"**Child-accessible**" means areas where children regularly have access such as: Entrances and exits to and from the center, classrooms or child care areas, playground area including equipment and fencing, parking areas, walkways, decks, platforms, stairs and any items available for children to use in these areas.

"**Child care center**" means the same as a "**child day care center**" or a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.

"**Clean**" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing a surface.

"CACFP" means child and adult care food program established by congress and funded by the United States Department of Agriculture (USDA).

"Commercial kitchen equipment" means equipment designed for business purposes such as restaurants.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, or mosquito) or environmental object (such as a table surface).

"Cultural relevancy" creates an environment that reflects home cultures, communities and lives of children enrolled in the program.

"Department," "we," "us," or "our" refers to and means the state department of early learning (DEL) and its predecessor agency the department of social and health services (DSHS).

"Developmentally appropriate practice":

(1) Means that the provider should interact with each child in a way that recognizes and respects the child's chronological and developmental age;

(2) Is based on knowledge about how children grow and learn; and

(3) Reflects the developmental level of the individual child, and interactions and activities must be planned with the needs of the individual child in mind.

"Director" means the person responsible for the overall management of the center's facility and operation, except that "DEL director" means the director of the department of early learning.

"Disinfect" means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents.

"Domestic kitchen" means a kitchen equipped with residential appliances.

"External medication" means a medication that is not intended to be swallowed or injected but is to be applied to the external parts of the body, such as medicated ointments, lotions, or liquids applied to the skin or hair.

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

"Inaccessible to children" means stored or maintained in a manner preventing children from reaching, entering, or using potentially hazardous items or areas. Examples include but are not limited to: Quantities of water, sharp objects, medications, chemicals, electricity, fire, mechanical equipment, entrapment or fall areas.

"Individual plan of care" means that the center's health policies and procedures do not cover the needs of the individual child so an individual plan is needed. Examples may include children with allergies, asthma, Down syndrome, tube feeding, diabetes care such as blood glucose monitoring, or nebulizer treatments.

"Infant" means a child one-month through eleven months of age.

"Lead teacher" means the person who is the lead child care staff person in charge of a child or group of children and implementing the activity program.

"License" means a permit issued by the department authorizing ((you)) a licensee by law to operate a child care center and certifying that ((you)) the licensee meets the minimum requirements under licensure.

"Licensee" or "you" means the person, organization, or legal entity responsible for operating the center.

"Maximum potential capacity based on square footage" is the maximum number of children ((you)) a licensee can be licensed for based on the amount of useable space (square footage) in ((your)) the licensee's center. ((You)) The licensee may be licensed for less than the maximum potential capacity. ((You)) A licensee may not be licensed for more than the maximum potential capacity.

"Moisture impervious" or "moisture resistant" means a surface incapable of being penetrated by water or liquids.

"Nonexpiring license" or "nonexpiring full license" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-295-0095.

"Parent" means birth parent, custodial parent, foster parent, legal guardian, those authorized by the parent or other entity legally responsible for the welfare of the child.

"Pesticides" means chemicals that are used to kill weeds, pests, particularly insects.

"Potentially hazardous food" means any food or ingredient that requires temperature control because it supports rapid growth of infectious or toxin forming microorganisms.

"Potable water" means water suitable for drinking by the public as determined by the state department of health or local health jurisdiction.

"Premises" means the building where the center is located and the adjoining grounds over which ((you have)) the licensee has control.

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

"Program supervisor" means the person responsible for planning and supervising the center's learning and activity program.

"Sanitize" means a surface must be clean and the number of germs reduced to a level that disease transmissions by that surface are unlikely. This procedure is less vigorous than disinfection.

"Satellite kitchen" means a food service establishment approved by a local health jurisdiction where food is stored, prepared, portioned or packaged for service elsewhere.

"School-age child" means a child not less than five years through twelve years of age who has begun attending kindergarten or elementary school.

"Staff" means a child care giver or group of child care givers employed by the licensee to supervise children served at the center who are authorized by DEL to care for or have unsupervised access to children under chapter 170-06 WAC.

"Supervised access" refers to those individuals at a child care center who have no responsibility for the operation of the center and do not have unsupervised access to children. These individuals are not required to submit a background check form. This includes those persons on the premises for "time limited" activities whose presence is supervised by a center employee and does not affect provider/child ratios or

the normal activities or routine of the center. Examples include:

- (1) A person hired to present an activity to the children in care such as a puppet show, cooking activity, and story telling;
- (2) Parent participation as part of a special theme; or
- (3) A relative visiting a child on the premises.

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

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

"**Terminal room cleaning**" means thorough cleaning of walls, ceiling, floor and all equipment, and disinfecting as necessary, in a room which has been used by a person having a communicable disease before it is occupied by another person.

"**Tribal certification**" means that the department has certified the tribe to receive state payment for children eligible to receive child care subsidies.

"**Unsupervised access**" refers to those individuals at a child care center who can be left alone with children in the child care center. These individuals must have received a full background authorization clearance under chapter 170-06 WAC.

"**Useable space**" means the areas that are available at all times for use by the children that do not cause a health or safety hazard.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-0090 (~~When does the department issue~~) **Initial and nonexpiring full licenses** (~~, and when are~~) ~~Licensing fees~~ (~~due?~~). ~~(We)~~ The department may issue an initial license to centers that have not yet begun providing care, but are accepting applications for potential clients.

(1) ~~(We)~~ The department may issue an initial license when ~~(you)~~ an applicant can show that ~~(you are)~~ he or she is following the rules regarding the child's health and safety.

(2) ~~(We)~~ The department may issue an initial license if ~~(you have)~~ an applicant has not yet opened for business, and so ~~(are)~~ is not yet able to show that ~~(you are)~~ he or she is complying with the rules pertaining to:

- (a) Staff to child interactions;
- (b) Group size and staff to child ratios;
- (c) Behavior management and discipline;
- (d) Activity programs;
- (e) Child records and information; and
- (f) Other rules that require us to observe ~~(your)~~ the facility's ability to comply with rules.

(3) ~~(You)~~ Applicants must provide ~~(us)~~ the department with a plan to comply with the rules listed in subsection (2)(a) through (f) of this section. ~~(We)~~ The department must approve of that plan.

(4) ~~(We)~~ The department may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years, which will continue to

remain valid so long as the licensee meets the requirements for a nonexpiring full license as provided in WAC 170-295-0095.

(5) When ~~(you have)~~ a licensee has an initial license ~~(we~~

~~(a Evaluate your)~~ the department evaluates the licensee's ability to comply with all rules contained in this chapter prior to issuing a nonexpiring full license (~~;~~

~~(b) May issue a full license to you when you have demonstrated compliance with chapter 170-295 WAC; and~~

~~(c) Do not issue a full license to you if you do not demonstrate the ability to comply with all rules contained in chapter 170-295 WAC).~~

(6) ~~(You must pay licensing fees at the time you apply for an initial license and when your license is being renewed.)~~ Fees are due with applications for initial licenses or continuations of a nonexpiring full license.

(7) ~~(We do)~~ The department does not process ~~(your)~~ an application or continuation until ~~(you have)~~ the applicant or licensee, as applicable, has paid the required fee.

(8) ~~(You)~~ Applicants or licensees can pay licensing fees for:

(a) A minimum of one year; or

(b) ~~(The entire length of your)~~ Multiple years of their license.

(9) ~~(You pay your fee)~~ Applicants and licensees pay their fees by mailing a check or money order for the required amount to the department, according to instructions on the licensing application to continuation.

(10) If ~~(you pay your)~~ fees are paid one time per year, ~~(you pay)~~ the annual rate must be paid each time. The annual fee is due thirty days before each annual anniversary date of the license.

(11) If ~~(you pay)~~ fees are paid for more than one year, the total fee ~~(you pay)~~ is based on the annual fee rate. For example, if ~~(you are licensed for three years and)~~ the licensee wants to pay the licensing fee for the entire period at once, ~~(you multiply)~~ the annual fee is multiplied by three years, and ~~(pay)~~ that amount ~~(at the time of your license application or renewal)~~ must be paid.

(12) If there is a change in ~~(your)~~ a facility that places ~~(your)~~ the facility in a higher fee category, ~~(we)~~ the department prorates the additional fee amount over the remainder of the license period.

(13) If ~~(you)~~ an applicant or licensee withdraws ~~(your)~~ an application or continuation before ~~(we deny)~~ the department denies or issues a license, ~~(we refund one-half of)~~ the fee shall not be refunded.

(14) If there is a change that requires a new license, ~~(we refund any fee that remains after your)~~ the fee paid for the period beyond the next licensing date shall not be refunded. A new license requires a new application and fee.

(15) If ~~(we deny, revoke, or suspend your license, we do not refund your)~~ the department denies, revokes or suspends a license, the department does not refund the licensing fee.

(16) If ~~(you reapply)~~ a licensee reapplies for a license after ~~(we)~~ the department revokes or suspends ~~(your)~~ a license, ~~(you)~~ the licensee must pay a new license fee.

(17) If ~~((you do))~~ a licensee does not pay licensing fees when they are due, ~~((we))~~ the department suspends or ~~((deny you))~~ denies the licensee's license.

NEW SECTION

WAC 170-295-0095 Nonexpiring full license. (1) The department may issue a nonexpiring full license to a licensee operating under an initial license who:

(a) Demonstrates full compliance with the health and safety requirements of this chapter at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with the other requirements of this chapter at any time during the period of initial licensure; and

(c) Meets the other requirements for a nonexpiring full license as provided in this section.

(2) To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis:

(a) An annual nonrefundable licensing fee;

(b) A declaration to the department on a department-approved form indicating:

(i) The intent to continue operating a licensed child care program; or

(ii) The intent to cease operation on a date certain;

(c) A declaration on a department-approved form of compliance with all licensing rules; and

(d) Documentation of completed background check applications as determined by the department-established schedule.

(3) The requirements in this section must be met within one calendar year of the date on the initial license and every twelve months thereafter. The nonexpiring full license is valid for one calendar year from the date a first initial license or previous nonexpiring full license was issued, unless otherwise suspended or revoked, or the department issues a probationary license.

(4) If a licensee fails to meet the requirements in this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

(5) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practice.

(6) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a full nonexpiring license as a result of the licensee's failure to comply with the requirements of this section.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-0110 ~~((When can I be fined for not following the minimum licensing requirements?))~~ Civil fines. (1) ~~((We notify you))~~ The department notifies licensees in writing of ~~((our))~~ the department's intention to impose a civil fine. ~~((We))~~ The department may use personal service, ~~((including by our))~~ the department's licensor, or certified mail. The letter will include:

(a) A description of the violation and a quote of the law or rule that ~~((you have))~~ the licensee has failed to meet;

(b) A statement of what ~~((you))~~ the licensee must do to come into compliance;

(c) The date by which ~~((we))~~ the department requires compliance;

(d) Information about the maximum allowable penalty ~~((we))~~ the department can impose if ~~((you do))~~ the licensee does not come into compliance by the given date;

(e) How ~~((you))~~ the licensee can get technical assistance services provided by ~~((us))~~ the department or by others; and

(f) Information about how ~~((you))~~ the licensee can request an extension to the date ~~((you must))~~ to be in compliance, if ~~((we))~~ the department decides ~~((you have))~~ he or she has a good reason.

(2) The length of time ~~((we establish))~~ the department establishes for ~~((you))~~ the licensee to come into compliance depends on:

(a) The seriousness of the violation;

(b) The potential threat to the health, safety and welfare of children in ~~((your))~~ the licensee's care; or

(c) If ~~((you have))~~ the licensee has had previous opportunities to correct the deficiency and ~~((have))~~ has not done so.

(3) ~~((We))~~ The department uses the following criteria to determine if ~~((we))~~ the department imposes a civil fine based on, but not limited to, these reasons:

(a) The child care center has previously been subject to an enforcement action for the same or similar type of violation for the same statute or rule; or

(b) The child care center has previously been given notice of the same or similar type of violation of the same law or rule; or

(c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) ~~((We can))~~ The department may impose a civil fine in addition to or at the same time as other disciplinary actions against a child care center. These include probation, suspension, or other action.

(5) ~~((You))~~ A licensee must pay any civil fines no more than twenty-eight days after ~~((you receive))~~ receiving the notice that ~~((you have))~~ he or she has a fine. ~~((We))~~ The department may specify a later date.

(6) ~~((We can))~~ The department may waive the fine if ~~((your))~~ the licensee's center comes into compliance during the notification period.

(7) ~~((You))~~ A licensee must post the final notice of a civil fine in a noticeable place in ~~((your))~~ his or her center. The notice must remain posted until ~~((we notify you))~~ the department notifies the licensee that ~~((we have))~~ the department has received ~~((your))~~ the payment.

(8) Each violation of a law or rule is a separate violation. ~~((We can))~~ The department may penalize each violation. ~~((We can))~~ The department may impose a penalty for each day the violation continues or as a flat amount of the maximum allowable penalty.

(9) If ~~((you))~~ a licensee fails to pay ~~((your))~~ a fine within ten days after the assessment becomes final, ~~((we can))~~ the department may suspend, revoke, or not ~~((renew your))~~ continue his or her license.

(10) ~~((You))~~ Licensees have the right to a hearing when ~~((we assess))~~ the department assesses a civil fine under RCW 43.215.307 and chapter 170-03 WAC.

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

WAC 170-295-0140 ~~((When can the department issue a))~~ **Probationary licenses** ~~((to a child care center operator?))~~. (1) ~~((We can))~~ The department may issue a probationary license to ~~((you))~~ a licensee as provided in RCW 43.215.290, based on the following factors:

(a) ~~((You))~~ The licensee's willful or negligent failure to comply with the regulations;

(b) ~~((You))~~ The licensee's history of noncompliance with the regulations;

(c) How far ~~((you))~~ the licensee deviates from the regulations;

(d) Evidence of ~~((you))~~ the licensee's good faith effort to comply with the regulations; and

(e) Any other factors relevant to ~~((you))~~ the licensee's unique situation.

(2) ~~((We can))~~ The department may issue a probationary license to ~~((you))~~ a licensee when the willful or negligent violation of the licensing requirements does not present an immediate threat to the health and well being of the children, but would be likely to do so if allowed to continue. ~~((We can))~~ The department may also issue civil fines or other sanctions in this case. Such situations can include:

(a) Substantiation that a child was abused or neglected while in the care of the center;

(b) A fire safety inspection or health/sanitation inspection report that has been disapproved;

(c) Use of unauthorized space for child care;

(d) Inadequate supervision of children;

(e) Under staffing for the number of children in care; and

(f) Noncompliance with requirements addressing children's health, proper nutrition, discipline, emergency medical plan, sanitation and personal hygiene practices.

(3) ~~((You))~~ Licensees are required to notify parents when a probationary license is issued. ~~((You))~~ The licensee must:

(a) Notify in writing the parents or guardians of all children in care that the center is in probationary status. This notification must be within five working days of ~~((you))~~ receiving notification of being placed on probationary status or being issued a probationary license. ~~((We))~~ The department must approve the notification before ~~((you))~~ the licensee sends it; and

(b) Provide documentation to ~~((us))~~ the department that parents or guardians of all children in care have been notified. ~~((You))~~ The licensee must provide this documentation within ten working days of being notified that ~~((you have))~~ he or she has been issued a probationary license.

(4) A probationary license ~~((can))~~ may be issued for up to six months and ~~((can))~~ may be extended at ~~((our))~~ the department's discretion for an additional six months.

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

WAC 170-295-7040 ~~((Am I required to keep licensing information available on site for parents to review?))~~ **Facility records.** ~~((You))~~ The licensee must keep a file on-site containing ~~((the following licensing information:~~

(1) Copies of the most recent child care center checklists for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and

(2) copies of the most recent child care center(s) monitoring checklist and facility licensing compliance agreement for any deficiencies noted.

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

WAC 170-295-7080 ~~((What am I required to post in the center?))~~ **Materials that must be posted.** ~~((You))~~ Licensees must post the following items so that they are clearly visible to the parent and staff:

(1) The center's child care license issued under this chapter;

(2) A schedule of regular duty hours with the names of staff;

(3) A typical activity schedule, including operating hours and scheduled mealtimes;

(4) Meal and snack menus for the month;

(5) Fire safety record and evacuation plans and procedures, including a diagram of exiting routes;

(6) Emergency telephone numbers near the telephone;

(7) Nondiscrimination poster;

(8) For the staff, ~~((you))~~ the licensee must post:

(a) Dietary restrictions and nutrition requirements for particular children;

(b) Handwashing practices;

(c) Diaper changing procedures, if applicable;

(d) Disaster preparedness plan; and

(e) Center policies and procedures.

(9) ~~((You))~~ The licensee must post a notification advising parents that ~~((you are))~~ the licensee is required to keep ~~((the following licensing information available))~~ a file on-site for their review(~~(=~~

~~(a) Copies of the most recent child care center checklist for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and~~

~~(b))~~ containing copies of the most recent child care center(s) monitoring checklist and facility licensing compliance agreement for any deficiencies noted.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

WAC 170-296-0020 ~~((What))~~ **Definitions** ~~((do I need to know to understand this chapter?))~~. For the purpose of this chapter:

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

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

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

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

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

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

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

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

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

"Capacity" means the highest number of children ((you)) a licensee can care for at any time, as written on ((you)) his or her license.

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

"Child care" means the developmentally appropriate care, protection and supervision of children that is designed to promote positive growth and educational experiences for children outside of their home for periods of less than twenty-four hours a day.

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

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

"Conditions of the license" means what ((you)) a licensee must do to keep a license.

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

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

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

"Department," "we," "us," or "our" refers to and means the state department of early learning (DEL), and its predecessor agency the department of social and health services (DSHS).

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

"Developmentally appropriate" means activities and interactions that recognize and address how children learn

and what they can do at each stage of development - socially, emotionally, cognitively, and physically.

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

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

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

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

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

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

"Inaccessible to children" means areas kept or items stored in a manner that makes it impossible for children to reach, enter, or use potentially hazardous items or areas. Examples of how this can be accomplished are through the use of locks, gates, or other means that are effective to prevent access by the children in ((you)) a licensee's care.

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

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

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

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

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

"Nonexpiring licensee" or "nonexpiring full license" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-296-0350.

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

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

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

"Primary staff person" means a person who has been authorized by DEL to care for or have unsupervised access to children in child care under chapter 170-06 WAC, age eighteen years or older, who has responsibilities for the operation

of the program and the direct supervision, behavior management and care of children.

"Provider" means the same as licensee.

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

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

"Revocation" means the formal act of closing ~~((your))~~ a licensee's child care business and taking ~~((your))~~ a license from ~~((you))~~ a licensee due to ~~((your))~~ the licensee's failure to follow the rules.

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

"Staff" means a child care giver or group of child care givers employed by the licensee to assist with or supervise children served at the family home child care who have been authorized by DEL to care for or have unsupervised access to children in child care under chapter 170-06 WAC.

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-296-0330 ~~((Is there more than one category))~~ Categories of ((license?)) licenses. ~~((We))~~ The department issues three types of licenses:

- (1) Initial (see WAC 170-296-0340);
- (2) Nonexpiring full (see WAC 170-296-0350); and
- (3) Probationary (see WAC 170-296-0440).

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

WAC 170-296-0340 ~~((When will the department issue an))~~ Initial ((license to me?)) licenses. (1) If ~~((you are))~~ an applicant is not currently licensed ((we)), the department may issue an initial license ((to you)) to provide child care when all the health and safety rules have been met, but ((you)) the applicant:

(a) Cannot demonstrate compliance with the rules pertaining to:

- (i) Supervision;
- (ii) Capacity;
- (iii) Behavior management;
- (iv) Activity and routines; and
- (v) Child records and information.

(b) Can provide a plan that is acceptable to ~~((us))~~ the department, to comply with rules found in subsection (1)(a) of this section.

(2) ~~((We))~~ The department may issue an initial license ((to you)) for a period not to exceed six months, renewable for a period not to exceed two years, which may continue to remain valid so long as the licensee meets the requirements for a nonexpiring license as provided in WAC 170-296-0350.

(3) ~~((We))~~ The department must evaluate ((your)) an applicant's ability to follow all the rules contained in this chapter during the initial licensing period prior to issuing a nonexpiring full license.

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

WAC 170-296-0350 ~~((When will the department issue a))~~ Nonexpiring full license ((to me?)). (1) ~~((We))~~ The department may issue a nonexpiring full license to ((you when you can demonstrate)) a licensee operating under an initial license who:

(a) Demonstrates full compliance with ((all rules contained in)) health and safety requirements of this chapter at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with other requirements of this chapter at any time ((that you have an)) during the period of initial ((license)) licensure; and

(c) Meets the other requirements for a nonexpiring full license as provided in this section.

(2) ~~((We must not issue a full license to you if you do not demonstrate the ability to comply with all rules contained in this chapter during the period you have an initial license.))~~ To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis:

(a) An annual nonrefundable licensing fee;

(b) A declaration to the department on a department-approved form indicating:

(i) The intent to continue operating a licensed child care program; or

(ii) The intent to cease operation on a date certain;

(c) A declaration on a department-approved form of compliance with all licensing rules; and

(d) Documentation of completed background check applications as determined by the department-established schedule.

(3) The requirements in this section must be met within one calendar year of the date on the initial license and every twelve months thereafter. The nonexpiring full license is valid for one calendar year from the date a first initial license or previous nonexpiring full license was issued, unless otherwise suspended or revoked, or the department issues a probationary license.

(4) If a licensee fails to meet the requirements in this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

(5) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practice.

(6) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a full nonexpiring license as a result of the licensee's failure to comply with the requirements of this section.

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

WAC 170-296-0410 (~~What happens if I fail~~) Failure to pay (~~the~~) a fine(~~?)~~. If (~~you~~) a licensee fails to pay a fine within ten days after the fine assessment becomes final, (~~we~~) the department may suspend, revoke or not (~~renew your~~) continue a license.

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

WAC 170-296-0440 (~~When would the department issue a~~) Probationary (~~license?)~~ licenses. (1) (~~We~~) The department may, but (~~are~~) is not required to, issue a probationary license to a licensee as provided in RCW 43.215.290 as part of a corrective action plan with a licensed provider. In addition to issuing (~~you~~) the licensee a probationary license, (~~we~~) the department may also assess civil penalties or other sanctions.

(2) (~~We~~) The department must base our decision about whether to issue a probationary license on the following:

(a) Intentional or negligent noncompliance with the licensing rules;

(b) A history of noncompliance with the rules;

(c) Current noncompliance with the rules; and

(d) Any other factors relevant to the specific situation.

(3) When (~~we~~) the department issues (~~you~~) a licensee a probationary license (~~you~~) the licensee must give notification of (~~your~~) his or her probationary license status to:

(a) The parents or guardians of all children in (~~your~~) the licensee's care, within five working days of receiving notification from (~~us~~) the department; and

(b) New applicants for child care, before enrolling new children.

(4) The notification must be in writing and must be approved by (~~us~~) the department prior to being sent.

(5) Within ten working days of receiving notification of the probationary license, (~~you~~) the licensee must provide documentation to (~~us~~) the department that parents or guardians of all children in (~~your~~) the licensee's care have been notified.

(6) (~~We~~) The department may issue a probationary license for up to six months(~~We~~), and at the department's discretion, may extend the probationary license for an additional six months.

(7) (~~You~~) The licensee must return (~~your~~) his or her nonexpiring full license to (~~us~~) the department.

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

WAC 170-296-0540 (~~What items am I required to post and where do I post them?~~) Materials that must be posted. (~~You~~) Licensees are required to post these items in the licensed space of your family home child care where the public can easily view them:

(1) The home's child care license issued under this chapter;

(2) Evacuation plans and procedures, that include a written record of the required monthly fire drills and smoke detector checks;

(3) Emergency telephone numbers;

(4) Any civil penalty imposed; and

(5) (~~You must post~~) A notification advising parents that (~~you are~~) the licensee is required to keep (~~the following licensing information available~~) a file on-site for their review(=

(a) ~~Copies of the most recent family home child care checklist for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and~~

(b) containing copies of the most recent family home child care monitoring checklist and facility licensing compliance agreement for any deficiencies noted.

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

WAC 170-296-0860 (~~What must I do to prevent~~) Preventing the spread of infections and communicable diseases(~~?)~~. (1) You must take precautions to guard against infections and communicable diseases.

(2) (~~You, your~~) A licensee, the licensee's staff, and volunteers with a reportable communicable disease in an infectious stage, as defined by the department of health, must not be on duty until (~~you, your~~) the licensee, the licensee's staff, and volunteers have approval from the local health department for returning to work.

(3) Applicants for a license, staff, volunteers and persons sixteen years and older authorized to have access to children in a family home child care must have a tuberculin (TB) skin test by the Mantoux method of testing. They must have this skin test upon being employed or licensed unless the person has evidence:

(a) Of negative testing within the previous twelve months;

(b) That they have a negative chest X ray since previously having a positive skin test; or

(c) Of having completed adequate preventive therapy or adequate therapy for active tuberculosis.

(4) The department does not require a tuberculin skin test if a physician indicates that the test is medically inadvisable.

(5) Persons whose tuberculosis skin test is positive must have a chest X ray within thirty days following the skin test.

(6) The department does not require retesting at the time of license (~~renewal~~) continuation, unless the licensee or staff person believes they have been exposed to someone with tuberculosis or if their health care provider recommends testing.

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|------------------|--------------------------------|
| WAC 170-296-0260 | Do I need to renew my license? |
|------------------|--------------------------------|