WSR 11-16-006
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed July 21, 2011, 2:56 p.m., effective July 30, 2011]

Effective Date of Rule: July 30, 2011.

Purpose: The DSHS division of child support (DCS) is adopting these second emergency rules to implement changes in the federal regulations concerning establishing and enforcing intergovernmental child support obligations. The federal rules being implemented in this rule-making order are 45 C.F.R. Parts 301.1, 302.35, 302.36, 303.3, 303.7, 303.11, 303.20, 305.63, 307.13, and 308.2.

DCS filed emergency rules with an effective date of March 31, 2011, under WSR 11-08-020; under RCW 34.05.350(2), those rules expire one hundred twenty days after filing, on July 29, 2011. The public rule-making hearing on these rules is set for August 9, 2011, under WSR 11-13-108. DCS is filing the second emergency rule package in order to keep the rules in effect until after the CR-103P Rule-making order, is filed and the thirty day period required under RCW 34.08.380(2) has run. The rules adopted in this second emergency filing are identical to the first emergency rules.

Citation of Existing Rules Affected by this Order: New sections WAC 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS? and 388-14A-2083 Under what circumstances can DCS close an intergovernmental case, otherwise known as a case where the application for services was originally made to another state, tribe, territory or country?; and amending WAC 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed?, 388-14A-2085 Under what circumstances may DCS ((~~deny~~)) keep a support enforcement case open despite a request to close ((~~a support enforcement case~~)) it?, 388-14A-2090 Who ((~~is mailed~~)) receives notice ((~~of DCS' intent to close~~)) when DCS closes a case?, 388-14A-2097 What happens to payments that come in after a case is closed?, 388-14A-2160 ((~~If my information is confidential, can~~)) On what authority does DCS ((~~report me to~~)) share my confidential information with a credit bureau?, 388-14A-3130 What happens if a ((~~parent~~)) party makes a timely request for hearing on a support establishment notice?, 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment?, 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears?, 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children?, 388-14A-7100 The division of child support may register an order from another state for enforcement or modification, 388-14A-7305 How ((~~do I~~)) does a party, IV-D agency or jurisdiction ask ((~~DCS to do~~)) for a determination of controlling order?, 388-14A-7325 How does DCS notify the parties ((~~of its~~)) that a determination of the controlling order ((~~has been~~)) is going to be made?, and 388-14A-7335 What happens if someone objects to ((~~DCS' proposed~~)) a notice of support debt and registration which contains a determination of the presumed controlling order?

Statutory Authority for Adoption: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.-040(9), 74.20A.310.

Other Authority: 45 C.F.R. Parts 301.1, 302.35, 302.36, 303.3, 303.7, 303.11, 303.20, 305.63, 307.13, and 308.2.

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: 45 C.F.R. Parts 301.1, 302.35, 302.36, 303.3, 303.7, 303.11, 303.20, 305.63, 307.13, and 308.2.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 3, Amended 13, 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 3, Amended 13, Repealed 0.

Date Adopted: July 18, 2011.

Katherine I. Vasquez
Rules Coordinator

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

WAC 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed? ((~~Once the division of child support (DCS) starts providing support enforcement services under RCW 26.23.045 and chapter 74.20 RCW, the case must remain open, unless DCS determines that:~~))

(1) ((~~There is no current support order, and the support debt owed by the noncustodial parent (NCP) is less than five hundred dollars, or cannot be enforced under Washington law;~~)) The circumstances under which the division of child support (DCS) may close a case depend on whether the application for services was made directly to DCS or to another governmental entity.

(2) ((~~The NCP or putative (alleged) father is dead with no assets, income or estate available for collection;~~)) WAC 388-14A-2081 discusses closure of a case when one of the parties submitted an application for support enforcement services directly to DCS, which includes when DCS opened the case as the result of an application for public assistance in the state of Washington.

(3) ((~~The NCP has no assets or income available for collection and is not able to provide support during the child's minority because of being:~~

~~(a) Institutionalized in a psychiatric facility;~~

~~(b) Incarcerated without possibility of parole; or~~

~~(c) Medically verified as totally and permanently disabled with no evidence of ability to provide support.~~

~~(4) The applicant, agency or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;~~

~~(5) DCS has enough information to use an automated locate system, and has not been able to locate the NCP after three years of diligent efforts;~~

~~(6) DCS does not have enough information to use an automated locate system, and has not been able to locate the NCP after one year of diligent efforts;~~

~~(7) DCS is unable to contact the applicant, agency or recipient of services for at least sixty days;~~

~~(8) DCS documents failure to cooperate by the custodial parent (CP) or the initiating jurisdiction, and that cooperation is essential for the next step in enforcement;~~

~~(9) DCS cannot obtain a paternity order because:~~

~~(a) The putative father is dead;~~

~~(b) Genetic testing has excluded all putative fathers;~~

~~(c) The child is at least eighteen years old;~~

~~(d) DCS, a court of competent jurisdiction or an administrative hearing determines that establishing paternity would not be in the best interests of the child in a case involving incest, rape, or pending adoption; or~~

~~(e) The biological father is unknown and cannot be identified after diligent efforts, including at least one interview by DCS or its representative with the recipient of support enforcement services.~~

~~(10) DCS, a court of competent jurisdiction or an administrative hearing determines that the recipient of services has wrongfully deprived the NCP of physical custody of the child as provided in WAC 388-14A-3370(3);~~

~~(11) DCS, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or enforce a support obligation cannot occur without a risk of harm to the child or the CP;~~

~~(12) DCS has provided locate-only services in response to a request for state parent locator services (SPLS);~~

~~(13) The NCP is a citizen and resident of a foreign country, and:~~

~~(a) NCP has no assets which can be reached by DCS; and~~

~~(b) The country where NCP resides does not provide reciprocity in child support matters.~~

~~(14) The child is incarcerated or confined to a juvenile rehabilitation facility for a period of ninety days or more; or~~

~~(15) Any other circumstances exist which would allow closure under 45 C.F.R. 303.11 or any other federal statute or regulation~~)) WAC 388-14A-2083 discusses closure of an intergovernmental case, which is what we call a case where the application for services was made to the child support enforcement agency of another state, tribe, territory, country or political subdivision thereof, which then requested support enforcement services from DCS.

NEW SECTION

WAC 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS? When the application for services was made directly to the division of child support (DCS) by one of the parties, including when DCS opened the case as the result of an application for public assistance in the state of Washington, the case must remain open unless DCS determines that:

(1) There is no current support order, and the support debt owed by the noncustodial parent (NCP) is less than five hundred dollars, or cannot be enforced under Washington law;

(2) The NCP or putative (alleged) father is dead with no assets, income or estate available for collection;

(3) The NCP has no assets or income available for collection and is not able to provide support during the child's minority because of being:

(a) Institutionalized in a psychiatric facility;

(b) Incarcerated without possibility of parole; or

(c) Medically verified as totally and permanently disabled with no evidence of ability to provide support.

(4) The applicant or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;

(5) DCS has enough information to use an automated locate system, and has not been able to locate the NCP after three years of diligent efforts;

(6) DCS does not have enough information to use an automated locate system, and has not been able to locate the NCP after one year of diligent efforts;

(7) DCS is unable to contact the applicant or recipient of services for at least sixty days;

(8) DCS or the prosecutor documents failure to cooperate by the custodial parent (CP), and that cooperation is essential for the next step in enforcement;

(9) DCS cannot obtain a paternity order because:

(a) The putative father is dead;

(b) Genetic testing has excluded all putative fathers;

(c) The child is at least eighteen years old;

(d) DCS, or the prosecutor, a court of competent jurisdiction or an administrative hearing determines that establishing paternity would not be in the best interests of the child in a case involving incest, rape, or pending adoption; or

(e) The biological father is unknown and cannot be identified after diligent efforts, including at least one interview by DCS or its representative with the recipient of support enforcement services.

(10) DCS, or the prosecutor, a court of competent jurisdiction or an administrative hearing determines that the recipient of services has wrongfully deprived the NCP of physical custody of the child as provided in WAC 388-14A-3370(3);

(11) DCS, or the prosecutor, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or enforce a support obligation cannot occur without a risk of harm to the child or the CP;

(12) DCS has provided locate-only services in response to a request for state parent locator services (SPLS);

(13) The NCP is a citizen and resident of a foreign country, and:

(a) NCP has no assets which can be reached by DCS; and

(b) The country where NCP resides does not provide reciprocity in child support matters.

(14) The child is incarcerated or confined to a juvenile rehabilitation facility for a period of ninety days or more; or

(15) Any other circumstances exist which would allow closure under 45 C.F.R. 303.11 or any other federal statute or regulation.

NEW SECTION

WAC 388-14A-2083 Under what circumstances can DCS close an intergovernmental case, otherwise known as a case where the application for services was originally made to another state, tribe, territory or country? (1) When the application for services was originally made by a party to the child support enforcement agency of another state, tribe, territory, country or political subdivision thereof, which then requested support enforcement services from the division of child support (DCS), DCS keeps the case open until:

(a) The state, tribe, territory, country or political subdivision that received the application for services tells DCS that its case is closed.

(b) The state, tribe, territory, country or political subdivision that received the application for services tells DCS that it no longer wants DCS to provide services.

(c) DCS documents failure to cooperate by the initiating jurisdiction, and that cooperation is essential for the next step in enforcement.

(2) DCS calls this type of case an "intergovernmental case."

(a) The state, tribe, territory, country or political subdivision thereof which referred the case to DCS is called the "initiating jurisdiction."

(b) In these cases, DCS is the "responding jurisdiction."

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

WAC 388-14A-2085 Under what circumstances may DCS ((~~deny~~)) keep a support enforcement case open despite a request to close ((~~a support enforcement case~~)) it? (1) The division of child support (DCS) may deny a request to close a support enforcement case when:

(a) There is a current assignment of support or medical rights on behalf of the children in the case;

(b) There is accrued debt under a support order which has been assigned to the state;

(c) Support or medical rights on behalf of the children have previously been assigned to the state; or

(d) The person who requests closure is not the recipient of support enforcement services((~~; or~~

~~(e) A superior court order requires payments to the Washington state support registry (WSSR)~~)).

(2) If DCS is the responding jurisdiction in an intergovernmental case DCS cannot deny a request from the initiating jurisdiction to close the intergovernmental portion of a DCS case.

(3) If there is no current assignment of support or medical rights, DCS may close the portion of the case which is owed to the custodial parent (CP), but if there is accrued debt under a support order which has been assigned to the state, DCS keeps that portion of the case open.

((~~(3)~~)) (4) If a superior court order specifies that the noncustodial parent (NCP) must make payments to the WSSR, but the CP does not want support enforcement services, DCS ((~~keeps the case open as~~)) changes the case status to a payment services only (PSO) case, which means that:

(a) DCS provides payment processing and records maintenance, and

(b) DCS does not provide enforcement services.

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

WAC 388-14A-2090 Who ((~~is mailed~~)) receives notice ((~~of DCS' intent to close~~)) when DCS closes a case? (1) ((~~Sixty days before closing a case the division of child support (DCS) sends a notice of intent to close, advising the parties why DCS is closing the case.~~

~~(a) DCS does not send a notice when closing a case under WAC 388-14A-2080 (11) or (12).~~

~~(b) DCS does not provide sixty days' prior notice when closing a case under WAC 388-14A-2080(4)~~)) The reason for case closure determines whether the division of child support (DCS):

(a) Sends a notice of intent to close;

(b) Sends a notice of case closure; or

(c) Notifies the other jurisdiction.

(2) DCS mails a notice of intent to close by regular mail to the last known address of the custodial parent (CP) and the noncustodial parent.

(3) ((~~In an interstate case, DCS mails the notice to the CP by regular mail in care of the other state's child support agency~~)) If DCS is closing a case under WAC 388-14A-2081, DCS sends a notice of intent to close, advising the parties why DCS is closing the case. DCS sends the notice sixty days before closing the case, except:

(a) DCS sends a notice of case closure but does not send a notice of intent to close when the applicant or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;

(b) DCS notifies the initiating jurisdiction in an intergovernmental case that DCS has closed the case after the initiating jurisdiction requests case closure; and

(c) DCS does not send a notice of intent to close or a notice of case closure when:

(i) DCS, the prosecuting attorney, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or enforce a support obligation cannot occur without a risk of harm to the child or the custodial parent (CP); or

(ii) DCS has provided locate-only services in response to a request for state parent locator services (SPLS).

(4) If DCS is the responding jurisdiction and is closing an ((~~interstate~~)) intergovernmental case because of noncooperation by the initiating jurisdiction, DCS ((~~also mails the~~

~~notice to~~)) notifies the other state's child support agency sixty days before closing the case.

(5) When DCS is the initiating jurisdiction in an intergovernmental case and DCS closes its case, DCS notifies the responding jurisdiction that DCS has closed its case and provides the reason for closure.

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

WAC 388-14A-2097 What happens to payments that come in after a case is closed? After support enforcement services are terminated, the division of child support (DCS) returns support money to the noncustodial parent except if the case remains open as a payment services only (PSO) case as described in WAC 388-14A-2000(1).

(2) If DCS, as the initiating jurisdiction in an intergovernmental case, closed a case without notifying the responding jurisdiction, DCS must attempt to locate the custodial parent (CP) and disburse any payments the CP is entitled to receive.

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.

AMENDATORY SECTION (Amending WSR 06-06-076, filed 2/28/06, effective 3/31/06)

WAC 388-14A-2160 ((~~If my information is confidential, can~~)) On what authority does DCS ((~~report me to~~)) share my confidential information with a credit bureau? (1) ((~~When a consumer reporting agency, sometimes called a credit bureau, requests information regarding the amount of overdue support owed by a noncustodial parent (NCP), the division of child support (DCS) provides this information~~)) Under 42 USC §666(7), the division of child support (DCS) may report to consumer reporting agencies the name of any noncustodial parent (NCP) who is delinquent in support and the amount of overdue support owed by that parent. Consumer reporting agencies are sometimes also called credit bureaus.

(2) ((~~In addition to responding to requests for information by consumer reporting agencies~~)) Once DCS has reported an NCP to the credit bureaus, DCS ((~~reports to those agencies information regarding overdue support owed by an NCP. DCS then~~)) updates the information on a regular basis as long as DCS continues to enforce the support order, even after the NCP brings the account current.

(3) Before releasing information to the consumer reporting agency, DCS sends a written notice to the NCP's last known address concerning the proposed release of the information ((~~to the NCP's last known address~~)).

(4) The notice gives the NCP ten days from the date of the notice to request a conference board under WAC 388-14A-6400 to contest the accuracy of the information. If the NCP requests a conference board, DCS does not release the information until a conference board decision has been issued.

(5) ((~~A noncustodial parent (NCP)~~)) An NCP who disagrees with the information supplied by DCS to a consumer reporting agency or credit bureau may file a notice of dispute under the federal Fair Credit Reporting Act, 15 USC 1681.

(6) For interstate or intergovernmental cases, either the initiating jurisdiction or the responding jurisdiction, or both, may report the NCP's debt to the credit bureaus.

AMENDATORY SECTION (Amending WSR 02-06-098, filed 3/4/02, effective 4/4/02)

WAC 388-14A-3130 What happens if a ((~~parent~~)) party makes a timely request for hearing on a support establishment notice? (1) A timely request for hearing is an objection made within the time limits of WAC 388-14A-3110. For late (or untimely) hearing requests, see WAC 388-14A-3135.

(2) If either parent makes a timely request for hearing, the division of child support (DCS) submits the hearing request to the office of administrative hearings (OAH) for scheduling.

(3) OAH sends a notice of hearing by first class mail to all parties at their address last known to DCS, notifying each party of the date, time and place of the hearing. DCS, the noncustodial parent (NCP), and the custodial parent are all parties to the hearing.

(4) A timely request for hearing stops the support establishment notice from becoming a final order, so DCS cannot collect on the notice. However, in appropriate circumstances, the administrative law judge (ALJ) may enter a temporary support order under WAC 388-14A-3850.

(5) A hearing on an objection to a support establishment notice is for the limited purpose of resolving the NCP's accrued support debt and current support obligation. The NCP has the burden of proving any defenses to liability.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support. (1) The division of child support (DCS) may serve a notice of support debt and demand for payment on a noncustodial parent (NCP) under RCW 74.20A.040 to provide notice that DCS is enforcing a support order entered in Washington state, a foreign court order or a foreign administrative order for support.

(a) A "foreign" order is one entered in a jurisdiction other than a Washington state court or administrative forum.

(b) DCS uses the notice of support debt and demand for payment when there is only one current child support order for the NCP and the children in the case.

(c) When there are multiple current support orders for the same obligor and children, DCS determines which order to enforce as provided under WAC 388-14A-3307.

(2) DCS serves a notice of support debt and demand for payment like a summons in a civil action or by certified mail, return receipt requested.

(3) In a notice of support debt and demand for payment, DCS includes the information required by RCW 74.20A.040, the amount of current and future support, accrued support

debt, interest (if interest is being assessed under WAC 388-14A-7110), any health insurance coverage obligation, and any day care costs under the court or administrative order.

(4) After service of a notice of support debt and demand for payment, the NCP must make all support payments to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support debt and demand for payment except as provided in WAC 388-14A-3375.

(5) A notice of support debt and demand for payment becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW, subject to the terms of the order, unless, within twenty days of service of the notice in Washington, or within sixty days of service of the notice outside of Washington, the NCP:

(a) Files a request with DCS for a conference board under WAC 388-14A-6400. The effective date of a conference board request is the date DCS receives the request;

(b) Obtains a stay from the superior court; or

(c) Objects to either the validity of the foreign support order or the administrative enforcement of the foreign support order, in which case DCS proceeds with registration of the foreign support order under WAC 388-14A-7100.

(6) ((~~A notice of support debt and demand for payment served in another state becomes final according to WAC 388-14A-7200~~)) RCW 26.21A.515 controls the calculation of the debt on a notice of support debt and demand for payment.

(7) Enforcement of the following are not stayed by a request for a conference board or hearing under this section or WAC 388-14A-6400:

(a) Current and future support stated in the order; and

(b) Any portion of the support debt that the NCP and custodial parent (CP) fail to claim is not owed.

(8) Following service of the notice of support debt and demand for payment on the NCP, DCS mails to the last known address of the CP and/or the payee under the order:

(a) A copy of the notice of support debt and demand for payment; and

(b) A notice to payee under WAC 388-14A-3315 regarding the payee's rights to contest the notice of support debt. The CP who is not the payee under the order has the same rights to contest the notice of support debt and demand for payment.

(9) If the NCP requests a conference board under subsection (5)(a) of this section, DCS mails a copy of the notice of conference board to the CP informing the CP of the CP's right to:

(a) Participate in the conference board; or

(b) Request a hearing under WAC 388-14A-3321 within twenty days of the date of a notice of conference board that was mailed to a Washington address. If the notice of conference board was mailed to an out-of-state address, the CP may request a hearing within sixty days of the date of the notice of conference board. The effective date of a hearing request is the date DCS receives the request.

(10) If the CP requests a hearing under subsection ((~~(9)~~)) (8)(b) of this section, DCS must:

(a) Stay enforcement of the notice of support debt and demand for payment except as required under subsection (6) of this section; and

(b) Notify the NCP of the hearing.

(11) If a CP requests a late hearing under subsection ((~~(8)~~)) (7) of this section, the CP must show good cause for filing the late request.

(12) The NCP is limited to a conference board to contest the notice and may not request a hearing on a notice of support debt and demand for payment. However, if the CP requests a hearing, the NCP may participate in the hearing.

(13) A notice of support debt and demand for payment must fully and fairly inform the NCP of the rights and responsibilities in this section.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment? Once the division of child support has served a notice of support debt and demand for payment, either party may disagree with the notice.

(1) If either party objects to the enforcement of a non-Washington support order, that party may request that DCS register that order under chapter 26.21A RCW. DCS then serves a notice of support debt and registration as provided in WAC ((~~388-14A-7110~~)) 388-14A-7100.

(2) If the noncustodial parent (NCP) objects to the amount of current support or the amount of support debt stated in the notice, the NCP may request a conference board under WAC 388-14A-6400.

(a) The custodial parent (CP) may participate in the conference board under this section.

(b) The CP may choose to convert the proceeding to an administrative hearing. The NCP may participate in a hearing held under this section.

(3) If the custodial parent objects to the amount of current support or the amount of support debt stated in the notice, the CP may request an administrative hearing. The NCP may participate in a hearing held under this section.

(4) See WAC 388-14A-3304 for a more full description of the hearing process on the notice of support debt and demand for payment.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears? (1) After service of a notice of support debt and demand for payment as provided in WAC 388-14A-3304, the final administrative order determines the support debt as of the date of the order, and:

(a) The debt determination is not a final determination under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

(b) ((~~Any party may request that a tribunal determine any amounts owed as interest on the support debt~~)) RCW 26.21A.515 controls in any computation and/or determination of accrued interest on arrearages under the support order.

(2) The final administrative order comes about by:

(a) Operation of law if nobody objects to the notice;

(b) Agreed settlement or consent order under WAC 388-14A-3600;

(c) Final conference board decision under WAC 388-14A-6400;

(d) Final administrative order entered after hearing or a party's failure to appear for hearing.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children? When more than one current child support order exists for the same obligor and children, the division of child support (DCS) may proceed as follows:

(1) When not acting as a responding jurisdiction, DCS decides whether or not a determination of controlling order is necessary, and which state has the authority to make a determination of controlling order (DCO) under UIFSA.

(2) Using the criteria listed in RCW 26.21A.130, DCS ((~~decides~~)) may decide which child support order it should enforce and ((~~serves~~)) may serve a notice of support debt and demand for payment under WAC 388-14A-3304.

(2) ((~~If DCS decides that a determination of controlling order under chapter 26.21A RCW is required~~)) When a party objects to enforcement of the order selected for enforcement under subsection (1) of this section, or when the order that DCS decides to enforce is not the order presented by a party or another jurisdiction for enforcement of current support, DCS ((~~serves~~)) may serve a notice of support debt and registration as provided in WAC 388-14A-7100.

(3) ((~~Upon request, DCS may do a determination of controlling order (DCO).~~

~~(a) See~~)) WAC 388-14A-7305 ((~~for~~)) describes how ((~~you~~)) either party or the initiating jurisdiction can ask for a DCO.

((~~(b) See~~)) (4) WAC 388-14A-7315 ((~~for~~)) describes how DCS decides whether ((~~or not~~)) to ((~~do~~)) deny a request for a DCO.

((~~(4)~~)) (5) If DCS ((~~does~~)) reviews the orders in response to a request for a DCO and decides that a Washington order is the presumed controlling order, DCS refers the case to superior court.

((~~(5)~~)) (6) If DCS ((~~does~~)) reviews the orders in response to a request for a DCO and decides that a non-Washington order is the presumed controlling order, DCS serves a notice of support debt and registration as provided in WAC 388-14A-7325.

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.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7100 The division of child support may register an order from another state for enforcement or modification. (1) A support enforcement agency, or a party to a child support order or an income-withholding order for support issued by a tribunal of another state or jurisdiction, may register the order in this state for enforcement pursuant to chapter 26.21A RCW.

(a) At the option of the division of child support (DCS), the support order or income-withholding order may be registered with the superior court pursuant to RCW 26.21A.505 or it may be registered with the administrative tribunal according to subsection (2) of this section. Either method of registration is valid.

(b) A support order or income-withholding order issued in another state or jurisdiction is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered order issued in another state or jurisdiction in the same manner and subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than the state of Washington as provided in WAC 388-14A-7110.

(e) DCS may notify the parties that it is enforcing a non-Washington support order using the notice of support debt and demand for payment under WAC 388-14A-3304 or using the notice of support debt and registration as provided in this section and in WAC 388-14A-7110. Either method of notice is valid.

(2) DCS must give notice to the nonregistering party when it administratively registers a support order or income-withholding order issued in another state or jurisdiction. DCS gives this notice with the Notice of Support Debt and Registration (NOSDR).

(a) The notice must inform the nonregistering party:

(i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered order, the party must request a hearing within twenty days after service of the notice on the nonregistering party within Washington state. If the nonregistering party was served with the notice outside of Washington state, the party has sixty days after service of the notice to request a hearing to contest the validity or enforcement of the registered order;

(iii) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted;

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110; and

(v) Whether DCS has made a determination of controlling order under chapter 26.21A RCW, as described in WAC 388-14A-7325.

(b) The notice must be:

(i) Served on the nonregistering party by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Served on the registering party by first class mail at the last known address; and

(iii) Accompanied by a copy of the registered order and any documents and relevant information accompanying the order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered order is the date DCS receives the request.

(3) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state or jurisdiction may register the order in this state according to RCW 26.21A.540 through 26.21A.-550.

(a) The order must be registered as provided in subsection (1)(a) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a child support order of another state or jurisdiction registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered order may be modified only if the requirements of RCW 26.21A.550 are met.

(4) Interpretation of the registered order is governed by RCW 26.21A.515.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7305 How ((~~do I~~)) does a party, IV-D agency or jurisdiction ask ((~~DCS to do~~)) for a determination of controlling order? (1) When there are multiple current support orders covering the same obligor and the same children, a party to a support order may request that the division of child support (DCS) make a determination of controlling order under the Uniform Interstate Family Support Act, chapter 26.21A RCW.

(2) When another state's IV-D agency or another jurisdiction has identified that there are multiple support orders in existence and DCS has personal jurisdiction over both of the parties to the orders, the IV-D agency or jurisdiction may request a determination of controlling order from DCS.

(3) A request for a determination of controlling order may be made at any time, unless there has already been a determination of controlling order for the same obligor and children.

(((~~3~~))) (4) DCS can provide a form which contains all the required elements for a request for determination of controlling order. A request for a determination of controlling order:

(a) Must be in writing;

(b) Must contain copies of any child support orders known to the requesting party. DCS waives this requirement if DCS has a true copy of the order on file; and

(c) ((~~State the reason the requesting party thinks DCS is enforcing the wrong~~)) Must identify the order that the requesting party believes should be the controlling order.

(((~~4~~))) (5) A request for determination of controlling order does not constitute a petition for modification of a support order.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7325 How does DCS notify the parties ((~~of its~~)) that a determination of the controlling order is going to be made? (1) When the division of child support (DCS) decides that a determination of controlling order is required, or when a party, IV-D agency or jurisdiction asks for a determination of controlling order, DCS reviews the multiple child support orders for the same obligor and children to determine which order should be enforced.

(a) If DCS decides that the order that should be enforced is a Washington order, ((~~we immediately~~)) DCS refers the matter to the superior court for a determination of controlling order proceeding under chapter 26.21A RCW.

(b) If ((~~we~~)) DCS decides that the order that should be enforced is an order which was not entered in the state of Washington, DCS follows the procedures set out in subsections (2) through (4) of this section.

(2) DCS serves a notice of support debt and registration (((~~NOSDR~~))) as provided in WAC 388-14A-7100. DCS serves the ((~~NOSDR~~)) notice of support debt and registration on the obligor, the obligee, and on all identified interested parties. The ((~~NOSDR~~)) notice of support debt and registration includes a determination of controlling order.

(3) DCS serves the notice of support debt and registration on ((~~the nonrequesting~~)) a party who did not request the determination of controlling order by certified mail, return receipt requested, or by personal service.

(4) DCS serves the notice on the ((~~requesting~~)) party who requested the determination of controlling order and on any other identified interested parties by first class mail to the last known address.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7335 What happens if someone objects to ((~~DCS' proposed~~)) a notice of support debt and registration which contains a determination of the presumed controlling order? (1) If any party, IV-D agency or jurisdiction objects to the ((~~proposed~~)) determination of presumed controlling order issued under WAC 388-14A-7325, that objection must be in writing and signed under penalty of perjury. The division of child support (DCS) provides an objection form with the notice of support debt and registration.

(2) ((~~The~~)) An objection to the determination of presumed controlling order must contain:

(a) The reason the party, IV-D agency or jurisdiction objects ((~~to the determination of controlling order~~)). Examples of reasons to object include, but are not limited to:

(i) There is another order that was not considered in making the determination;

(ii) The alleged controlling order has been vacated, suspended or modified by a later order, which is attached to the objection;

(iii) The issuing tribunal lacked personal jurisdiction over the nonpetitioning party;

(iv) The order was obtained by fraud; or

(v) Any other legal defense available under chapter 26.21A RCW.

(b) A copy of the order which the party, IV-D agency or jurisdiction believes should be the controlling order, if that order was not included with the notice.

(c) A statement of facts in support of the ((~~party's~~)) objection.

(((~~(2)~~))) (3) When DCS receives an objection to the proposed determination of controlling order, DCS refers the objection to the prosecuting attorney or attorney general to bring an action for determination of controlling order under RCW 26.21A.130 in the superior court.

WSR 11-16-007
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 21, 2011, 2:57 p.m., effective July 22, 2011]

Effective Date of Rule: July 22, 2011.

Purpose: The DSHS division of child support (DCS) is filing the following CR-103E for an emergency rule amending various sections in chapter 388-14A WAC to implement E2SHB 1267 (chapter 283, Laws of 2011), which makes changes to the Uniform Parentage Act, contained in chapter 26.26 RCW. E2SHB 1267's effective date is July 22, 2011, and DCS must adopt emergency rules in order to have rules effective by that date.

DCS cannot start the rule-making process until the legislation we are implementing takes effect. Therefore, we are filing this emergency rule to adopt rules as of the effective date, July 22, 2011. At the same time, we are filing a CR-101 Preproposal statement of inquiry, to start the regular rule-making process.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020, 388-14A-3100, 388-14A-3102, and 388-14A-3115.

Statutory Authority for Adoption: E2SHB 1267 (chapter 283, Laws of 2011), RCW 34.05.220, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, and 74.20A.310.

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: These rules are adopted to implement E2SHB 1267 (chapter 283, Laws of 2011), which makes changes to the Uniform Parentage Act, contained in chapter 26.26 RCW. E2SHB 1267's effective date is July 22, 2011, and DCS must adopt emergency rules in order to have rules effective by that date.

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 4, 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 4, Repealed 0.

Date Adopted: July 19, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

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

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

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

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

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

"Acknowledged father" means a man who has established a father-child relationship under RCW 26.26.300 through 26.26.375.

"Adjudicated parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.

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

(1) An order entered under chapter 34.05 RCW;

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

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

"Agency" means the Title IV-D provider of a state. In Washington, this is the division of child support (DCS) within the department of social and health services (DSHS).

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

"Aid" or **"public assistance"** means cash assistance under the temporary assistance for needy families (TANF) program, the aid to families with dependent children (AFDC)

program, federally funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Custodial parent or CP" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

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

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

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

"Dependent child" means a person:

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

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

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

"Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under RCW 26.26.300 through 26.26.375 or adjudication by the court.

"Differentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child and may justifiably be divided into "per child" amounts for each child covered by the support order, based on information contained in the support order.

"Differentiated support order" means a child support order which provides a monthly amount of child support for two or more children, and either provides a specific support obligation for each child or provides enough information in the order so that the monthly amount may justifiably be divided into a "per child" amount for each child covered by the support order.

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

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

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

"Domestic partner" means a state registered domestic partner as defined in chapter 26.60 RCW.

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

(1) Wages or salary;

(2) Commissions and bonuses;

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

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.020, 50.40.050 and Title 74 RCW;

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

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

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

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

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

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

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

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

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

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

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

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

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

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

(2) The representation's materiality;

(3) The representation's falsity;

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

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

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

(7) The latter's:

(a) Reliance on the truth of the representation;

(b) Right to rely on it; and

(c) Subsequent damage.

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

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

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

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

"Health insurance" means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy. Health insurance coverage does not include medical assistance provided under chapter 74.09 RCW.

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

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

"Income" includes:

(1) All gains in real or personal property;

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

(3) Earnings;

(4) Interest and dividends;

(5) Proceeds of insurance policies;

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

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

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

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

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

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

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

(5) Obtaining wage assignment orders under RCW 26.18.080.

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

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

"Medical expenses" for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical costs incurred on behalf of a child, which include:

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

• Prescribed medical equipment and prescribed pharmacy products;

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

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

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

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

"Medical support" means any combination of the following:

(1) Health insurance coverage for a dependent child;

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

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

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

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

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

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

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

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

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

"Nonmedical expenses" means amounts incurred on behalf of a child which are not medical expenses as defined in this chapter. Nonmedical expenses include, but are not limited to, day care or other special childrearing expenses such as tuition and long-distance transportation costs to and from the parents for visitation purposes.

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

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

(1) Directly benefits the dependent child; and

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

"Parent" means an individual who has established a parent-child relationship under RCW 26.26.101.

"Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

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

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

"Past support" means support arrears.

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

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

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

"Physical custodian" means custodial parent (CP).

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

"Presumed parent" means a person who, by operation of law under RCW 26.26.116, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial proceeding.

"Private insurance" means accessible health insurance for a child provided by a parent without the need for service of a national medical support notice, and does not include health insurance provided by the state without a contribution from either parent.

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

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

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

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

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

(3) Tracing activity such as:

(a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of

the noncustodial parent, past or present employers, or the post office;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Self-support reserve" or **"self support reserve"** means an amount equal to one hundred twenty-five percent of the federal poverty guideline for a one-person family.

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

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

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

(1) Delinquent support;

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

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

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

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

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

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

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

"Support order" means a court order, administrative order or tribal court order which contains a determination, finding, decree or order that sets a child support obligation (including medical support) and orders either the payment of a set or determinable amount of money for current support and/or a support debt, or the provision of medical support, or both.

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

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

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

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

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

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

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

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

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

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

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

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

"Underlying order" means an existing child support order for which DCS serves a notice of support owed under RCW 26.23.110 to determine a sum certain support obligation.

"Undifferentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child which cannot justifiably be divided into "per child" amounts for each child covered by the support order.

"Undifferentiated support order" means a child support order which provides a monthly amount of child support for two or more children, but does not provide a specific support obligation for each child or does not contain enough information in either the order or the worksheets associated with the order to justify dividing the monthly amount into "per child" amounts for each child covered by the support order.

"Uninsured medical expenses":

For the purpose of establishing or enforcing support obligations means:

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

(2) Premiums, copayments, or deductibles incurred on behalf of a child.

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

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

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

"WSSR" is the Washington state support registry.

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

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3100 How does the division of child support establish a child support obligation when there is no child support order? (1) When there is no order setting the amount of child support a noncustodial parent (NCP) should pay, the division of child support (DCS) serves a support establishment notice on the NCP and the custodial parent (CP). A support establishment notice is an administrative notice that can become an enforceable order for support if nobody requests a hearing on the notice.

(2) DCS may serve a support establishment notice when there is no order that:

(a) Establishes the NCP's support obligation for the child(ren) named in the notice; or

(b) Specifically relieves the NCP of a support obligation for the child(ren) named in the notice.

(3) Whether support is based upon an administrative order or a court order, DCS may serve a support establishment notice when the parties to a paternity order subsequently marry each other and then separate, or parties to a decree of dissolution remarry each other and then separate. The remaining provisions of the paternity order or the decree of dissolution, including provisions establishing paternity, remain in effect.

(4) Depending on the legal relationship between the NCP and the child for whom support is being set and on the type of child support obligation which is being established, DCS serves one of the ((~~following~~)) support establishment notices((~~:~~)) listed in subsections (5), (6) or (7). WAC 388-14A-3102 describes which notice DCS uses to set the support obligation of a father who has signed a paternity acknowledgment or an affidavit of paternity.

(((~~(a) Notice~~)) (5) DCS may serve a notice and finding of financial responsibility (NFFR)((~~, see~~)) under WAC 388-14A-3115. ((~~This notice is used~~)) DCS uses this notice when the ((~~NCP is either the mother or the legal father of~~)) NCP's parentage of the child is based on:

(a) The presumption arising from the existence of a marriage or a registered domestic partnership;

(b) The entry of a court order adjudicating the parent-child relationship;

(c) The entry of an adoption order;

(d) The man's having signed and filed a paternity acknowledgment under RCW 26.26.300 through 26.26.375, unless the acknowledgment has been rescinded or successfully challenged; or

(e) The woman's being the biological mother of, and having given birth to, the child. ((~~WAC 388-14A-3102 describes when DCS uses a NFFR to set the support obligation of a father who has signed an acknowledgment or affidavit of paternity.~~

~~(b)~~)) (6) DCS may serve a notice and finding of parental responsibility (NFPR)((~~, see~~)) under WAC 388-14A-3120. ((~~This notice is used~~)) DCS uses this notice when the NCP was not married to the mother but has filed an affidavit or acknowledgment of paternity which did not become a conclusive presumption of paternity. ((~~WAC 388-14A-3102 describes when DCS uses a NFPR to set the support obligation of a father who has signed an acknowledgment or affidavit of paternity.~~

~~(c)~~)) (7) DCS may serve a "Medical support only" NFFR or NFPR((~~, which as of October 1, 2009, replaced the notice and finding of medical responsibility (NFMR), see~~)) under WAC 388-14A-3125. Until October 1, 2009, DCS used the notice and finding of medical responsibility (NRMR) for this purpose. A medical support only NFFR or NFPR, whichever is appropriate, is used when DCS seeks to set only a medical

support obligation instead of a monetary child support obligation.

AMENDATORY SECTION (Amending WSR 05-12-136, filed 6/1/05, effective 7/2/05)

WAC 388-14A-3102 When the parents have signed an acknowledgment or affidavit of paternity, which support establishment notice does the division of child support serve on the noncustodial parent? (1) When the parents of a child are not married, they may sign an affidavit of paternity, also called an acknowledgment of paternity or a paternity acknowledgment. The legal effect of the affidavit or acknowledgment depends on when it is filed, in what state it is filed, and whether both parents were over age eighteen when the affidavit was signed.

(2) For affidavits or acknowledgments filed on or before July 1, 1997 with the center for health statistics in the state of Washington, the division of child support (DCS) serves a notice and finding of parental responsibility (NFPR)((. See)) under WAC 388-14A-3120.

(3) For affidavits or acknowledgments filed after July 1, 1997 with the center for health statistics in the state of Washington, DCS serves a notice and finding of financial responsibility (NFFR) under WAC 388-14A-3115, because the affidavit or acknowledgment has become a conclusive presumption of paternity under RCW 26.26.320.

(4) For acknowledgments or affidavits filed with the vital records agency of another state, DCS determines whether to serve a NFFR or NFPR depending on the laws of the state where the affidavit is filed.

(5) DCS relies on the acknowledgment or affidavit, even if the mother or father were not yet eighteen years of age at the time they signed or filed the acknowledgment or affidavit, as provided in RCW 26.26.315(4).

(6) If the mother was married at the time of the child's birth, but not to the man acknowledging paternity, the man to whom she was married must also have signed and filed a denial of paternity within ten days of the child's birth.

(7) If the acknowledgment or affidavit is legally deficient in any way, DCS may refer the case for paternity establishment in the superior court.

(8) If the mother is the noncustodial parent, DCS serves a NFFR.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue. (1) A notice and finding of financial responsibility (NFFR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.055.

(2) DCS may serve a NFFR when the noncustodial parent (NCP) is a legal parent of the child, based on:

(a) The presumption arising from the existence of a marriage or registered domestic partnership;

(b) The entry of a court order adjudicating the parent-child relationship;

(c) The entry of an adoption order;

(d) The man's having signed and filed a paternity acknowledgment under RCW 26.26.300 through 26.26.375, unless the acknowledgment has been rescinded or successfully challenged; or

(e) The woman's being the biological mother of, and having given birth to, the child.

(3) DCS serves a NFFR in the situations listed in this section and in WAC 388-14A-3100. There may be other bases on which a court can determine parentage and/or establish a child support obligation.

(4) The NFFR:

(a) Advises the noncustodial parent and the custodial parent (who can be either a parent or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFFR fully and fairly advises the parents of their rights and responsibilities under the NFFR.

(b) Includes the information required by RCW 26.23.050 and 74.20A.055.

(c) Includes a provision that both parents are obligated to provide medical support, as required by RCW 26.09.105, 26.18.170 and 26.23.050. This requirement does not apply to the custodial parent when the custodial parent is not one of the parents of the child covered by the order.

(d) Includes a provision that apportions the share of uninsured medical expenses to both the mother and the father, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050.

(e) May include an obligation for the noncustodial parent to contribute his or her proportionate share of the cost of day care or childcare, which may be stated either as a sum certain amount per month, or as a proportion of the expenses incurred by the custodial parent.

(f) Warns the noncustodial parent (NCP) and the custodial parent (CP) that at an administrative hearing, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFFR, if necessary for an accurate support order.

((~~(3)~~)) (5) As provided in WAC 388-14A-3125, DCS may serve a notice and finding of financial responsibility that can become an enforceable order for support to establish and enforce a health insurance obligation. This type of NFFR is called "medical support only" NFFR.

((~~(4)~~)) (6) DCS uses a medical support only NFFR when the custodial parent has requested medical support enforcement services only and has asked DCS in writing not to collect monetary child support.

((~~(5)~~)) (7) A medical support only NFFR does not include a monthly financial support obligation, but may include:

(a) An obligation to pay a monthly payment toward the premium paid by the CP or the state for health insurance coverage for the child(ren); and

(b) An obligation to pay a proportionate share of the child(ren)'s uninsured medical expenses.

((~~(6)~~)) (8) An administrative order resulting from a medical support only NFFR may later be modified to include a monthly financial support obligation, as provided in WAC 388-14A-3925(2).

(((~~(7)~~))) (9) After service of the NFFR, the NCP and the CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

(((~~(8)~~))) (10) The NCP must make all support payments to the Washington state support registry after service of the NFFR. DCS does not give the NCP credit for payments made to any other party after service of a NFFR, except as provided by WAC 388-14A-3375.

(((~~(9)~~))) (11) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFFR is a final order. WAC 388-14A-3110 describes when the notice becomes a final order.

(((~~(10)~~))) (12) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFFR can end sooner or later than age eighteen.

(((~~(11)~~))) (13) If paternity has been established by an affidavit or acknowledgment of paternity, or paternity acknowledgment, DCS attaches a copy of the acknowledgment, affidavit, or certificate of birth record information to the notice. A party wishing to challenge the acknowledgment or denial of paternity may only bring an action in court to rescind or challenge the acknowledgment or denial of paternity under RCW 26.26.330 and 26.26.335.

(((~~(12)~~))) (14) If the parents filed a paternity affidavit ((~~or~~)) acknowledgment of paternity, or by a paternity acknowledgment in another state, and by that state's law paternity is therefore conclusively established, DCS may serve a NFFR to establish a support obligation.

(((~~(13)~~))) (15) A hearing on a NFFR is for the limited purpose of resolving the NCP's accrued support debt and current support obligation. The hearing is not for the purpose of setting a payment schedule on the support debt. The NCP has the burden of proving any defenses to liability.

WSR 11-16-061
EMERGENCY RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-14—Filed July 29, 2011, 10:20 a.m., effective July 29, 2011, 10:20 a.m.]

Effective Date of Rule: Immediately.

Purpose: To bring Washington state's requirements for nongrandfathered health plans into compliance with the Affordable Care Act (ACA) requirements for review of adverse benefit determinations, and provide that all plans, both grandfathered and nongrandfathered, must continue to address grievances.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-410, 284-43-615, and 284-43-620.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.530.

Other Authority: P.L. 111-148 (2010, as amended) and implementing regulations.

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

Reasons for this Finding: In guidance issued by the United States Department of Health and Human Services (HHS), states were advised that HHS would review state law as of July 31, 2011, to determine whether the state process was compliant with the ACA's requirements for review of adverse benefit determinations. If a state is not deemed compliant, as of January 1, 2012, the federal government preempts the state appeal process, and a state must reapply to use its process. Because carriers and health plans need time to amend plan documents and file them for approval with this office, and because the commissioner finds that the stability of the individual and small group markets is best served by being deemed compliant with federal law, adoption of these rules on an emergency basis is justified.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 12, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 29, 2011.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION [(Amending Matter No. R 2000-02, filed 1/9/01)]

WAC 284-43-130 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

(1) "Adverse determination and noncertification" means a decision by a health carrier to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits including the admission to or continued stay in a facility.

(2) "Certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

(3) "Clinical review criteria" means the written screens, decision rules, medical protocols, or guidelines used by the carrier as an element in the evaluation of medical necessity

and appropriateness of requested admissions, procedures, and services under the auspices of the applicable health plan.

(4) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

(5) "Covered person" means an individual covered by a health plan including an enrollee, subscriber, policyholder, or beneficiary of a group plan.

(6) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(7) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

(8) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(9) "Facility" means an institution providing health care services, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings.

(10) "Formulary" means a listing of drugs used within a health plan.

(11) "Grievance" means a written or an oral complaint submitted by or on behalf of a covered person regarding:

~~(a) Denial of health care services or payment for health care services; or~~

~~(b) I~~issues other than health care services or payment for health care services including dissatisfaction with health care services, delays in obtaining health care services, conflicts with carrier staff or providers, and dissatisfaction with carrier practices or actions unrelated to health care services.

(12) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(13) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(14) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48..20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020.

(15) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(16) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

(17) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit if the service is consistent with generally recognized standards within a relevant health profession.

(18) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

(19) "Mental health services" means in-patient or out-patient treatment, partial hospitalization or out-patient treatment to manage or ameliorate the effects of a mental disorder listed in the *Diagnostic and Statistical Manual (DSM) IV* published by the American Psychiatric Association, excluding diagnoses and treatments for substance abuse, 291.0 through 292.9 and 303.0 through 305.9.

(20) "Network" means the group of participating providers and facilities providing health care services to a particular health plan. A health plan network for carriers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

(21) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in *Physicians Current Procedural Terminology,* published by the American Medical Association.

(22) "Participating provider" and "participating facility" means a facility or provider who, under a contract with the health carrier or with the carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

(23) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

(24) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

(25) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

(26) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(27) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(28) "Small group" means a health plan issued to a small employer as defined under RCW 48.43.005~~(24)~~ comprising from one to fifty eligible employees.

(29) "Substitute drug" means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

(30) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

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

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

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.

AMENDATORY SECTION [(Amending Matter No. R 2009-19, filed 11/10/10)]

WAC 284-43-410 Utilization review—Generally. (1) These definitions apply to this section:

(a) "Concurrent care review request" means any request for an extension of a previously authorized inpatient stay or a previously authorized ongoing outpatient service, e.g., physical therapy, home health, etc.

(b) "Immediate review request" means any request for approval of an intervention, care or treatment where passage of time without treatment would, in the judgment of the provider, result in an imminent emergency room visit or hospital admission and deterioration of the patient's health status. Examples of situations that do not qualify under an immediate review request include, but are not limited to, situations where:

(i) The requested service was prescheduled, was not an emergency when scheduled, and there has been no change in the patient's condition;

(ii) The requested service is experimental or in a clinical trial;

(iii) The request is for the convenience of the patient's schedule or physician's schedule; and

(iv) The results of the requested service are not likely to lead to an immediate change in the patient's treatment.

(c) "Nonurgent preservice review request" means any request for approval of care or treatment where the request is made in advance of the patient obtaining medical care or services and is not an urgent care request.

(d) "Postservice review request" means any request for approval of care or treatment that has already been received by the patient.

(e) "Urgent care review request" means any request for approval of care or treatment where the passage of time could seriously jeopardize the life or health of the patient, seriously jeopardize the patient's ability to regain maximum function, or, in the opinion of a physician with knowledge of the patient's medical condition, would subject the patient to severe pain that cannot be adequately managed without the care or treatment that is the subject of the request.

(2) Each carrier must maintain a documented utilization review program description and written clinical review criteria based on reasonable medical evidence. The program must include a method for reviewing and updating criteria. Carriers must make clinical review criteria available upon request to participating providers. A carrier need not use medical evidence or standards in its utilization review of religious nonmedical treatment or religious nonmedical nursing care.

(3) The utilization review program must meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter and must have staff who are properly qualified, trained, supervised, and supported by explicit written clinical review criteria and review procedures.

(4) Each carrier when conducting utilization review must:

(a) Accept information from any reasonably reliable source that will assist in the certification process;

(b) Collect only the information necessary to certify the admission, procedure or treatment, length of stay, or frequency or duration of services;

(c) Not routinely require providers or facilities to numerically code diagnoses or procedures to be considered for certification, but may request such codes, if available;

(d) Not routinely request copies of medical records on all patients reviewed;

(e) Require only the section(s) of the medical record during prospective review or concurrent review necessary in that specific case to certify medical necessity or appropriateness of the admission or extension of stay, frequency or duration of service;

(f) For prospective and concurrent review, base review determinations solely on the medical information obtained by the carrier at the time of the review determination;

(g) For retrospective review, base review determinations solely on the medical information available to the attending physician or order provider at the time the health service was provided;

(h) Not retrospectively deny coverage for emergency and nonemergency care that had prior authorization under the plan's written policies at the time the care was rendered unless the prior authorization was based upon a material misrepresentation by the provider;

(i) Not retrospectively deny coverage or payment for care based upon standards or protocols not communicated to the provider or facility within a sufficient time period for the provider or facility to modify care in accordance with such standard or protocol; and

(j) Reverse its certification determination only when information provided to the carrier is materially different from that which was reasonably available at the time of the original determination.

(5) Each carrier must reimburse reasonable costs of medical record duplication for reviews.

(6) Each carrier must have written procedures to assure that reviews and second opinions are conducted in a timely manner.

(a) Review time frames must be appropriate to the severity of the patient condition and the urgency of the need for treatment, as documented in the review request.

(b) If the review request from the provider is not accompanied by all necessary information, the carrier must tell the provider what additional information is needed and the deadline for its submission. Upon the sooner of the receipt of all necessary information or the expiration of the deadline for providing information, the time frames for carrier review determination and notification must be no less favorable than federal Department of Labor standards, as follows:

(i) For immediate request situations, within one business day when the lack of treatment may result in an emergency visit or emergency admission;

(ii) For concurrent review requests that are also urgent care review requests, as soon as possible, taking into account the medical exigencies, and no later than twenty-four hours, provided that the request is made at least twenty-four hours prior to the expiration of previously approved period of time or number of treatments;

(iii) For urgent care review requests ~~received before July 1, 2011~~, within forty-eight hours;

~~(iv) For urgent care review requests received on or after July 1, 2011, within twenty-four hours;~~

(~~v~~iv) For nonurgent preservice review requests, including nonurgent concurrent review requests, within five calendar days; or

(v~~i~~) For postservice review requests, within thirty calendar days.

(c) Notification of the determination must be provided as follows:

(i) Information about whether a request was approved or denied must be made available to the attending physician, ordering provider, facility, and covered person. Carriers must at a minimum make the information available on their web site or from their call center.

(ii) Whenever there is an adverse determination the carrier must notify the ordering provider or facility and the covered person. The carrier must inform the parties in advance whether it will provide notification by phone, mail, fax, or other means. For an adverse determination involving an urgent care review request, the carrier may initially provide notice by phone, provided that a written or electronic notification meeting United States Department of Labor standards is furnished within ~~three days~~ seventy-two hours of the oral notification.

(d) As appropriate to the type of request, notification must include the number of extended days, the next anticipated review point, the new total number of days or services approved, and the date of admission or onset of services.

(e) The frequency of reviews for the extension of initial determinations must be based on the severity or complexity of the patient's condition or on necessary treatment and discharge planning activity.

(7) No carrier may penalize or threaten a provider or facility with a reduction in future payment or termination of participating provider or participating facility status because the provider or facility disputes the carrier's determination with respect to coverage or payment for health care service.

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

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

SUBCHAPTER E

ADVERSE BENEFIT DETERMINATION PROCESS REQUIREMENTS

For Non-Grandfathered Plans

NEW SECTION

WAC 284-43-510 Scope and intent. This subchapter sets forth the requirements that carriers and non-grandfathered health plans must implement when establishing the adverse benefit determination process required by RCW 48.43.530 and RCW 48.43.535. A health plan is non-grandfathered if it does not meet the definition and standards for a grandfathered health plan contained in the Affordable Care Act (2010), P.L. 111-148, as amended, and the Affordable Care Act's implementing federal regulations. These rules apply to any health plan issued, renewed or in effect on or after January 1, 2012.

NEW SECTION

WAC 284-43-515 Definitions. These definitions apply to the sections in subchapter E, WAC 284-43-510 through 284-43-550:

"Adverse benefit determination" refers to the definition found in RCW 48.43.005. An adverse benefit determination includes a carrier or health plan's denial of enrollment status.

"Appellant" means an applicant or a person enrolled as an enrollee, subscriber, policy holder, participant or beneficiary of an individual or group health plan, and when designated, their representative. Providers seeking expedited review of an adverse benefit determination on behalf of an appellant may act as an appellant's representative even if the appellant has not formally notified the health plan or carrier of the designation.

"Internal appeal" means the request by an appellant to a carrier or health plan to review and reconsider an adverse benefit determination.

"External appeal or review" means the request by an appellant for an independent review organization to determine whether the carrier or health plan's internal appeal decisions are correct.

NEW SECTION

WAC 284-43-525 Review of adverse benefit determinations—Generally. (1) Each carrier and health plan must establish and implement a comprehensive process for the review of adverse benefit determinations. The process must meet the accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter. A carrier and health plan may not take or threaten to take any punitive action against a provider acting on behalf or in support of an appellant. Unless the request for review is made by an applicant, coverage must be continued while an adverse benefit determination is reviewed. Appellants must be notified that they may be responsible for the cost of services if the adverse benefit determination is upheld.

(2) The process must offer an appellant the opportunity for both internal review, and external review of an adverse benefit determination.

(3) A carrier must accept a request for internal review of an adverse benefit determination if it is submitted within at least sixty days of the appellant's receipt of a determination applicable to an individual health plan, and within one-hundred-eighty days of an appellant's receipt of a determination applicable to a group health plan.

(4)(a) A carrier must clearly communicate in writing the right to review an adverse benefit determination. At a minimum, the notice must be sent at the following times:

(i) Upon request; and

(ii) As part of the notice of adverse benefit determination; and

(iii) To new enrollees at the time of enrollment; and

(iv) Annually thereafter to enrollees, group administrators and subcontractors of the carrier.

(v) The notice requirement under 4 (a)(iii) and (iv) of this section is satisfied if the description of the internal and external review process is included in or attached to the summary health plan descriptions, policy, certificate, membership booklet, outline of coverage or other evidence of cover provided to participants, beneficiaries, or enrollees.

(b) Each carrier and health plan must ensure that its network providers receive a written explanation of the manner in which adverse benefit determinations may be reviewed on both an expedited and non-expedited basis.

(c) The written explanation of the review process must include information about the availability of Washington's designated ombudsman's office, as that term is referenced in the Affordable Care Act (2010) P.L. 111-148, as amended. A carrier and health plan must also specifically direct appellants to the Office of the Insurance Commissioner's Consumer Protection Division for assistance with questions and complaints.

(5) The review process must be accessible to persons who are limited-English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to request review or participate in the review process. Carriers and health plans must conform to federal requirements to provide notice of the process in a culturally and linguistically appropriate manner to those seeking review. Carriers and health plans in counties where ten percent or more of the population is literate in a non-English language must include in notices a statement prominently displayed in the relevant language stating that oral assistance and a written notice will be available on request in the non-English language.

(6) Within seventy-two hours of receiving a request for review, each carrier and health plan must notify an appellant of its receipt of the request.

(7) Each carrier and health plan must consistently assist appellants with understanding the review process. Carriers and health plans may not use procedures and practices that the commissioner determines discourage an appellant from seeking expedited internal or independent external review, or concurrent expedited review.

(8) If a carrier or health plan reverses its initial adverse benefit determination, which it may at any time during the review process, the carrier or health plan must immediately provide appellant with written or electronic notification of the decision.

(9) Each carrier and health plan must track requests for review until final resolution by maintaining a log of each review, its resolution, and the dates of receipt, notification, and determination.

(a) The carrier must make its review log available to the commissioner upon request in a form accessible by the commissioner. The log must be maintained by the carrier for a six year period.

(b) Each carrier must identify, evaluate and make available to the commissioner data and reports on trends in reviews for at least a six year time frame, including the areas of the number of appeals, the subject matter of appeals and their outcome.

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

NEW SECTION

WAC 284-43-526 Initial notice and explanation of adverse benefit determination—General requirements. (1) A carrier and health plan's notification of an adverse benefit determination must be provided in writing or electronically. The notification must be provided to:

(a) An appellant or their authorized representative; and

(b) To the provider if the adverse benefit determination involves a denial of treatment or procedure prescribed by the provider.

(2) A carrier and health plan's notification must include a description of:

(a) The specific reasons for the adverse benefit determination in plain language;

(b) The specific health plan provisions on which the determination is based, including references to the provisions;

(c) The plan's review procedures;

(d) The time limits applicable to such procedures; and

(e) The right of appellants and their providers to present evidence as part of a review of an adverse benefit determination.

(3) If an adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, the notification must contain either an explanation of the scientific or clinical basis and judgment for the determination, applying the terms of the health plan to the appellant's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

(4) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, the notification must contain either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request.

(5) The notice of an adverse benefit determination must include an explanation of the right to review the records of relevant information related to the adverse benefit determination, and any evidence used by the carrier or the carrier's representative that influenced or supported the decision to make the adverse benefit determination. For purposes of this subsection, relevant information means information relied on in making the determination, or that was submitted, considered or generated in the course of making the determination, regardless of whether the document, record or information was relied on in making the determination. Relevant information includes any statement of policy, procedure or administrative process concerning the denied treatment option or benefit for the diagnosis, regardless of whether it was relied on in making the determination.

(6) If the carrier and health plan determines that additional information is necessary to perfect the claim, the carrier and health plan must provide a description of such additional material or information, with an explanation of why such material is necessary, as soon as the need is identified.

(7) An enrollee or covered person may request that a carrier and health plan identify medical or vocational experts whose advice was obtained in connection with an adverse benefit determination, without regard to whether the advice was relied on in making the determination.

(8) The notification must include language similar to the following: If you request a review of this adverse benefit determination, {company name} will continue to provide coverage for the disputed benefit pending the outcome of the review. If {company name} prevails in the appeal, you may be responsible for the cost of coverage received during the review period. The decision at the next level of review is binding unless other remedies are available under state or federal law. [Company name] must provide benefits, including making payment on a claim, pursuant to the final external review decision without delay, regardless of whether [company name] intends to seek judicial review of the external review decision, and unless or until there is a judicial decision changing the final determination."

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

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

NEW SECTION

WAC 284-43-528 Electronic disclosure and communication by carriers. (1) Except as otherwise provided by applicable law, rule, or regulation, a carrier or health plan furnishing documents through electronic media is deemed to satisfy the notice and disclosure requirements regarding adverse benefit determinations with respect to applicants, covered persons, and appellants or their representative, if the carrier takes appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents:

(a) Results in actual receipt of transmitted information (e.g., using return-receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information); and

(b) Protects the confidentiality of personal information relating to the individual's accounts and benefits (e.g., incorporating into the system measures designed to preclude unauthorized receipt of or access to such information by individuals other than the individual for whom the information is intended);

(c) Notice is provided in electronic or nonelectronic form, at the time a document is furnished electronically, that apprises the recipient of the significance of the document when it is not otherwise reasonably evident as transmitted (e.g., the attached document describes the internal review process used by your plan) and of the right to request and obtain a paper version of such document; and

(d) Upon request, the appellant or their representative is furnished a paper version of the electronically furnished documents.

(2) Subsection (1) of this section only applies to the following individuals:

(a) An appellant who affirmatively consents, in electronic or nonelectronic form, to receiving documents through electronic media and has not withdrawn such consent.

(b) In the case of documents to be furnished through the internet or other electronic communication network, has affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates the individual's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and has provided an address for the receipt of electronically furnished documents;

(c) Prior to consenting, is provided, in electronic or non-electronic form, a clear and conspicuous statement indicating:

(i) The types of documents to which the consent would apply;

(ii) That consent can be withdrawn at any time without charge;

(iii) The procedures for withdrawing consent and for updating the individual's electronic address for receipt of electronically furnished documents or other information;

(iv) The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge; and

(v) Any hardware and software requirements for accessing and retaining the documents.

(d) Following consent, if a change in hardware or software requirements needed to access or retain electronic documents creates a material risk that the individual will be unable to access or retain electronically furnished documents, the carrier must provide a statement of the revised hardware or software requirements for access to and retention of electronically furnished documents, and provide the individual receiving electronic communications with the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent. The carrier or health plan must request and receive a new consent following a hardware or software requirement change as described in this subsection, to the receipt of documents through electronic media.

NEW SECTION

WAC 284-43-529 Internal review of adverse benefit determinations. Each carrier and health plan must include in its review process the opportunity for internal review of an adverse benefit determination. An appellant seeking review of an adverse benefit determination must use the carrier and health plan's review process. Treating providers may seek review on a patient's behalf, regardless of whether the provider is affiliated with the carrier on a contracted basis.

(1) When a carrier and health plan receive a written request for review, the carrier must reconsider the adverse benefit determination, and notify the appellant of its decision within fourteen days of receipt of the request for review.

(2) For good cause, carriers may extend the time to make a review determination by no more than thirty days from the date of receiving the request for review. The thirty day response time may be waived if an appellant provides informed consent in writing, to extend the review period to a specific, agree-upon date for determination.

(3) The carrier or health plan must provide the appellant with any new or additional evidence considered, whether relied upon, generated by or at the direction of the carrier or health plan, in connection with the claim. The evidence must be provided free of charge to the appellant, and sufficiently in advance of the date the notice of final internal review determination must be provided that the appellant has a reasonable opportunity to respond prior to that date. (4) Before a carrier and health plan may issue a final internal adverse determination based on a new or additional rationale, the appellant must be provided with the new or additional rationale free of charge as soon as possible. If appellant requests an extension in order to respond to a new or additional rationale, a carrier and health plan must extend the determination date for a reasonable amount of time.

(4) Before a carrier and health plan may issue a final internal adverse determination based on a new or additional rationale, the appellant must be provided with the new or additional rationale free of charge as soon as possible. The new rationale must be provided sufficiently in advance of the date the notice of final determination must be provided by the carrier or health plan, so that the appellant has a reasonable opportunity to respond prior to that date. If appellant requests an extension in order to respond to a new or additional rationale, a carrier and health plan must extend the determination date for a reasonable amount of time.

(5) A carrier and health plan's review process must provide appellant with the opportunity to submit information, documents, written comments, records, evidence, and testimony, including information and records obtained through a second opinion. An appellant has the right to review the carrier and health plan's file and obtain a free copy of all documents, records and information relevant to any claim that is the subject of the determination being appealed.

(6) A carrier and health plan's review process must include the requirement that the carrier and health plan affirmatively review and investigate the determination being reviewed, and consider all information submitted by the appellant prior to issuing a determination.

(7) Reviews of adverse determinations must be performed by health care providers or staff who were not involved in the initial decision, and who are not subordinates of the persons involved in the initial decision. If the determination involves, even in part, medical judgment, the reviewer must be or must consult with a health care professional who has appropriate training and experience in the field of medicine encompassing the appellant's condition or disease and make a determination within the clinical standard of care for an appellant's condition or disease.

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

NEW SECTION

WAC 284-43-530 Exhaustion of internal review remedies. (1) If a carrier or health plan fails to strictly adhere to its requirements with respect to the internal review, the internal review process is deemed exhausted, and the appellant may request external review without receiving an internal review determination from the carrier or health plan.

(a) Exception: When an appellant seeks external review based on this section, a carrier or health plan may challenge

the request on the basis that its violations are de minimis, and do not cause and are not likely to cause, prejudice or harm to the appellant. The carrier or health plan may challenge external review on this basis either in court or to the independent review organization.

(i) This exception applies only if the external reviewer or court determines that the carrier has demonstrated that the violation was for good cause or due to matters beyond the control of the issuer and that the violation occurred in the context of an ongoing, good faith exchange of information between the carrier or health plan and the appellant.

(ii) This exception is not available if the violation is part of a pattern or practice of violations by the carrier or health plan.

(b) The appellant may request a written explanation of the violation from the carrier and the carrier must provide such explanation within 10 calendar days, including a specific description of its basis, if any, for asserting that the violation should not cause the internal claims and appeals process to be deemed exhausted.

(c) If the independent review organization or court determines that an appellant has not exhausted the internal review process based on such a challenge on the basis that the carrier or health plan met the standards for this exception, the carrier or health plan must provide the appellant with notice of the opportunity to resubmit and pursue the internal appeal of the claim within a reasonable time, not to exceed 10 days, of receiving the independent review organization determination. The appellant's time frame to refile the request for review begins to run upon receipt of the notice from the carrier.

(2) The review process for group health plans must not contain any provision or be administered so that an appellant must file more than two requests for review prior to bringing a civil action. For individual health plans, carriers must provide for only one level of internal review before issuing a final determination, and may not require two levels of internal review.

NEW SECTION

WAC 284-43-535 Notice of internal review determination. Each carrier and health plan's review process must require delivery of written notification to the appellant of the internal review determination. In addition to the requirements of WAC 284-43-526, the written determination must include:

(a) The actual reasons for the determination;

(b) Instructions for obtaining further review of the determination, either through a second level of internal review or using the external review process;

(c) The clinical rationale for the decision, which may be in summary form; and

(d) Instructions on obtaining the clinical review criteria used to make the determination.

NEW SECTION

WAC 284-43-540 Expedited review. (1) A carrier and health plan's internal and external review processes must permit an expedited review of an adverse benefit determination at any time in the review process, or concurrently, if:

(a) The appellant is currently receiving or is prescribed treatment for a medical condition; and

(b) any treating provider for the appellant, regardless of their affiliation with the carrier and health plan, believes that a delay in treatment based on the standard review time may seriously jeopardize the appellant's life, overall health or ability to regain maximum function, or would subject the appellant to severe and intolerable pain, or

(c) the determination is related to an issue related to admission, availability of care, continued stay or health care services received on an emergency basis where the appellant has not been discharged.

(2) An appellant is not entitled to expedited review if the treatment has already been delivered, and the review involves payment for the delivered treatment, if the situation is not urgent or if the situation does not involve the delivery of services for an existing condition, illness or disease.

(3) A carrier and health plan's expedited review process must:

(a) Permit the covered person, their authorized representative or their provider to file an expedited appeal orally;

(b) Require the carrier to respond as expeditiously as possible, preferably within twenty-four hours, but in no case longer than seventy-two hours. The carrier's response to an expedited review may be delivered verbally, and must be reduced to and issued in writing not later than seventy-two hours after the date of the decision. Regardless of who makes the carrier and health plan's determination in response to requests for expedited review, the time frame for providing a response begins when the carrier first receives the request;

(c) Notify the appellant as soon as possible if additional information is necessary to determine whether the service or treatment request being reviewed is covered under the health plan or eligible for benefits.

(4) If a treating health care provider determines that delay could jeopardize the covered person's health or ability to regain maximum function, a carrier must presume the need for expeditious review, including the need for an expeditious determination in any independent review under RCW 48.43.535.

(5) A carrier may not require exhaustion of the internal appeal process to request an external review in urgent care situations that justify expedited review.

NEW SECTION

WAC 284-43-545 Concurrent expedited review of adverse benefit determinations. A carrier and health benefit plan must offer the right to request concurrent expedited internal and external reviews of adverse benefit determinations. When responding to a request for concurrent expedited internal and external review, a carrier and health benefit plan may not extend the timelines by making the decision consecutively, but must apply the requisite timelines concurrently. A carrier and health benefit plan may not deny a request for concurrent expedited review, unless the conditions for expedited review in WAC 284-43-540 are not met. Neither a carrier nor a health plan may require exhaustion of internal

review if concurrent expedited review is requested by an appellant.

NEW SECTION

WAC 284-43-550 External review of adverse benefit determinations. When the internal review of an adverse benefit determination is final, or is deemed exhausted, the appellant may request an external review of the final internal adverse benefit determination. If the appellant requests an external review of a final internal adverse determination, the carrier or health plan must cooperatively participate in that review. Carriers and health plans must inform appellants of their right to external review, and explain the process that they must use to exercise that right.

(1) Appellants must be provided the right to external review of adverse benefit determinations based on medical necessity, appropriateness, health care setting, level of care, or effectiveness of a covered benefit. The carrier and health plan may not establish a minimum dollar amount restriction as a predicate for an appellant to seek external review.

(2) Carriers must use the rotational registry system of certified independent review organizations (IRO) established by the commissioner, and must select reviewing IROs in the rotational manner described in the rotational registry system. A carrier may not make an assignment to an IRO out of sequence for any reason other than the existence of a conflict of interest, as set forth in WAC 246-305-030.

(3) The rotational registry system, a current list of certified IROs, IRO assignment instructions, and an IRO assignment form to be used by carriers are available on the insurance commissioner's web site (www.insurance.wa.gov).

(4) In addition to the requirements set forth in RCW 48.43.535, the carrier and health plan must:

(a) Make available to the appellant and to any provider acting on behalf of the appellant all materials provided to an IRO reviewing the carrier's determination;

(b) Provide IRO review without imposing any cost to the appellant or their provider; and

(c) Provide IROs with:

(i) All relevant clinical review criteria used by the carrier and other relevant medical, scientific, and cost-effectiveness evidence;

(ii) The attending or ordering provider's recommendations; and

(iii) A copy of the terms and conditions of coverage under the relevant health plan.

(d) Within one day of selecting the IRO, notify the appellant the name of the IRO and its contact information. This requirement is intended to comply with the federal standard that appellants receive notice of the IRO's identity and contact information within one day of assignment. The notice from the carrier must explain that the appellant is permitted five business days from receipt of the notice to submit additional information in writing to the IRO. The IRO must consider this information when conducting its review.

(5) A carrier may waive a requirement that internal appeals must be exhausted before an appellant may proceed to an independent review of an adverse determination.

(6) Upon receipt of the information provided by the appellant to the IRO pursuant to RCW 48.43.535 and this section, a carrier may reverse its final internal adverse determination. If it does so, it must immediately notify the IRO and the appellant.

(7) Carriers must report to the commissioner each assignment made to an IRO not later than one business day after an assignment is made. Information regarding the enrollee's personal health may not be provided with the report.

(8) The requirements of this section are in addition to the requirements set forth in RCW 48.43.535 and 43.70.235, and rules adopted by the department of health in chapter 246-305 WAC.

SUBCHAPTER F

~~GRIEVANCE AND COMPLAINT PROCEDURES~~ GRANDFATHERED HEALTH PLAN APPEAL PROCEDURES

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

NEW SECTION

WAC 284-43-610 Application of Subchapter F. For any grandfathered health plan, a carrier may continue to implement its grievance and complaint process as required by RCW 48.43.530 and RCW 48.43.535 by complying with the procedures and standards set forth in WAC 284-43-615 through 284-43-630. A health plan is grandfathered if the carrier correctly designates it as such under the federal definition standards for grandfathered health plans as set forth in the Affordable Care Act (2010), P.L. 111-148, as amended, and its implementing federal regulations.

Reviser's note: The above new section was filed by the agency as WAC 284-43-610, however WAC 284-43-610 was repealed in 2001 and WAC 284-43-610 should not be reused. Pursuant to RCW 34.08.040, the section is in the same form as filed by the agency.

AMENDATORY SECTION [(Amending Matter No. R 2000-02, filed 1/9/01)]

WAC 284-43-615 ~~Grievance and complaint~~ Appeal procedures—Generally. (1) Each carrier must adopt and implement a comprehensive process for the resolution of covered persons' ~~grievances and~~ appeals of adverse determinations. This process shall meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter.

(2) This process must conform to the provisions of this subchapter F and each carrier must:

(a) Provide a clear explanation of the ~~grievance~~ appeal process upon request, upon enrollment to new covered persons, and annually to covered persons and subcontractors of the carrier.

(b) Ensure that the ~~grievance~~ appeal process is accessible to enrollees who are limited-English speakers, who have lit-

eracy problems, or who have physical or mental disabilities that impede their ability to file an appeal ~~grievance~~.

~~(e) Process as a grievance a covered person's expression of dissatisfaction about customer service or the quality or availability of a health service.~~

(~~d~~c) Implement procedures for registering and responding to oral and written ~~grievances~~ appeals in a timely and thorough manner including the notification of a covered person that a ~~grievance or~~ appeal has been received.

(~~e~~d) Assist the covered person with all ~~grievance and~~ appeal processes.

(~~f~~e) Cooperate with any representative authorized in writing by the covered person.

(~~g~~f) Consider all information submitted by the covered person or representative.

(~~h~~g) Investigate and resolve all ~~grievances and~~ appeals.

(~~i~~h) Provide information on the covered person's right to obtain second opinions.

(~~j~~i) Track each appeal until final resolution; maintain, and make accessible to the commissioner for a period of three years, a log of all appeals; and identify and evaluate trends in appeals.

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

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

AMENDATORY SECTION [(Amending Matter No. R 2000-02, filed 1/9/01)]

WAC 284-43-610 Procedures for review and appeal of adverse determinations. (1) A covered person or the covered person's representative, including the treating provider (regardless of whether the provider is affiliated with the carrier) acting on behalf of the covered person may appeal an adverse determination in writing. The carrier must reconsider the adverse determination and notify the covered person of its decision within fourteen days of receipt of the appeal unless the carrier notifies the covered person that an extension is necessary to complete the appeal; however, the extension cannot delay the decision beyond thirty days of the request for appeal, without the informed, written consent of the ~~coverage~~ covered person.

(2) Whenever a health carrier makes an adverse determination and delay would jeopardize the covered person's life or materially jeopardize the covered person's health, the carrier shall expedite and process either a written or an oral appeal and issue a decision no later than seventy-two hours after receipt of the appeal. If the treating health care provider determines that delay could jeopardize the covered person's health or ability to regain maximum function, the carrier shall presume the need for expeditious review, including the need for an expeditious determination in any independent review under WAC 284-43-630.

(3) A carrier may not take or threaten to take any punitive action against a provider acting on behalf or in support of a covered person appealing an adverse determination.

(4) Appeals of adverse determinations shall be evaluated by health care providers who were not involved in the initial decision and who have appropriate expertise in the field of medicine that encompasses the covered person's condition or disease.

(5) All appeals must include a review of all relevant information submitted by the covered person or a provider acting on behalf of the covered person.

(6) The carrier shall issue to affected parties and to any provider acting on behalf of the covered person a written notification of the adverse determination that includes the actual reasons for the determination, the instructions for obtaining an appeal of the carrier's decision, a written statement of the clinical rationale for the decision, and instructions for obtaining the clinical review criteria used to make the determination.

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

Reviser's note: The above section, filed by the agency as an amendment of WAC 284-43-610, appears to be an amendment of WAC 284-43-620, there being no WAC 284-43-610 in existence. Pursuant to RCW 34.08.040, the section is published in the same form as filed by the agency.

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

SUBCHAPTER G

GRIEVANCES

NEW SECTION

WAC 284-43-710 Definition. This definition applies to subchapter G. "Grievant" means a person filing a grievance as defined in WAC 284-43-130, and is not an appellant under either Subchapter E or F of this chapter.

Reviser's note: The above new section was filed by the agency as WAC 284-43-710, however WAC 284-43-710 was repealed in 2008 and WAC 284-43-710 should not be reused. Pursuant to RCW 34.08.040, the section is in the same form as filed by the agency.

NEW SECTION

WAC 284-43-720 Grievance process—Generally. (1) Each carrier and health plan must offer applicants, covered persons, and providers a way to resolve grievances. A carrier must promptly provide information regarding the use of its grievance process to an applicant or enrollee who wants to submit a grievance, and assist that person in the filing of the grievance when a complaint is stated and assistance requested to put that complaint into writing.

(2) Each carrier must maintain a log or otherwise register oral and written grievances, and retain this log or record for six years. It must be available for review by the commissioner upon request. The log must identify the health plan, if any, under which the person was enrolled, the name of the grievant, the resolution of each grievance, the date of receipt, the date of resolution, and if different than the resolution date, the date notice was provided to the person registering the grievance. If a health plan is administered by a third party under contract to the carrier, the third party may keep the log and make it available through the carrier if requested by the

commissioner, or can forward the information to the carrier to maintain.

(3) Each carrier and health plan must send notice of receipt of a grievance to the grievant within two business days of receiving the grievance.

(4) When resolving a grievance, a carrier must consider all information submitted by the person registering the grievance, and perform a reasonable investigation or review of the facts policies, procedures or practices related to the grievance. A carrier and health plan must determine its resolution in response to the grievance within forty-five business days, and must notify the grievant of its determination within five business days of making its determination.

(5) Grievance determinations are not adverse benefit determinations and do not establish the right to internal or external review of a carrier or health plan's resolution of the grievance.

(6) Nothing in this section prohibits a carrier from creating or using its own system to categorize the nature of grievances in order to collect data if the system permits reporting of the data specified in (2) of this section.

(7) This section is effective as of July 29, 2011.

Reviser's note: The above new section was filed by the agency as WAC 284-43-720, however WAC 284-43-720 was repealed in 2008 and WAC 284-43-720 should not be reused. Pursuant to RCW 34.08.040, the section is in the same form as filed by the agency.

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

WSR 11-17-007
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-182—Filed August 3, 2011, 4:21 p.m., effective August 6, 2011]

Effective Date of Rule: August 6, 2011.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100M; 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 the sea cucumber district listed. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: August 3, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07100N Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective August 6, 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 District 1 on Monday and Tuesday of each week.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 6, 2011:

WAC 220-52-07100M Sea cucumbers. (11-162)

WSR 11-17-008
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-183—Filed August 3, 2011, 4:21 p.m., effective August 3, 2011, 4:21 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100W; 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 raises the limit in Shrimp Management Area 2E from 300 to 350 until the area closes at 11:59 p.m., August 9, 2011, because the quota will be reached. 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: August 3, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-05100X 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, Catch Areas 23A-E, 26B-1, 26C, and the Discovery Bay Shrimp District are closed.

ii) All waters of SMA 2E are closed to the harvest of all shrimp species other than spot shrimp.

iii) All waters of SMA 1C are closed to the harvest of spot shrimp.

iv) Effective at 11:59 p.m. August 9, 2011, all waters of SMA 2E are closed.

(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 immediately until 11:59 p.m. August 9, 2011, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 350 pounds per week in SMA 2E.

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

(c) Catch Area 20A is 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 220-52-05100W	Puget Sound shrimp beam trawl fishery—Season. (11-170)

WSR 11-17-013
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-185—Filed August 4, 2011, 11:21 a.m., effective August 7, 2011]

Effective Date of Rule: August 7, 2011.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000E; and amending WAC 232-28-620.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Enough chinook remain in the quota to liberalize the chinook daily limit to two per day. 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: August 4, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62000F Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective August 7, 2011, until further notice, it is unlawful to violate the following provisions:

(1) Catch Record Card Area 1: Open immediately through September 30. Daily limit of 2 salmon. Release wild coho.

(2) Catch Record Card Area 2: Open immediately through September 18. Daily limit of 2 salmon. Release wild coho.

a) September 19 until further notice - Closed.

(3) Willapa Bay (Catch Record Card Area 2-1): Open August 1 until further notice - Daily limit of six salmon, not more than three of which may be adult salmon. Release chum and wild Chinook.

(4) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):

a) Open September 16 until further notice - Daily limit of 2 salmon. Release Chinook and chum.

b) Notwithstanding the provisions of this subsection, Westport Boat Basin and Ocean Shores Boat Basin: Open only August 16 until further notice - Daily limit of six salmon, not more than four of which may be adult salmon. Release wild Chinook.

(5) Catch Record Card Area 3:

a) Open immediately through September 18. Daily limit of 2 salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release wild coho.

b) September 19 until further notice - Closed.

c) Notwithstanding the provisions of this subsection, waters north of 47°50'00"N latitude and south of 48°00'00"N latitude also open September 24 through October 9 - Daily limit two salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release wild coho.

(6) Catch Record Card Area 4:

a) Open immediately through September 18 - Daily limit of 2 salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release wild coho salmon. Waters east of a true north-south line through Sail Rock closed June 26 through July 31. Release Chinook salmon caught east of the Bonilla-Tatoosh line beginning August 1. Release chum salmon beginning August 1.

b) September 19 until further notice - Closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 7, 2011:

WAC 232-28-62000E	Coastal salmon—Saltwater seasons and daily limits. (11-175)

WSR 11-17-015
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-187—Filed August 4, 2011, 1:15 p.m., effective August 5, 2011, 9:00 a.m.]

Effective Date of Rule: August 5, 2011, 9:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100F; and amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of sockeye salmon available. 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: August 4, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-47-50100F Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapter 220-47 WAC, effective immedi-

ately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section:

Areas 7 and 7A:

(1) **Purse Seines -** Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
9:00 AM - 7:00 PM	8/5

(a) It is unlawful to retain rockfish, Chinook, coho, and chum.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

(2) **Gill Nets -** Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
2:00 PM - Midnight	8/5

(a) It is unlawful to retain rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

(3) **Reef Nets -** Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 3:00 PM	8/6

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department-issued certification card.

(4) **"Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 3:01 p.m. August 6, 2011:

WAC 220-47-50100F	Puget Sound all-citizen commercial salmon fishery—Open periods.

WSR 11-17-018
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-186—Filed August 4, 2011, 3:01 p.m., effective August 4, 2011, 3:01 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-69-240.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency rule is needed to update the phone number for Grays Harbor and Willapa Bay quick reporting when reports are required. 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: August 4, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-69-24000W Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, when quick reporting is required, Grays Harbor and Willapa Bay reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-249-1229; e-mail at harborfishtickets@dfw.wa.gov; or phone at 1-866-791-1280.

WSR 11-17-019
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed August 4, 2011, 4:00 p.m., effective August 4, 2011, 4:00 p.m.]

Effective Date of Rule: Immediately.

Purpose: To further extend the emergency declaration filed under WSR 11-09-004.

Citation of Existing Rules Affected by this Order: Amending WAC 51-50-0907, 51-51-0315, and 51-54-0900.

Statutory Authority for Adoption: [Chapter 19.27 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: Rules regarding installation of carbon monoxide alarms in residential settings were scheduled to go into effect on January 1, 2011, (statutory requirement) for new construction, and July 1, 2011, for existing units. The implementation date for existing units is not a statutory mandate, and may cause financial hardship on certain industries; additional time was needed to consider ways to mitigate or eliminate the economic impacts, without compromising public safety. Adoption of the emergency rules eliminates the current implementation date requirements contained in the permanent rules for installation of carbon monoxide alarms, and also modifies which dwellings must have the alarms. These rules will continue to be in effect while new permanent rules are adopted.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 3, Repealed 0.

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

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

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

Date Adopted: August 4, 2011.

Kristyn Clayton

Chair

AMENDATORY SECTION (Amending WSR 10-03-097, filed 1/20/10, effective 7/1/10)

WAC 51-50-0907 Section 907—Fire alarm and detection systems.

[F] 907.2.8 Group R-1. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-1 occupancies as required in Sections 907.2.8.1 through 907.2.8.4.

[F] 907.2.8.4. Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ((~~by January 1, 2011,~~)) outside of each separate sleeping area in the immediate vicinity of the bedroom in sleeping units((~~. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries~~)) within which fuel-fired appliances are installed, and in sleeping units that have attached garages.

[F] 907.2.8.4.1 Existing sleeping units. Existing sleeping units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ((~~July 1, 2011~~)) January 1, 2013.

[F] 907.2.8.4.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

[F] 907.2.9 Group R-2. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 through 907.2.9.3.

[F] 907.2.9.3. Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ((~~by January 1, 2011,~~)) outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units((~~. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries~~)) within which fuel-fired appliances are installed and in dwelling units that have attached garages.

[F] 907.2.9.3.1 Existing dwelling units. Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ((~~July 1, 2011~~)) January 1, 2013.

907.2.9.3.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

[F] 907.2.10 Group R-3. Carbon monoxide alarms shall be installed in Group R-3 occupancies as required in Sections 907.2.10.1 through 907.2.10.3.

[F] 907.2.l0.1 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ((~~by January 1, 2011,~~)) outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units((~~. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries~~)) within which fuel-fired appliances are installed and in dwelling units that have attached garages.

[F] 907.2.10.2 Existing dwelling units. Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ((~~July 1, 2011~~)) January 1, 2013.

EXCEPTION: Owner-occupied Group R-3 residences legally occupied prior to July 1, 2010.

[F] 907.2.10.3 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

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

AMENDATORY SECTION (Amending WSR 10-03-098, filed 1/20/10, effective 7/1/10)

WAC 51-51-0315 Section R315—Carbon monoxide alarms.

R315.1 Carbon Monoxide Alarms. For new construction, an approved carbon monoxide alarm shall be installed ((~~by January 1, 2011,~~)) outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units((~~. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries~~)) within which fuel-fired appliances are installed and in dwelling units that have attached garages.

R315.2 Existing Dwellings. Existing dwellings within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ((~~July 1, 2011~~)) January 1, 2013.

EXCEPTION: Owner-occupied detached one-family dwellings legally occupied prior to July 1, 2010.

R315.3 Alarm Requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

AMENDATORY SECTION (Amending WSR 10-03-100 [10-24-059], filed 1/20/10 [11/29/10], effective 7/1/10 [7/1/11])

WAC 51-54-0900 Chapter 9—Fire protection systems.

902.1 Definitions.

ALERT SIGNAL. See Section 402.1.

ALERTING SYSTEM. See Section 402.1.

PORTABLE SCHOOL CLASSROOM. A structure, transportable in one or more sections, which requires a chassis to be transported, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be trailerable and capable of being demounted and relocated to other locations as needs arise.

903.2.3 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS:
1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m^2); and clusters of portable school classrooms shall be separated as required by the building code.
2. Group E Occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.1.

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION: Group R-1 if all of the following conditions apply:
1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is on only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

903.6.3 Nightclub. Existing nightclubs constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.

SECTION 906—PORTABLE FIRE EXTINGUISHERS

906.1 Where required. Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.

2. Within 30 feet (9144 mm) of commercial cooking equipment.

3. In areas where flammable or combustible liquids are stored, used or dispensed.

4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.

5. Where required by the sections indicated in Table 906.l.

6. Special-hazard areas, including, but not limited to, laboratories, computer rooms and generator rooms, where required by the fire code official.

SECTION 907—FIRE ALARM AND DETECTION SYSTEMS

[F] 907.2.8 Group R-1. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-1 occupancies as required in this section and Section 907.2.8.4.

[F] 907.2.8.4((.)) Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ((~~by January 1, 2011,~~)) outside of each separate sleeping area in the immediate vicinity of the bedroom in sleeping units((~~. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries~~)) within which fuel-fired appliances are installed, and in sleeping units that have attached garages.

[F] 907.2.8.4.1 Existing sleeping units. Existing sleeping units shall be equipped with carbon monoxide alarms by ((~~July 1, 2011~~)) January 1, 2013.

[F] 907.2.8.4.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

[F] 907.2.9 Group R-2. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 through 907.2.9.3.

((~~907.2.9.1~~)) [F] 907.2.9.1.1 Group R-2 boarding homes. A manual fire alarm system shall be installed in Group R-2 occupancies where the building contains a boarding home licensed by the state of Washington.

EXCEPTION: In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

[F] 907.2.9.3 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ((~~by January 1, 2011,~~)) outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units((~~. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries~~)) within which fuel-fired appliances are installed, and in dwelling units that have attached garages.

[F] 907.2.9.3.1 Existing dwelling units. Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ((~~July 1, 2011~~)) January 1, 2013.

[F] 907.2.9.3.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

[F] 907.2.10 Group R-3. Carbon monoxide alarms shall be installed in Group R-3 occupancies as required in Sections 907.2.10.1 through 907.2.10.3.

[F] 907.2.l0.1 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ((~~by January 1, 2011,~~)) outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units((~~. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries~~)) within which fuel-fired appliances are installed, and in dwelling units that have attached garages.

[F] 907.2.10.2 Existing dwelling units. Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ((~~July 1, 2011~~)) January 1, 2013.

EXCEPTION: Owner-occupied Group R-3 residences legally occupied prior to July 1, 2010.

[F] 907.2.10.3 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

909.6.3 Elevator shaft pressurization. Where elevator shaft pressurization is required to comply with Exception 6 of IBC Section 708.14.1, the pressurization system shall comply with and be maintained in accordance with IBC 708.14.2.

909.6.3.1 Activation. The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire code official. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

909.6.3.2 Power system. The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

SECTION 915 ALERTING SYSTEMS

915.1 General. An approved alerting system shall be provided in buildings and structures as required in chapter 4 and this section, unless other requirements are provided by another section of this code.

EXCEPTION: Approved alerting systems in existing buildings, structures or occupancies.

915.2 Power source. Alerting systems shall be provided with power supplies in accordance with Section 4.4.1 of NFPA 72 and circuit disconnecting means identified as "EMERGENCY ALERTING SYSTEM."

EXCEPTION: Systems which do not require electrical power to operate.

915.3 Duration of Operation. The alerting system shall be capable of operating under nonalarm condition (quiescent load) for a minimum of 24 hours and then shall be capable of operating during an emergency condition for a period of 15 minutes at maximum connected load.

915.4 Combination system. Alerting system components and equipment shall be allowed to be used for other purposes.

915.4.1 System priority. The alerting system use shall take precedence over any other use.

915.4.2 Fire alarm system. Fire alarm systems sharing components and equipment with alerting systems must be in accordance with Section 6.8.4 of NFPA 72.

915.4.2.1 Signal priority. Recorded or live alert signals generated by an alerting system that shares components with a fire alarm system shall, when actuated, take priority over fire alarm messages and signals.

915.4.2.2 Temporary deactivation. Should the fire alarm system be in the alarm mode when such an alerting system is actuated, it shall temporarily cause deactivation of all fire alarm-initiated audible messages or signals during the time period required to transmit the alert signal.

915.4.2.3 Supervisory signal. Deactivation of fire alarm audible and visual notification signals shall cause a supervisory signal for each notification zone affected in the fire alarm system.

915.5 Audibility. Audible characteristics of the alert signal shall be in accordance with Section 7.4.1 of NFPA 72 throughout the area served by the alerting system.

EXCEPTION: Areas served by approved visual or textual notification, where the visible notification appliances are not also used as a fire alarm signal, are not required to be provided with audibility complying with Section 915.6.

915.6 Visibility. Visible and textual notification appliances shall be permitted in addition to alert signal audibility.

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

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

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

WSR 11-17-035
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-188—Filed August 9, 2011, 3:39 p.m., effective August 10, 2011, 12:01 a.m.]

Effective Date of Rule: August 10, 2011, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100X; 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 Catch Area 23B because the spot shrimp quota will be reached; (2) reduces the spot shrimp weekly limit in Catch Areas 23A-E and 23B; and (3) within Shrimp Management Area 1B, closes Catch Areas 21A and 22A to beam trawl and reopens 20B for one week. 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: August 9, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-05100Y 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, 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, 2E, Catch Areas 26B-1, 26C, and the Discovery Bay Shrimp District are closed.

ii) All waters of SMA 1C are closed to the harvest of spot shrimp.

iii) Effective at 11:59 p.m. August 16, 2011, all waters of Catch Area 23B 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 immediately, 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 in Catch Areas 23A-E and 23B.

(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 21A and 22A within SMA 1B are open, effective immediately until 6:00 p.m. August 11, 2011.

(c) Catch Area 20A is open, effective immediately until further notice.

(d) That portion of Catch Area 20B within SMA 1B is open, effective immediately until 6:00 p.m. August 16, 2011.

(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 effective 12:01 a.m. August 10, 2011:

WAC 220-52-05100X	Puget Sound shrimp beam trawl fishery—Season. (11-183)

WSR 11-17-036
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-190—Filed August 9, 2011, 3:57 p.m., effective August 11, 2011, 5:00 a.m.]

Effective Date of Rule: August 11, 2011, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100G; and amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of sockeye salmon available. 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: August 9, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-47-50100G Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
9:00 AM - 5:00 PM	8/11

(a) It is unlawful to retain rockfish, Chinook, coho, and chum.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:00 AM - Midnight	8/11

(a) It is unlawful to retain rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/11

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(4) **"Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 12, 2011:

WAC 220-47-50100G	Puget Sound all-citizen commercial salmon fishery—Open periods.

WSR 11-17-043
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-189—Filed August 10, 2011, 2:33 p.m., effective August 12, 2011]

Effective Date of Rule: August 12, 2011.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100J, 220-47-41100S and 220-47-42700C; and amending WAC 220-47-311, 220-47-411, and 220-47-427.

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: These emergency rules are necessary to comply with agreed upon management plans, and are interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 3.

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: August 10, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-47-31100J Purse seine—Open periods. Notwithstanding the provisions of WAC 220-47-311, it is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

1. Seasons:

AREA	TIME	DATES
7B, 7C:	6 AM - 8 PM	8/17
8A:	6 AM - 8 PM	8/18

2. It is unlawful to retain the following salmon species taken with purse seine gear within the following areas:

a. Chinook salmon - in Area 8A.

b. Coho salmon - in Area 7B.

c. Chum salmon - in Area 8A.

3. All other saltwater and freshwater areas - closed.

NEW SECTION

WAC 220-47-41100S Gill net—Open periods. Notwithstanding the provisions of WAC 220-47-411, it is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

1. Seasons:

AREA	TIME	DATE(S)	MINIMUM MESH
7B, 7C:	7 PM - 8 AM	NIGHTLY 8/14, 8/16, 8/17, 8/21,	7"
8A:	5 AM - 11:30 PM	8/17	5" minimum and 5 1/2" maximum
9A: Skiff gill net only.	7 AM - 11:59 PM	8/21	5"

2. Skiff gill net definition is in WAC 220-16-046, and lawful gear description is in WAC 220-47-302.

3. It is unlawful to retain Chinook and chum salmon taken in Area 9A. Any salmon required to be released in Area 9A must be removed from the net by cutting the meshes ensnaring the fish.

4. Nightly openings refer to the start date.

5. Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

6. All other saltwater and freshwater areas - closed.

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

NEW SECTION

WAC 220-47-42700C Puget Sound—Beach seine—Emerging commercial fishery—Eligibility—Lawful gear. Notwithstanding the provisions of WAC 220-47-427:

(1) The Puget Sound beach seine salmon fishery is designated as an emerging commercial fishery for which a vessel is required. An emerging commercial fishery license and an experimental fishery permit are required to participate in this fishery.

(2) The department will issue four salmon beach seine experimental fishery permits.

(3) The following is the selection process the department will use to offer a salmon beach seine experimental permit.

(a) Persons who held a salmon beach seine experimental fishery permit in the previous management year will be eligible for a permit in the current management year.

(b) The department will work with the advisory board, per RCW 77.70.160(1), to establish criteria by which applicants would qualify to enter the pool. The pool established by this drawing will be maintained to replace any permit(s) which may be voided.

(4) Permit holders are required to participate in the salmon beach seine experimental fishery.

(a) For purposes of this section, "participation" means the holder of the salmon beach seine experimental permit being aboard the designated vessel in the open fishery.

(b) If the salmon beach seine experimental permit holder fails to participate, the salmon beach seine experimental permit issued to that fisher will be void and a new salmon beach seine experimental permit will be issued through a random drawing from the applicant pool.

(c) The department may require proof of participation by requiring participants to maintain a department approved log book or register with state officials each day the salmon beach seine experimental permit holder participates.

(d) Persons who participate, but violate conditions of a salmon beach seine experimental permit, will have the permit voided, and a new salmon beach seine experimental permit will be reissued through a random drawing from the pool of the voided permit holder.

(5) In Quilcene Bay, chum salmon may not be retained by a salmon beach seine experimental permit holder. Chum salmon in Quilcene Bay must be released alive.

(6) Any person who fails to purchase the license, fails to participate, or violates the conditions of a salmon beach seine experimental permit will have his or her name permanently withdrawn from the pools.

(7) It is unlawful to take salmon with beach seine gear that does not meet the requirements of this subsection.

(a) Beach seine salmon nets in Puget Sound shall not exceed 600 feet in length or 100 meshes in depth, or contain meshes of a size less than 3 inches or greater than 4 inches.

(b) Mesh webbing must be constructed with a twine size no smaller than 210/30d nylon, 12 thread cotton, or the equivalent diameter in any other material.

REPEALER

The following section of the Washington Administrative Code are repealed effective August 21, 2011:

WAC 220-47-31100J	Purse seine—Open periods.
WAC 220-47-41100S	Gill net—Open periods.
WAC 220-47-42700C	Puget Sound—Beach seine—Emerging commercial fishery—Eligibility—Lawful gear.

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

WSR 11-17-046
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-191—Filed August 11, 2011, 1:22 p.m., effective August 11, 2011, 1:22 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000D.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: It is projected that the harvestable quota of chinook salmon will have been taken by the commercial troll fleet. 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 0, 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: August 11, 2011.

Lori Preuss
for Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000D	All-citizen commercial salmon troll. (11-156)

WSR 11-17-047
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed August 11, 2011, 2:32 p.m., effective August 12, 2011]

Effective Date of Rule: August 12, 2011.

Purpose: The legislature passed ESHB 1086, which authorized the department of social and health services to place long-term care clients residing in nursing homes and paid for with state-only funds into less restrictive community care settings while continuing to meet the client's care needs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-438-0125.

Statutory Authority for Adoption: Chapter 5, Laws of 2011, ESHB 1086 and HB 1248 which extends the allowance of emergency rule filing through fiscal year 2013.

Other Authority: RCW 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, 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: See Purpose above. This emergency rule is necessary to continue the emergency rule adopted under WSR 11-09-031 while the permanent rulemaking process is completed. A public hearing is scheduled for September 6, 2011 (WSR 11-16-101). Delaying this adoption could jeopardize the state's ability to continue complying with ESHB 1086, which authorizes the department to place long-term care clients into less restrictive community care settings.

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: August 8, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-19-085, filed 9/17/10, effective 10/18/10)

WAC 388-438-0125 ((~~Alien nursing facility~~)) State-funded long-term care services program ((~~(state-funded)~~)). (1) The state-funded ((~~alien nursing facility~~)) long-term care services program is subject to caseload limits determined by legislative funding. Services cannot be authorized for eligible persons prior to a determination by the aging and disability services administration (ADSA) that caseload limits will not be exceeded as a result of the authorization.

(2) Long-term care services are defined in this section as services provided in one of the following settings:

(a) In a person's own home, as described in WAC 388-106-0010;

(b) Nursing facility, as defined in WAC 388-97-0001;

(c) Adult family home, as defined in RCW 70.128.010;

(d) Assisted living facility, as described in WAC 388-513-1301;

(e) Enhanced adult residential care facility, as described in WAC 388-513-1301;

(f) Adult residential care facility, as described in WAC 388-513-1301.

(3) Long-term care services will be provided in one of the facilities listed in subsection (2)(b) through (2)(f) of this section unless nursing facility care is required to sustain life.

(4) To be eligible for the state-funded ((~~alien nursing facility~~)) long-term care services program described in this section, an adult nineteen years of age or older must meet all of the following conditions:

(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a), (3)(b), (3)(e), and (3)(f);

(b) Reside in ((~~a nursing facility as defined in WAC 388-97-0001~~)) one of the settings described in subsection (2) of this section;

(c) Attain institutional status as described in WAC 388-513-1320;

(d) Meet the functional eligibility described in WAC 388-106-0355 for nursing facility level of care;

(e) Not have a penalty period due to a transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366;

(f) Not have equity interest in a primary residence ((~~of~~)) more than ((~~five hundred thousand dollars as~~)) the amount described in WAC 388-513-1350 (7)(a)(ii); and

(g) Any annuities owned by the adult or spouse must meet the requirements described in chapter 388-561 WAC.

(((~~3~~))) (5) An adult who is related to the supplemental security income (SSI) program as described in WAC 388-475-0050 (1), (2), and (3) must meet the financial requirements described in WAC 388-513-1325, 388-513-1330, and 388-513-1350.

(((~~4~~))) (6) An adult who does not meet the SSI-related criteria in subsection (2) of this section may be eligible under the family institutional medical program rules described in WAC 388-505-0250 or 388-505-0255.

(((~~5~~))) (7) An adult who is not eligible for the state-funded ((~~alien nursing facility~~)) long-term care services program under categorically needy (CN) rules may qualify under medically needy (MN) rules described in:

(a) WAC 388-513-1395 for adults related to SSI; or

(b) WAC 388-505-0255 for adults related to family institutional medical.

(((~~6~~))) (8) All adults qualifying for the state-funded ((~~alien nursing facility~~)) long-term care services program will receive CN scope of medical coverage described in WAC 388-501-0060.

(((~~7~~))) (9) The department determines how much an individual is required to pay toward the cost of care using the following rules:

(a) For an SSI-related individual residing in a nursing home, see rules described in WAC 388-513-1380.

(b) For an SSI-related individual residing in one of the other settings described in subsection (2) of this section, see rules described in WAC 388-515-1505.

(c) For an individual eligible under the family institutional program, see WAC 388-505-0265.

(((~~8~~))) (10) A person is not eligible for state-funded ((~~nursing facility~~)) long-term care services if that person entered the state specifically to obtain medical care.

(((~~9~~))) (11) A person eligible for the state-funded ((~~alien nursing facility~~)) long-term care services program is certified for a twelve month period.

WSR 11-17-051
EMERGENCY RULES
HORSE RACING COMMISSION

[Filed August 12, 2011, 2:32 p.m., effective August 12, 2011, 2:32 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend WAC 260-36-220 and 260-36-230 to extend the period of short duration license at Class A and B racing associations from seven to thirty day[s] in an attempt to attract more trainers and horses to run in Washington. This action is being taken at the specific request of the Washington Horsemen's Benevolent and Protective Association, the industry group representing those this amendment would affect, and therefore is exempt from the limitations of EO 10-06. This filing replaces CR-103E, WSR 11-09-077 until the permanent rule becomes effective.

Citation of Existing Rules Affected by this Order: Amending WAC 260-36-220 and 260-36-230.

Statutory Authority for Adoption: RCW 67.16.020.

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 Washington horse racing commission is required by law (RCW 67.16.300) to collect industrial insurance premiums required by RCW 51.16.210. These premiums are tied to the participants' license and collected at the time of licensing. This has left many out-of-state trainers with the perception that Washington's "license fees" are some of the highest in the nation. While this is not the case, the perception has kept trainers from running in Washington, jeopardizing the overall welfare of Washington equine industry. In response, immediate action is needed to change this perception and encourage horsemen to bring their horses to Washington. Current economic conditions coupled with fewer horses participating in live horse racing make it critical that immediate action is taken to preserve the general welfare of the state's equine industry.

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 2, 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 2, Repealed 0; Pilot Rule Mak-

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

Date Adopted: August 12, 2011.

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 09-23-063, filed 11/13/09, effective 12/14/09)

WAC 260-36-220 Industrial insurance premiums—Additional premiums for exercise riders. (1) At the time of licensing, and as provided in this section and WAC 260-36-230, a trainer must pay the annual industrial insurance premiums for exercise riders established by labor and industries, unless exempted under WAC 260-36-240. Coverage will only apply to licensed exercise riders exercising horses for a licensed trainer and for trainers, also licensed as exercise riders, exercising any of the horses in their care. It is the trainer's responsibility to ensure all exercise riders in their employ are properly licensed by the commission.

(2)(a) A trainer at a Class A or B track must pay all required annual industrial insurance premiums for exercise riders equal to the maximum number of horses in training on any given day during the calendar year that the trainer has both on and off the grounds of a racing association.

(b) For horses on the grounds of a Class A or B track, a trainer must count stalls that are occupied by horses (including horses that are sick or injured) under the trainer's care. Premiums will be calculated on the total number of stalls allotted by the racing association, even if the horse is stalled on the grounds for a day or less. (For example, if a trainer comes to Washington to enter or nominate his/her horse in one race and the horse is only on the grounds for one day, the trainer is required to pay the full industrial insurance premium for that one horse, except as provided in WAC 260-36-230.) Stalls assigned to and occupied by pony horses will not be counted.

(c) For horses off the grounds, a trainer must count all horses in training that are subject to being ridden by licensed exercise riders, if the exercise riders are to be covered by the Washington labor and industries insurance under the horse industry account.

(d) If any trainer increases the number of horses in training or racing, either on or off the grounds during the calendar year, the trainer is responsible to pay the additional premiums as provided in this section.

(e) If any trainer decreases the number of horses in training or racing, either on or off the grounds during the calendar year, the trainer is not entitled to any refund as premiums are annual fees that are not prorated and are assessed on the maximum number of horses in training on any day during the calendar year.

(f) It is the trainer's responsibility to maintain records and accurately report the number of horses in training (both on and off the grounds) for purposes of paying industrial insurance premiums required by this section. Any time during the calendar year if a trainer increases the number of horses in training or racing beyond the premium previously assessed the trainer is responsible for immediately reporting and paying the additional premium owed.

(3)(a) A trainer at a Class C track must pay industrial insurance premiums for exercise riders equal to the maximum number of different horses the trainer starts at the Class C tracks during the calendar year, or the maximum number of horses the trainer has in training, whichever is greater. All trainers at a Class C track are required to pay industrial insurance for at least one horse.

(b) If during the calendar year a horse is started by more than one trainer that horse, for the purpose of calculating the annual industrial insurance premium a trainer is required to pay, will count as a different horse for each trainer.

(c) It is the trainer's responsibility to maintain records and accurately report the number of different horses started or in training for the purpose of paying industrial insurance premiums required in this section. Any time during the calendar year if a trainer increases the number of different horses started or the total number of horses in training beyond the premium previously assessed the trainer is responsible for immediately reporting and paying the additional premium owed.

AMENDATORY SECTION (Amending WSR 09-23-063, filed 11/13/09, effective 12/14/09)

WAC 260-36-230 Short duration industrial insurance coverage. (1) ((~~Trainers entering horses to run in Washington races will be allowed to obtain short duration industrial insurance coverage that will reduce the trainer's base premium and the groom and/or assistant trainer slot(s). The reduced premiums for short duration coverage will not apply to the additional premiums required to cover exercise riders as provided in WAC 260-36-220. The following conditions will apply for short duration coverage:~~

~~(a) Trainers who ship in to Class A or B race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. The trainer must pay twenty percent of the trainer base premium, and twenty percent for each groom slot or assistant trainer slot obtained (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums established for Class A or B race meets. A trainer may only purchase Class A or B race meet short duration coverage for three seven-day periods per calendar year.~~)) Trainers entering horses to run in Washington races will be allowed to obtain short duration industrial insurance coverage that will reduce the amount of industrial insurance premium a trainer has to pay to provide employees financial relief from injury. Short duration coverage may be purchased no sooner than seven days prior to the start of the live race meet where the trainer plans to run. The following conditions will apply for short duration coverage:

(a) Trainers who ship in to Class A or B race meets may purchase short duration industrial insurance coverage for thirty consecutive calendar days. Trainers who have purchased any annual coverage at Class A or B race meets including paying premiums quarterly are not eligible for short duration coverage. Thirty-day short duration coverage can be purchased for each trainer's base coverage. Separate thirty-day short duration coverage can be purchased for each groom, and/or assistant trainer and separate coverage can be

purchased for each exercise rider (WAC 260-36-220). The premium for thirty-day coverage will be set by the department of labor and industries (rounded to the next whole dollar). A trainer may only purchase Class A or B race meet short duration coverage for three thirty-day periods per calendar year. If a trainer extends coverage for more than three thirty-day periods the trainer will owe the annual premium for each groom and assistant trainer, and the annual premium for exercise rides (based on all horses on the grounds during the previous ninety-day coverage period). The premium owed for coverage extending past ninety days will be the annual premium, less what the trainer may have already purchased for each risk class.

(b) Trainers who ship in to Class C race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. ((~~The trainer must pay twenty percent of the trainer base premium, and twenty percent of each groom slot or assistant trainer slot obtained (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums established for Class C race meets.~~)) Seven-day short duration coverage can be purchased for each trainer's base premium. Separate seven-day short duration coverage can be purchased for each groom and assistant trainer. The premium for seven-day short duration coverage will be set by the department of labor and industries (rounded to the next whole dollar). A trainer may only purchase Class C race meet short duration coverage for three seven-day periods per calendar year. Class C race meet short duration industrial insurance coverage is not transferable to a Class A or B race meet.

(2) Before short duration coverage will be allowed, a trainer must obtain a license and pay all applicable license and fingerprint fees required in WAC 260-36-085. The trainer is also required to ensure that each groom, assistant trainer, pony rider, and exercise rider hired by the trainer has a proper license. A trainer may only employ persons on the grounds of the racing association who are properly licensed by the commission. Prior to the end of each short duration coverage period a trainer must pay the short duration premium for any additional grooms, or assistant trainers (groom slots) and any additional horses brought on the grounds of a Class A or B race meet, or any additional horses started in a race at Class C race meets.

WSR 11-17-052
EMERGENCY RULES
DEPARTMENT OF HEALTH
(Board of Pharmacy)

[Filed August 12, 2011, 3:01 p.m., effective August 12, 2011, 3:01 p.m.]

Effective Date of Rule: Immediately.

Purpose: WAC 246-887-100 continues the addition of the chemicals JWH-018, JWH-073, JWH-200, CP-47,497, cannabicyclohexanol, methylmethcathinone, methylenedioxypyrovalerone, methylenedioxymethylcathinone, methylbenzodioxolylpropylamine, and fluoromethcathinone to the Schedule I list under the Controlled Substance Act. Schedule I substances have a high potential for abuse and no accepted medical use. The rule makes it illegal to sell, possess, manufacture or deliver these chemicals or products containing these chemicals.

Citation of Existing Rules Affected by this Order: Amending WAC 246-887-100.

Statutory Authority for Adoption: RCW 69.50.201(a), 69.50.203.

Other Authority: RCW 18.64.005(7).

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: By adding these chemicals to Schedule I of the controlled substances list, the board of pharmacy identifies these substances as having a high potential for abuse with no medical use. The rule gives law enforcement clear authority to prosecute for the sale, possession, manufacture, or delivery of these substances and is consistent with the direction from the federal Drug Enforcement Agency.

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

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

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

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

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

Date Adopted: August 12, 2011.

A. J. Linggi, RPH
Board Chair

AMENDATORY SECTION (Amending WSR 01-03-108, filed 1/22/01, effective 1/22/01)

WAC 246-887-100 Schedule I. The board finds that the following substances have high potential for abuse and have no accepted medical use in treatment in the United States or that they lack accepted safety for use in treatment under medical supervision. The board, therefore, places each of the following substances in Schedule I.

(a) The controlled substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name, are included in Schedule I.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
(2) Acetylmethadol;
(3) Allylprodine;
(4) Alphacetylmethadol; (({~~[(except for levo-alphacetyl-methadol - also known as levo-alpha-acetylmethadol, levo-methadyl acetate or LAAM);]~~})) (except for levo-alphacetyl-methadol - also known as levo-alpha-acetylmethadol, levo-methadyl acetate or LAAM);
(5) Alphameprodine;
(6) Alphamethadol;
(7) Alpha-methylfentanyl (N-[1-alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
(8) Benzethidine;
(9) Betacetylmethadol;
(10) Betameprodine;
(11) Betamethadol;
(12) Betaprodine;
(13) Clonitazene;
(14) Dextromoramide;
(15) Diampromide;
(16) Diethylthiambutene;
(17) Difenoxin;
(18) Dimenoxadol;
(19) Dimepheptanol;
(20) Dimethylthiambutene;
(21) Dioxaphetyl butyrate;
(22) Dipipanone;
(23) Ethylmethylthiambutene;
(24) Etonitazene;
(25) Etoxeridine;
(26) Furethidine;
(27) Gamma-hydroxybutyric Acid (other names include: GHB);
(28) Hydroxypethidine;
(29) Ketobemidone;
(30) Levomoramide;
(31) Levophenacylmorphan;
(32) 3-Methylfentanyl (N-[3-Methyl-1-(2-phenylethyl)-4-piperidyl)]-N-phenylpropanamide);
(33) Morpheridine;
(34) MPPP (1-Methyl-4-phenyl-4-propionoxypiperidine);
(35) Noracymethadol;
(36) Norlevorphanol;
(37) Normethadone;
(38) Norpipanone;
(39) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(40) Phenadoxone;
(41) Phenampromide;
(42) Phenomorphan;
(43) Phenoperidine;
(44) Piritramide;
(45) Proheptazine;
(46) Properidine;
(47) Propiram;
(48) Racemoramide;
(49) Tilidine;
(50) Trimeperidine.

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except hydrochloride salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophine;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Pholcodine;
(23) Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of paragraph (d) of this section, only, the term "isomer" includes the optical, position, and geometric isomers):
(1) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA;
(2) 2,5-dimethoxyamphetamine: Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;
(3) 2,5-dimethoxy-4-ethylamphetamine (DOET)
(4) 4-methoxyamphetamine: Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA;
(5) 5-methoxy-3,4-methylenedioxy-amphetamine;
(6) 4-methyl-2,5-dimethoxy-amphetamine: Some trade and other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP";
(7) 3,4-methylenedioxy amphetamine;
(8) 3,4-methylenedioxymethamphetamine (MDMA);
(9) 3,4,5-trimethoxy amphetamine;
(10) Bufotenine: Some trade or other names: 3-(beta-Dimethylaminoethyl)-5-hydroxindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(11) Diethyltryptamine: Some trade or other names: N,N-Diethyltryptamine; DET;

(12) Dimethyltryptamine: Some trade or other names: DMT;

(13) Ibogaine: Some trade or other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13,-octahydro-2-methoxy-6,9methano-5H-pyndo (1',2':1,2) azepino (5,4-b) indole; Tabernanthe iboga;

(14) Lysergic acid diethylamide;

(15) Marihuana;

(16) Mescaline;

(17) Parahexyl-7374; some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;

(18) Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts; (interprets 21 USC § 812 (c), Schedule I (c)(12))

(19) N-ethyl-3-piperidyl benzilate;

(20) N-methyl-3-piperidyl benzilate;

(21) Psilocybin;

(22) Psilocyn;

(23) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp., and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1 - cis - or transtetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration;

(ii) Delta 6 - cis - or transtetrahydrocannabinol, and their optical isomers;

(iii) Delta 3,4 - cis - or transtetrahydrocannabinol, and its optical isomers;

(iv) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol- 7297 (Other names: CP-47,497);

(v) 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol- 7298 (Other names: Cannabicyclohexanol and CP-47,497 C8 homologue);

(vi) 1-Butyl-3-(1-naphthoyl)indole-7173 (Other names: JWH-073);

(vii) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole-7200 (Other names: JWH-200);

(viii) 1-Pentyl-3-(1-naphthoyl)indole-7118 (Other names: JWH-018 and AM678).

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(24) Ethylamine analog of phencyclidine: Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;

(25) Pyrrolidine analog of phencyclidine: Some trade or other names: 1-(1-phencyclohexyl)pyrrolidine; PCPy; PHP;

(26) Thiophene analog of phencyclidine: Some trade or other names: 1-(1-[2-thenyl]-cyclohexly)-pipendine; 2-thienylanalog of phencyclidine; TPCP; TCP;

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) Mecloqualone;

(ii) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

((~~(i)~~)) (1) Cathinone (also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);

((~~(ii)~~)) (i) Fluoromethcathinone (Flephedrone);

(ii) Methylbenzodioxolylpropylamine (Butylone);

(iii) Methylenedioxymethylcathinone (Methylone);

(iv) Methylenedioxypyrovalerone (MDPV); and

(v) Methylmethcathinone (Mephedrone);

(2) Fenethylline;

((~~(iii)~~)) (3) N-ethylamphetamine;

((~~(iv)~~)) (4) 4-methylaminorex;

((~~(v)~~)) (5) N,N-dimethylamphetamine.

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

WSR 11-17-053
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed August 12, 2011, 3:30 p.m., effective August 12, 2011, 3:30 p.m.]

Effective Date of Rule: Immediately.

Purpose: WAC 458-20-273 (Rule 273) explains the cost recovery incentive program for renewable energy systems. Rule 273 is amended to provide appeal rights to a determination by the department of revenue regarding a: (1) Revocation or denial of approval to certify a renewable energy system for eligibility in the incentive payment program or (2) revocation or denial of approval to certify a module, inverter, or blade as manufactured in Washington state for purposes of increased factors in calculating the amount of incentive payments.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-273 Renewable energy system cost recovery.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Other Authority: RCW 34.05.350.

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: Taxpayers need to be aware of their appeal rights and responsibilities if the department denies certification or intends to revoke certification.

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

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

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

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

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

Date Adopted: August 12, 2011.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-17-004, filed 8/5/10, effective 9/5/10)

WAC 458-20-273 Renewable energy system cost recovery. (1) **Introduction.** This section explains the renewable energy system cost recovery program provided in RCW 82.16.110 through 82.16.140. This program authorizes a customer investment cost recovery incentive payment (incentive payment) to help offset the costs associated with the purchase and use of renewable energy systems located in Washington state that produce electricity. Qualified renewable energy systems include:

- Solar energy systems;
- Wind generators; and
- Certain types of anaerobic digesters that process manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity.

(a) Any individual, business, local government, or participant in a qualifying community solar project that purchases and uses or supports such a system may apply for an incentive payment from the light and power business that serves the property. Neither a state governmental entity nor a federal governmental entity can participate in the incentive payment program.

(b) Participation by a light and power business in this incentive payment program is discretionary.

(c) No incentive payment may be made for kilowatt-hours generated before July 1, 2005, or after June 30, 2020. The right to earn tax credits under this section expires June 30, 2020. Credits may not be claimed after June 30, 2021.

(2) **Definitions.** The definitions in this section apply throughout this section unless the context clearly requires otherwise.

(a) "Administrator" means an owner and assignee of a community solar project defined in (c)(i) and (iii) of this subsection, that is responsible for applying for the investment cost recovery incentive on behalf of the other owners and performing such administrative tasks on behalf of the other owners as may be necessary; such as receiving investment cost recovery incentive payments, and allocating and paying appropriate amounts of such payments to other owners.

(b) "Applicant" has the following three meanings in this definition.

(i) For other than community solar projects, applicant means an individual, business, or local government, that owns the renewable energy system that qualifies under the definition of "customer-generated electricity."

(ii) For purposes of a community solar project defined in (c)(i) or (iii) of this subsection, the administrator, defined in (a) of this subsection, is the applicant.

(iii) For purposes of a utility-owned community solar project defined in (c)(ii) of this subsection, the utility will act as the applicant for its ratepayers that provide financial support to participate in the project.

(c) "Community solar project" means any one of the three definitions, below:

(i) A solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of electricity and is owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business.

(ii) A utility-owned solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of electricity and that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for their share of the value of the electricity generated by the solar energy system.

(iii) A solar energy system located in Washington state, placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business, that is capable of generating up to seventy-five kilowatts of electricity, and that is owned by a company whose members are each eligible for an investment cost recovery incentive payment for the same customer-generated electricity as defined in (e) of this subsection.

(A) The cooperating local governmental entity that owns the property on which the solar energy system is located may also be a member of the company.

(B) A member may hold an interest in the company constituting ownership of either a portion of the solar energy system or a portion of the value of the electricity generated by the solar energy system, or both.

(d) For purposes of "community solar project" as defined in (c) of this subsection, the following definitions apply.

(i) "Capable of generating up to seventy-five kilowatts of electricity" means that the solar energy system will qualify if it generates seventy-five kilowatts of electricity or less. If the solar energy system or a community solar project produces

more than seventy-five kilowatts the entire project is ineligible for the incentive payment program.

(ii) "Company" means an entity that is:

(A)(I) A limited liability company created under the laws of Washington state;

(II) A cooperative formed under chapter 23.86 RCW; or

(III) A mutual corporation or association formed under chapter 24.06 RCW; and

(B) Not a "utility" as defined in (d)(v) of this subsection.

(iii) "Local individuals, households, nonprofit organizations, or nonutility businesses" mean individuals, households, nonprofit organizations, or nonutility businesses that are:

• Located within the service area of the light and power business where the renewable energy system is located; and

• Residents of Washington state.

(iv) "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the federal Internal Revenue Code of 1986, as amended, as of January 1, 2009.

(v) "Owned in fee simple" means an interest in land that is the broadest property interest allowed by law.

(vi) "Utility" means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

(e) "Customer-generated electricity" means the alternating current electricity that is generated from a renewable energy system located in Washington state, that is installed on an individual's, businesses', local government's or utility's real property and the real property involved is served by a light and power business.

(i) Except for utility-owned community solar systems, a system located on a leasehold interest does not qualify under this definition. For a community solar project requiring the cooperation of a local governmental entity, the cooperating local governmental entity must own in fee simple the real property on which the solar energy system is located to qualify as "customer-generated electricity." A leasehold interest held by a cooperating local governmental entity will not qualify. However, for nonutility community solar projects, a solar energy system located on land owned in fee simple by a cooperating local governmental entity that is leased to local individuals, households, nonprofit organizations, nonutility businesses or companies will qualify as "customer-generated electricity."

(ii) Except for a utility-owned solar energy system that is voluntarily funded by the utility's ratepayers, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(f) "Local governmental entity" means any unit of local government of Washington state including, but not limited to:

• Counties;
• Cities;
• Towns;
• Municipal corporations;
• Quasi-municipal corporations;
• Special purpose districts;
• Public stadium authorities; or
• Public school districts.

"Local governmental entity" does not include a state or federal governmental entity, such as a:

• State park;
• State-owned building;
• State-owned university;
• State-owned college;
• State-owned community college; and
• Federal-owned building.

(g) "Light and power business" means the business of operating a plant or system of generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(h) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(i) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(j) "Renewable energy system" means:

• A solar energy system used in the generation of electricity;

• An anaerobic digester that processes livestock manure into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity; or

• A wind generator used for producing electricity.

(k) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(l) "Solar inverter" means the device used to convert direct current to alternating current in a photovoltaic cell system.

(m) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(3) **Who may receive an incentive payment?** Any of the following may receive an incentive payment:

(a) An individual, business, or local governmental entity, not in a light and power business or in a gas distribution business owning a qualifying renewable energy system; or

(b) A participant in a community solar project with an ownership interest in the:

• Solar energy system;

• Company that owns the solar energy system; or

• Value of the electricity produced by the solar energy system.

(4) **Must you be a customer of a light and power business to be a recipient of an incentive payment?** Yes, only owners of qualifying renewable energy systems located on interconnected properties belonging to customers of a light and power business are eligible to receive incentive payments. This is because the electricity generated by the renewable energy system must be able to be transformed or transmitted for entry into or operated in parallel with electricity transmission and distribution systems. In the case of community solar projects, the land on which the renewable energy system is located may be owned in fee simple by a local governmental entity or owned in fee simple or leased by

a utility and they will be the customer of the light and power business.

(5) **To whom do I apply?** An applicant must apply to the light and power business serving the real property on which the renewable energy system is located. The applicant applies for an incentive payment based on customer-generated electricity during each fiscal year beginning on July 1st and ending on June 30th. Participation by a light and power business in the cost recovery incentive program is voluntary. An applicant should first contact their light and power business to verify that it is participating

(6) **Do I need a certification before applying to the light and power business?** Before submitting the first application to the light and power business for the incentive payment allowed under this section, the applicant must submit to the department of revenue a certification request in a form and manner prescribed by the department of revenue.

(a) There are two forms for this certification found at the department of revenue's web site at www.dor.wa.gov, entitled:

• Community Solar Project Renewable Energy System Cost Recovery Certification; and

• Renewable Energy System Cost Recovery Certification.

(b) The department of revenue will evaluate these certification requests with assistance from the climate and rural energy development center at the Washington State University.

(c) In the case of community solar projects:

• Only one certification can be obtained for each system;

• Applicants may rely upon a prior issued certification of the system;

• The administrator must apply for the certification if it is a community solar project placed on property owned by a cooperating local government and owned by individuals, households, nonprofit organizations, or nonutility businesses;

• The company acting as an administrator must apply for the certification if it is a community solar project placed on property owned by a cooperating local government and owned by a company; and

• The utility acting as administrator must apply for the certification if it is a utility-owned community solar project on property owned or leased by the utility.

(d) **Property purchased with existing system.** Except for community solar projects, if an applicant has just purchased a property with a certified renewable energy system, the applicant must reapply for certification as the new owner with the department of revenue.

(e) **Requirements of the certification request.** This certification request must contain, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) If the applicant is an administrator of a community solar project, the certification request must also include the current name and address of each of the participants in the community solar project.

(B) If the applicant is a company that owns a community solar project that is acting as an administrator, the certification request must also include the current name and address of each member of the company that is a participant in the community solar project.

(ii) The applicant's tax registration number;

(iii) Confirmation that the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A wind generator with an inverter manufactured in Washington state;

(D) A solar inverter manufactured in Washington state;

(E) A solar module manufactured in Washington state;

(F) Solar or wind equipment manufactured outside of Washington state; or

(G) An anaerobic digester which processes manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity.

(iv) Confirmation that the electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems;

(v) The date that the local jurisdiction issued its final electrical permit on the renewable energy system; and

(vi) A statement that the applicant understands that this information is true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(f) **Response from the department of revenue.** Within thirty days of receipt of the certification the department of revenue must notify the applicant whether the renewable energy system qualifies for an incentive payment under this section. This notification may be delivered by either mail or electronically as provided in RCW 82.32.135.

(i) The department of revenue may consult with the climate and rural energy development center to determine eligibility for the incentive.

(ii) System certifications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)(m).

(g) **What happens if the department of revenue notifies me that the original certification does not qualify for an incentive payment or upon notice of intent to revoke approval of certification?**

(i) If the department of revenue finds the certification does not qualify for an incentive payment, it will notify you of the reasons why and advise you how you may appeal the decision if you disagree with their reason.

(ii) Any appeal must be served on the department of revenue within thirty days of the notice of intention to disapprove or revoke approval of certification or the decision will be final.

(7) **How often do I apply to the light and power business?** You must annually apply by August 1st of each year to the light and power business serving the location of your renewable energy system. The incentive payment applied for covers the production of electricity by the system between July 1st and June 30th of each prior fiscal year.

(8) **What about the application to the light and power business?** The department of revenue has two application forms for use by customers when applying for the incentive payment with their light and power business. These applications are found at the department of revenue's web site at www.dor.wa.gov, entitled:

• Community Solar Project Renewable Energy System Cost Recovery Annual Incentive Payment Application; and

• Renewable Energy System Cost Recovery Annual Incentive Payment Application.

However, individual light and power businesses may create their own forms or use the department of revenue's form in conjunction with their additional addendums.

(a) **Information required on the application to the light and power business.** The application must include, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) If the applicant is an administrator of a community solar project, the application must also include the current name and address of each of the participants in the community solar project.

(B) If the applicant is a company that owns a community solar project that is acting as an administrator, the application must also include the current name and address of each member of the company that is a participant in the community solar project.

(C) If the applicant is the utility involved with a utility-owned community solar project that is acting as an administrator, the application must also include the current name and address of each customer-ratepayer participating in the community solar project.

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

(iv) A statement of the amount of gross kilowatt-hours generated by the renewable energy system in the prior fiscal year; and

(v) A statement that the applicant understands that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that the statements are true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(b) **Light and power business response.** Within sixty days of receipt of the incentive payment application the light and power business serving the location of the system must notify the applicant in writing whether the incentive payment will be authorized or denied.

(i) The light and power business may consult with the climate and rural energy development center to determine eligibility for the incentive payment.

(ii) Incentive payment applications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)(m).

(c) **Light and power business may verify initial certification of system.** Your light and power business has the authority to verify and make separate determinations on the matters covered in your earlier certification with the department of revenue. If your light and power business finds the certification process made an error in determining whether your renewable energy system's generated electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems, then the determination by the light and power business will be controlling and it has the authority to decertify your system.

(9) **What are the possible procedures an applicant and their light and power business may follow in setting up incentive payments?** This subsection first discusses recommended procedures an applicant should follow when requesting that the light and power businesses set up an applicant's incentive payments and second discusses the possible procedures the light and power business may follow.

(a) **Steps an applicant may take include, but are not limited to:**

• Contacting their light and power business to ask whether it is participating and what application procedures apply;

• Submitting an application to the light and power business that serves their property;

• Submitting to the light and power business proof that the applicant's renewable energy system is certified by the department of revenue for the incentive payment program;

• Submitting to the light and power business a copy of the approved certification and letter from the department of revenue; and

• Signing an agreement that the light and power business will provide to the applicant.

(b) **Steps the applicant's local light and power business may take include, but are not limited to:**

• Sending a utility serviceman to inspect the system;

• Installing an electric production meter if one meeting its specifications is not already installed since a meter is required to properly measure production;

• Reading the applicant's production meter at least annually;

• Processing the annual incentive payment;

• Notifying the applicant within sixty days whether the incentive payment is authorized or denied;

• Calculating annual production payments based on the meter reading or readings made prior to the accounting date of July 1st; and

• Sending the applicant's incentive payment check on or before December 15th; and

• Alternatively, the light and power business may credit the applicant's account on or before December 15th.

However, if the applicant is a net generator, that applicant must be paid by check. Net generator means the measured difference, in kilowatt-hours between the electricity supplied to a power and light business' customer and the electricity generated by the same customer from the renewable energy system and delivered to the light and power business at the same point of interconnection that is in excess of the electricity used at the same location.

(10) **How may the procedures differ with my light and power business when dealing with a utility-owned solar energy system?** A utility-owned community solar

project is voluntarily funded by ratepayers of the specific light and power business offering the program. Only customer-ratepayers of that utility may participate in the program. In exchange for a customer's support the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project. It is important that the customer-ratepayer realize when contributing to this program, they are in effect investing in the utility to receive a stated "value." This value is defined in the agreement between the customer-ratepayer and the utility and this agreement is a contract. Customer-ratepayers need to protect their interest in this investment the same as a person would in any other investment.

(11) **What is the formal agreement between the applicant and the light and power business?** The formal agreement between the applicant and the light and power business serving the property governs the relationship between the parties. This document may:

• Contain the necessary safety requirements and interconnection standards;

• Allow the light and power business the contractual right to review the applicant's substantiation documents for four years, upon five working days' notice;

• Allow the light and power business the contractual right to assess against the applicant, with interest, for any overpayment of incentive payments;

• Delineate any extra metering costs for an electric production meter to be installed on the applicant's property;

• Contain a statement allowing the department of revenue to send proof of the applicant's system certification electronically to applicant's light and power business, which will include the applicant's department of revenue taxpayer's identification number;

• Contain other information required by the light and power business to effectuate and properly process the applicant's incentive payment; and

• In the case of a utility-owned solar energy system, contain a detailed description of the "value" the customer-ratepayer will receive in consideration of the financial support given to the utility.

(12) **Must the renewable energy system be owned or can it be leased?** The renewable energy system must be owned by the individual, business, local governmental entity, utility in a utility-owned renewable energy system, local individuals, households, nonprofit organizations or nonutility business in a community-solar project, or company in a company-owned system. Leasing a renewable energy system does not constitute ownership.

(13) **Must you keep records regarding your incentive payments?** Applicants receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received.

(a) **Examination of records.** Such records must be open for examination at any time upon notice by the light and power business that made the payment or by the department of revenue.

(b) **Overpayment.** If upon examination of any records or from other information obtained by the light and power business or department of revenue it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the light and power business may assess against the person the amount found to have been paid in excess of the correct amount of the incentive payment. Interest will be added to that amount in the manner that the department of revenue assesses interest upon delinquent tax under RCW 82.32.050.

(c) **Underpayment.** If it appears that the amount of incentive paid is less than the correct amount of incentive payable, the light and power business may authorize additional payment.

(14) **How is an incentive payment computed?** The computation for the incentive payment involves a base rate that is multiplied by an economic development factor determined by the amount of the system's manufacture in Washington state to determine the incentive payment rate. The incentive payment rate is then multiplied by the system's gross kilowatt-hours generated to determine the incentive payment.

(a) **Determining the base rate.** The first step in computing the incentive payment is to determine the correct base rate to apply, specifically:

• Fifteen cents per economic development kilowatt-hour; or

• Thirty cents per economic development kilowatt-hour for community solar projects.

If requests for incentive payments exceed the amount of funds available for credit to the participating light and power business, the incentive payments must be reduced proportionately.

(b) **Economic development factors.** For the purposes of this computation, the base rate paid for the investment cost recovery incentive may be multiplied by the following economic development factors:

(i) For customer-generated electricity produced using solar modules manufactured in Washington state, two and four-tenths;

(ii) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(iii) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(iv) For all other customer-generated electricity produced by wind, eight-tenths.

(c) **What if a solar system has both a module and inverter manufactured in Washington state or a wind generator has both blades and inverter manufactured in Washington state?** In these two situations the above-described economic development factors are added together. For example, if your system is solar and has both solar modules and an inverter manufactured in Washington state, you would compute your incentive payment by using the factor three and six-tenths (3.6) (computed 2.4 plus 1.2). Therefore, you would multiply either the fifteen cent or thirty cent base rate by three and six-tenths (3.6) to get your incentive payment rate and then multiple this by the gross kilowatt-hours generated to get the incentive payment amount. Further, if your wind generator has both blades and an inverter manufac-

tured in Washington state you would multiply the fifteen cents base rate by two and two-tenths (2.2) (computed 1.0 plus 1.2) to get your incentive payment rate and then multiply this by the kilowatt-hours generated to get the incentive payment amount.

(d) **Tables for use in computation.** The following tables describe the computation of the incentive payment using the appropriate base rate and then multiplying it by the applicable economic development factors to determine the incentive payment rate. The incentive payment rate is then multiplied by the gross kilowatt-hours generated. The actual incentive payment you receive must be computed using your renewable energy system's actual measured gross electric kilowatt-hours generated.

Annual Incentive Payment Calculation Table for Noncommunity Projects

Customer-generated power applicable factors	Base rate (0.15) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules manufactured in Washington state **Factor: 2.4** (two and four-tenths)	$0.36		
Solar or wind generating equipment with an inverter manufactured in Washington state **Factor: 1.2** (one and two-tenths)	$0.18		
Anaerobic digester or other solar equipment or wind generator equipped with blades manufactured in Washington state **Factor: 1.0** (one)	$0.15		
All other electricity produced by wind **Factor: 0.8** (eight-tenths)	$0.12		
Both solar modules and inverters manufactured in Washington state. **Factor:** (2.4 + 1.2) =3.6	$0.54		
Wind generator equipment with both blades and inverter manufactured in Washington state. **Factor:** (1.0 + 1.2) =2.2	$0.33		

Annual Incentive Payment Calculation Table for Community Solar Projects

Customer-generated power applicable factors	Base rate (0.30) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules manufactured in Washington state **Factor: 2.4** (two and four-tenths)	$0.72		

Customer-generated power applicable factors	Base rate (0.30) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar equipment with an inverter manufactured in Washington state **Factor: 1.2** (one and two-tenths)	$0.36		
Other solar equipment **Factor: 1.0** (one)	$0.30		
Both solar modules and inverters manufactured in Washington state. **Factor:** (2.4 + 1.2) =3.6	$1.08		

(e) **Examples to illustrate how incentive payments are calculated.** Assume for the following ten examples that the renewable energy system involved generates 2,500 kilowatt-hours.

(i) If a noncommunity solar system has a module manufactured in Washington state and an inverter manufactured out-of-state the computation would be as follows: (0.15 x 2.4) x 2,500 = $900.00.

(ii) If a noncommunity solar system has an out-of-state module and inverter manufactured in Washington state the computation would be as follows: (0.15 x 1.2) x 2,500 = $450.00.

(iii) If a noncommunity solar system has both modules and an inverter manufactured in Washington state the computation would be as follows: (0.15 x (2.4 + 1.2)) x 2,500 = $1,350.00.

(iv) If wind generator equipment has out-of-state blades and an inverter manufactured in Washington state the computation would be as follows: (0.15 x 1.2) x 2,500 = $450.00.

(v) If wind generator equipment has blades manufactured in Washington state and an out-of-state inverter the computation would be as follows: (0.15 x 1.0) x 2,500 = $375.00.

(vi) If wind generator equipment has both blades and an inverter manufactured in Washington state the computation would be as follows: (0.15 x (1.0 + 1.2)) x 2,500 = $825.00.

(vii) If wind generator equipment has both out-of-state blades and an out-of-state inverter the computation would be as follows: (0.15 x 0.8) x 2,500 = $300.00.

(viii) If a community solar system has a module manufactured in Washington state and an out-of-state inverter the computation would be as follows: (0.30 x 2.4) x 2,500 = $1,800.00.

(ix) If a community solar system has an out-of-state module and inverter manufactured in Washington state the computation would be as follows: (0.30 x 1.2) x 2,500 = $900.00.

(x) If a community solar system has both modules and an inverter manufactured in Washington state the computation would be as follows: (0.30 x (2.4 + 1.2)) x 2,500 = $2,700.00.

(15) **What constitutes manufactured in Washington?** The statute authorizing this incentive payment program defines a "solar module" to mean the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. Thus, for a module to qualify as manufactured in Washington state, the manufactured module must meet this definition. However, when determining whether an inverter or blades are manufactured in Washington the department of revenue will apply the definition of manufacturing in WAC 458-20-136. Of particular interest is WAC 458-20-136(7), which defines when assembly constitutes manufacturing. The department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, will apply this rule on manufacturing when analyzing a request for certification.

(16) **How can an applicant determine the system's level of manufacture in Washington state?** For systems installed after the date this section is adopted, the manufacturer must supply the department of revenue with a statement delineating the system's level of manufacture in Washington state, signed under penalty of perjury. The department of revenue will issue a binding letter ruling (approval of manufacturer's certification request) to the manufacturer stating its determination.

(a) **Manufacturer's statement.** This manufacturer's statement must be specific as to what processes were carried out in Washington state to qualify the system for one or more of the multiplying economic development factors discussed in subsection (13) of this section. The manufacturer can request a binding letter ruling from the department of revenue at this web address: http://dor.wa.gov/content/contactus/con_TaxRulings.aspx.

(b) **Penalty of perjury.** The manufacturer's statement must be under penalty of perjury and specifically state that the manufacturer understands that the department of revenue will use the statement in deciding whether customer incentive payments and corresponding tax credits are allowed under the renewable energy system cost recovery incentive payment program.

(c) **Document retention.** The applicant must retain this documentation for five years after the receipt of applicant's last incentive payment from the light and power business.

(d) **Certificate of manufacture in Washington state.** If the department of revenue has issued a binding letter ruling

stating a module, inverter, or blade((s)) qualifies as manufactured in Washington state, the manufacturer may apply to the climate and rural energy development center at Washington State University energy program for a certificate stating the same.

(i) The department of revenue may revoke the approval of certification that a part or component is "made in Washington state" when it finds that a module, inverter, or blade does not qualify as manufactured in Washington state. The department of revenue will notify the manufacturer of the reason why and advise the manufacturer how to appeal the decision if the manufacturer disagrees with the reason.

(ii) Any appeal must be served on the department of revenue within thirty days of the notice or the decision will be final. The procedures for serving the department of revenue will be explained in their notice of intention to revoke approval of certification.

(17) **What about guidelines and standards for manufactured in Washington?** The climate and rural energy development center at the Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(18) **Do condominiums or community solar projects need more than one meter?** No, the requirement of measuring the kilowatt hours of customer-generated electricity for computing the incentive payments only requires one meter for the renewable energy system, not one meter for each owner, in the case of a condominium, or each applicant, in the case of a community solar project. Thus for example, in the case of a renewable energy system on a condominium with multiple owners, while such a system would not qualify as a community solar project, only one meter is needed to measure the system's gross generation and then each owner's share can be calculated by using each owner's percentage of ownership in the condominium building on which the system is located. With regard to a community solar project, only one meter is needed to measure the system's gross generation and each applicant's share in the project can be calculated by each applicant's interest in the project.

(19) **Is there an annual limit on an incentive payment to one payee?** There is an annual limit on an incentive payment.

(a) **Applicant limit.** No individual, household, business, or local governmental entity is eligible for incentive payments of more than five thousand dollars per year.

(b) **Community solar projects.**

• Each owner or member of a company in a community solar project located on a cooperating local government's property is eligible for an incentive payment, not to exceed five thousand dollars per year, based on their ownership share.

• Each ratepayer in a utility-owned community solar project is eligible for an incentive payment, not to exceed five thousand dollars per year, in proportion to their contribution resulting in their share of the value of electricity generated.

(20) **Are the renewable energy system's environmental attributes transferred?** Except for utility-owned community solar systems, the environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the incentive payment. In the case of utility-owned community solar system, the utility involved owns the environmental attributes of the renewable energy system.

(21) **Is the light and power business allowed a tax credit for the amount of incentive payments made during the year?** A light and power business will be allowed a credit against public utility taxes in an amount equal to incentive payments made in any fiscal year under RCW 82.16.120. The following restrictions apply:

• The credit must be taken in a form and manner as required by the department of revenue.

• The credit for the fiscal year may not exceed one-half percent of the light and power business' taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater.

• Incentive payments to applicants in a utility-owned community solar project as defined in RCW 82.16.110 (1)(a)(ii) may only account for up to twenty-five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all utility-owned community solar projects in total may not exceed twenty-five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business' taxable power sales are six million dollars, the maximum available credit is one hundred thousand dollars, which is greater than one-half percent of the six million dollar taxable power sales. Of that one hundred thousand dollars, the maximum amount of incentive payments to applicants in a utility-owned solar project is twenty-five thousand dollars.

• Incentive payments to participants in a company-owned community solar project as defined in RCW 82.16.-110 (1)(a)(ii) may only account for up to five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all company-owned community solar projects in total may not exceed five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business has thirty million dollars in taxable power sales, the maximum total tax credit available to the light and power business is one hundred fifty thousand dollars. Of this one hundred fifty thousand dollars, the maximum tax credit that the light and power business can claim relative to incentive payments to participants in a company-owned community solar project is seven thousand five hundred dollars. Alternatively, the maximum tax credit that light and power business can claim relative to incentive payments to applicants in a utility-owned solar project is thirty-seven thousand five hundred dollars.

Computation examples. The following table provides:

Taxable Power Sales by the light and power business	Maximum tax credit (greater of .5% of total taxable power sales or $100,000)	Maximum amount of tax credit available for incentive payments in a utility-owned community solar project	Maximum amount of tax credit available for incentive payments in a company-owned community solar project
$5,000,000	$100,000	$25,000	$5,000
$50,000,000	$250,000	$62,500	$12,500
$500,000,000	$2,500,000	$625,000	$125,000

• The credit may not exceed the tax that would otherwise be due under the public utility tax described in chapter 82.16 RCW. Refunds will not be granted in the place of credits.

• Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(22) **When community solar projects are located on the same property, how do you determine whether their systems are one combined system or separate systems for determining the seventy-five kilowatts limitation?** In determining whether a community solar project's system is capable of generating more than seventy-five kilowatts of electricity when more than one community solar project is located on one property, the department of revenue will treat each project's system as separate from the other projects if there are:

• Separate meters;

• Separate inverters;

• Separate certification documents submitted to the department of revenue; and

• Separate owners in each community solar project, except for utility-owned systems that are voluntarily funded by the utility's ratepayers, which must have a majority of different ratepayers funding each system.

(23) **What if a light and power business claims an incentive payment in excess of the correct amount?** For any light and power business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments will be immediately due and payable.

• The department of revenue will assess interest but not penalties on the taxes against which the credit was claimed.

• Interest will be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and will accrue until the taxes against which the credit was claimed are repaid.

(24) **Does the department of revenue consider the incentive payment taxable income?** No, the department of revenue does not consider the incentive payment an applicant receives to be taxable income.

(25) **What is the relationship between the department of revenue and the light and power business under this program?** The department of revenue is not regulating light and power businesses; it is only administering a tax credit program relating to the public utility tax. Therefore, for purposes of the customer investment cost recovery incentive payment, the department of revenue will generally focus its audit of light and power businesses to include, but not be limited to, whether:

• Claimed credit amount equals the amount of the total incentive payments made during the fiscal year;

• Each individual incentive payment is properly calculated;

• Payment to each applicant or participant in a community solar project is proportionally reduced by an equal percentage if the limit of total allowed credits is reached;

• Applicant payments are based on measured gross production of the renewable energy systems; and

• The credit and incentive payment limitations have not been exceeded.

WSR 11-17-054
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-194—Filed August 12, 2011, 4:01 p.m., effective August 13, 2011, 12:00 p.m.]

Effective Date of Rule: August 13, 2011, 12:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100H; and amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of sockeye salmon available. 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: August 12, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-47-50100H Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
10:00 AM - 4:00 PM	8/15

(a) It is unlawful to retain rockfish, Chinook, coho, and chum.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
12:00 PM - Midnight	8/14

(a) It is unlawful to retain rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
12:00 PM - 8:00 PM	8/13, 8/14

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(4) **"Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:01 p.m. August 15, 2011:

WAC 220-47-50100H	Puget Sound all-citizen commercial salmon fishery—Open periods.

WSR 11-17-055
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-193—Filed August 12, 2011, 4:04 p.m., effective August 14, 2011]

Effective Date of Rule: August 14, 2011.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000F; and amending WAC 232-28-620.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Chinook catch rates have been higher than expected. Reduction in the chinook daily limit is needed to ensure the coastal salmon fishery meets the season objectives. 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: August 12, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62000G Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective August 14, 2011, until further notice, it is unlawful to violate the following provisions:

(1) Catch Record Card Area 1: Open immediately through September 30. Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(2) Catch Record Card Area 2: Open immediately through September 18. Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

a) September 19 until further notice - Closed.

(3) Willapa Bay (Catch Record Card Area 2-1): Open immediately until further notice - Daily limit of six salmon, not more than three of which may be adult salmon. Release chum and wild Chinook.

(4) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):

a) Open September 16 until further notice - Daily limit of 2 salmon. Release Chinook and chum.

b) Notwithstanding the provisions of this subsection, Westport Boat Basin and Ocean Shores Boat Basin: Open only August 16 until further notice - Daily limit of six salmon, not more than four of which may be adult salmon. Release wild Chinook.

(5) Catch Record Card Area 3:

a) Open immediately through September 18. Daily limit of 2 salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release wild coho.

b) September 19 until further notice - Closed.

c) Notwithstanding the provisions of this subsection, waters north of 47º50'00"N latitude and south of 48º00'00"N latitude also open September 24 through October 9 - Daily limit two salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release wild coho.

(6) Catch Record Card Area 4:

a) Open immediately through September 18 - Daily limit of 2 salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release wild coho salmon. Release Chinook salmon caught east of the Bonilla-Tatoosh line. Release chum salmon.

b) September 19 until further notice - Closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 14, 2011:

WAC 232-28-62000F	Coastal salmon—Saltwater seasons and daily limits. (11-185)

WSR 11-17-073
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 16, 2011, 2:07 p.m., effective August 16, 2011, 2:07 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is extending the emergency rule filed as WSR 11-09-029, amending by emergency adoption WAC 388-478-0005 Cash assistance need and payment standards and grant maximum.

The department reduced the cash assistance grant maximum to $726 effective May 1, 2011, by emergency adoption, which affected households with more than five members.

These changes are necessary to comply with the department's appropriation for the 2011-2013 biennium, per RCW 34.05.350 as amended by ESSB [ESHB] 1248 and as documented in the 2011-2013 TANF/WorkFirst spending plan.

The department continues the emergency rule filed as WSR 11-09-029 to allow the department to complete the permanent rule-making process. The department filed a preproposal statement of inquiry on July 6, 2011, as WSR 11-14-115 after the budgetary impacts of the emergency rule were assessed and plans to file a proposed rule making (CR-102) on August 19, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.100, 74.04.770, and 74.08.090.

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 year 2009, 2010, 2011, 2012 or 2013, 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: A second emergency adoption of this rule is required to realize the $3.2 million in budgetary

reductions, as documented in the TANF/WorkFirst spending plan for the 2011-2013 biennium. The department must make these changes to comply with the department's appropriation, per RCW 34.05.350 as amended by ESSB [ESHB] 1248.

The department has experienced a budgetary shortfall since October 1, 2010, as a result of increased demand for TANF benefits due to the economic recession. The WorkFirst caseload grew by more than thirty percent, from 51,106 cases in July 2008 to 66,634 cases in June 2010. As of June 2011, the WorkFirst caseload is 58,610 cases, which is still well above the July 2008 levels, despite various program reductions in the past year.

The Governor's Executive Order 10-04 (Ordering Expenditure Reductions in Allotments of State General Fund Appropriations), signed on September 13, 2010, found that:

- Revenues have fallen short of projections;
- The official state economic and revenue forecast of general fund revenues was less than the official estimate upon which the state's 2009-2011 biennial operating budget and supplemental operating budget were enacted; and
- The anticipated revenues combined with the beginning cash balance of the general fund are insufficient to meet anticipated expenditures from this fund for the remainder of the current fiscal period.

Accordingly, the governor ordered across-the-board reductions of state general fund allotments by 6.287 percent, effective October 1, 2010. There were further reductions in November 2010 and December 2010. In March 2011, the WorkFirst subcabinet announced alternate TANF reductions to achieve the $12.5 million in savings while preserving working connections child care for low-income working families. The alternate TANF reductions included this and seven other changes related to WorkFirst, child care assistance and child support. Emergency rule making was necessary because cost savings could not be achieved during the remainder of FY 2011 under permanent rule making.

Continuance of the emergency rule until a permanent rule is in place will lessen the adverse impact on families. If planned budget reductions are not realized, the department will have to make additional cuts in the future to TANF/WorkFirst assistance programs to stay within budget. Additional cuts could include greater reduction in services than those currently proposed, and/or eliminating benefits rather than reducing them. These reductions would have a much greater detrimental effect on vulnerable families with children in need.

The department filed the rule by emergency adoption on April 14, 2011, under WSR 11-09-029 with a May 1, 2011, effective date. A second emergency is required to allow the department to complete the permanent rule-making process. The department filed the CR-101 on July 6, 2011, under WSR 11-14-115 following an assessment of the impacts of the rule and will file the CR-102 on, or shortly after, August 19, 2011.

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: August 16, 2011.

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-21-134, filed 10/20/08, effective 10/28/08)

WAC 388-478-0005 Cash assistance need and payment standards and grant maximum. (1) Need standards for cash assistance programs represent the amount of income required by individuals and families to maintain a minimum and adequate standard of living. Need standards are based on assistance unit size and include basic requirements for food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

(2) Payment standards for assistance units in medical institutions and other facilities are based on the need for clothing, personal maintenance, and necessary incidentals (see WAC 388-478-0040 and 388-478-0045).

(3) Need and payment standards for persons and families who do not reside in medical institutions and other facilities are based on their obligation to pay for shelter.

(a) Eligibility and benefit levels for persons and families who meet the requirements in WAC 388-478-0010 are determined using standards for assistance units with an obligation to pay shelter costs.

(b) Eligibility and benefit levels for all other persons and families are determined using standards for assistance units who have shelter provided at no cost.

(c) For recent arrivals to Washington state who apply for temporary assistance for needy families (TANF), see WAC 388-468-0005.

(4) Effective May 1, 2011, the monthly cash assistance grant for an assistance unit ((~~containing eight or more persons~~)) cannot exceed ((~~the grant maximum payment standard for a family of eight listed in WAC 388-478-0020(1)~~)) seven hundred and twenty-six dollars.

WSR 11-17-074
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-195—Filed August 16, 2011, 2:17 p.m., effective August 17, 2011, 12:01 a.m.]

Effective Date of Rule: August 17, 2011, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100Y; 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 Shrimp Management Area 2W because the spot shrimp quota will be reached; (2) reduces the spot shrimp weekly limit in Shrimp Management Area 1A, 1B and 2W; and (3) reopens Shrimp Management Area 1C and Catch Area 23B. 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: August 16, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-52-05100Z 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, 1B, 1C, 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 2E, Catch Areas 26B-1, 26C, and the Discovery Bay Shrimp District are closed.

ii) Effective at 6:00 p.m. August 19, 2011, all waters of SMA 1C and 2W 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 immediately, 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 in SMA 1B, 2W, and Catch Areas 23A-E and 23B; or to exceed 200 pounds per week in SMA 1A.

(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) Catch Area 20A is 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 effective 12:01 a.m. August 17, 2011:

WAC 220-52-05100Y	Puget Sound shrimp beam trawl fishery—Season. (11-188)

WSR 11-17-075
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 16, 2011, 3:13 p.m., effective August 16, 2011, 3:13 p.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESSB

5921, section 4, directs the department to establish income eligibility criteria for TANF benefits for a child, other than a foster child, who lives with a caregiver other than his or her parents.

Purpose: The department is amending WAC 388-418-0005 How will I know what changes to report? and 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and calculate the amount of my cash and Basic Food benefits?

These changes are necessary to update existing regulations to establish income eligibility for nonparental child-only TANF grants required by ESSB 5921 that go into effect November 1, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 388-418-0005 and 388-450-0162.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, chapter 74.12 RCW.

Other Authority: ESSB 5921, section 4.

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: ESSB 5921, section 4, as signed by the governor on June 15, 2011, goes into effect November 1, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 16, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-02-071, filed 1/5/11, effective 2/5/11)

WAC 388-418-0005 How will I know what changes to report? You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

(1) If you receive assistance from any of the programs listed in subsection (1), you must report changes for people in your assistance unit under chapter 388-408 WAC, based on the **first** program you receive benefits from.

(a) If you receive **long term care** benefits such as a home and community based waiver (Basic, Basic Plus, CORE, Community Protection, COPES, New Freedom, Medically Needy), care in a medical institution (nursing home, hospice care center, state veterans home, ICF/MR, RHC) or hospice, you must tell us if you have a change of:

(i) Residence;

(ii) Marital status;

(iii) Living arrangement;

(iv) Income;

(v) Resources;

(vi) Medical expenses; and

(vii) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.

(b) If you receive **medical benefits based on age, blindness, disability (SSI-related medical), or ADATSA** benefits, you need to tell us if:

(i) You move;

(ii) A family member moves into or out of your home;

(iii) Your resources change; or

(iv) Your income changes. This includes the income of you, your spouse or your child living with you.

(c) If you receive **cash** benefits, you need to tell us if:

(i) You move;

(ii) Someone moves out of your home;

(iii) Your total gross monthly income goes over the:

(A) Payment standard under WAC 388-478-0030 if you receive general assistance; or

(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;

(iv) You have liquid resources more than four thousand dollars; or

(v) You have a change in employment. Tell us if you:

(A) Get a job or change employers;

(B) Change from part-time to full-time or full-time to part-time;

(C) Have a change in your hourly wage rate or salary; or

(D) Stop working.

(d) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:

(i) You move;

(ii) The child you are caring for moves out of the home;

(iii) ((~~The child's parent moves into your home;~~

~~(iv) The~~)) Anyone related to you or to the child you are caring for moves into or out of the home;

(iv) There is a change in the earned or unearned income of anyone in your child-only means-testing assistance unit, as defined in WAC 388-450-0162 (3)(b). You do not need to report changes in earned income for your dependent children who are in school full-time (see WAC 388-450-0070).

(v) There is a change in the recipient child's earned or unearned income ((~~changes~~)) (see WAC 388-450-0070 for how we count the earned income of a child);

(((~~v~~))) (vi) The recipient child has liquid resources more than four thousand dollars;

(vii) A recipient child in the home becomes a foster child or is no longer a foster child.

(e) If you receive **family medical** benefits, you need to tell us if:

(i) You move;

(ii) A family member moves out of your home; or

(iii) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.

(2) If you do not receive assistance from any of the programs listed in subsection (1), but you do receive benefits from any of the programs listed in subsection (2), you must report changes for the people in your assistance unit under chapter 388-408 WAC, based on all the benefits you receive.

(a) If you receive **Basic Food** benefits, you need to tell us if:

(i) If your household is a categorically eligible household as defined under WAC 388-414-0001, tell us if your total gross monthly income is more than two hundred percent of the federal poverty level; or

(ii) For all other households tell us if your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; or

(iii) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 ((~~and~~)) has their hours at work go below twenty hours per week.

(b) If you receive **children's medical** benefits, you need to tell us if:

(i) You move; or

(ii) A family member moves out of the house.

(c) If you receive **pregnancy medical** benefits, you need to tell us if:

(i) You move; or

(ii) You are no longer pregnant.

(d) If you receive **other medical** benefits, you need to tell us if:

(i) You move; or

(ii) A family member moves out of the home.

AMENDATORY SECTION (Amending WSR 09-07-054, filed 3/11/09, effective 4/11/09)

WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and Basic Food benefits? (1) Countable income is all income your assistance unit (AU) or your child-only means-testing AU has after we subtract the following:

(a) Excluded or disregarded income under WAC 388-450-0015;

(b) For **cash assistance,** earned income incentives and deductions allowed for specific programs under WAC 388-450-0170 and 388-450-0175;

(c) For **Basic Food,** deductions allowed under WAC 388-450-0185; and

(d) Income we allocate to someone outside of the assistance unit under WAC 388-450-0095 through 388-450-0160.

(2) Countable income includes all income that we must deem or allocate from financially responsible persons who are not members of your AU under WAC 388-450-0095 through 388-450-0160.

(3) Starting November 1, 2011, we may apply child-only means-testing to determine eligibility and your payment standard amount.

(a) Child-only means-testing applies when you are a nonparental relative or unrelated caregiver applying for or receiving a nonneedy TANF/SFA grant for a child or children only, unless at least one child was placed by a state or tribal child welfare agency and it is an open child welfare case.

(b) For the purposes of child-only means-testing only, we include yourself, your spouse, your dependents, and other persons who are financially responsible for yourself or the child as defined in WAC 388-450-0100 in your assistance unit (AU). We call this your child-only means-testing AU.

(c) As shown in the chart below, we compare your child-only means-testing AU's total countable income to the current federal poverty level (FPL) for your household size to determine your child-only means-testing payment standard. Your child-only means-tested payment standard is a percentage of the payment standards in WAC 388-478-0020.

If your countable child-only means-testing AU income is:	Your child-only means-tested payment standard is equal to the following percentage of the payment standards in WAC 388-478-0020:
200% FPL or less	100%
Between 201% and 225% of FPL	80%
Between 226% and 250% of FPL	60%
Between 251% and 275% of FPL	40%
Between 276% and 300% of FPL	20%
Over 300% of the FPL	The children in your care are not eligible for a TANF/SFA grant.

(d) If the children in your care qualify for a TANF/SFA grant once the child-only means-test is applied, the child's income is budgeted against the child-only means-tested payment standard amount.

(e) If the children in your care do not qualify for a TANF/SFA grant once the child-only means-test is applied, they may still qualify for medical assistance as described in WAC 388-408-0055 and WAC 388-505-0210.

(4) For **cash assistance:**

(a) We compare your countable income to the payment standard in WAC 388-478-0020 and 388-478-0030 or, for child-only means-tested cases, to the payment standard amount in subsection (3).

(b) You are not eligible for benefits when your AU's countable income is equal to or greater than the payment standard plus any authorized additional requirements.

(c) Your benefit level is the payment standard and authorized additional requirements minus your AU's countable income.

((~~(4)~~)) (5) For **Basic Food,** if you meet all other eligibility requirements for the program under WAC 388-400-0040,

we determine if you meet the income requirements for benefits and calculate your AU's monthly benefits as specified under Title 7 Part 273 of code of federal regulations for the supplemental nutrition assistance program (SNAP). The process is described in brief below:

(a) How we determine if your AU is income eligible for Basic Food:

(i) We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

(ii) We then compare your AU's countable monthly income to the net income standard under WAC 388-478-0060.

(A) If your AU is categorically eligible for Basic Food under WAC 388-414-0001, your AU can have income over the gross or net income standard and still be eligible for benefits.

(B) If your AU includes a person who is sixty years of age or older or has a disability, your AU can have income over the gross income standard, but must have income under the net income standard to be eligible for benefits.

(C) **All other AUs** must have income at or below the gross and net income standards as required under WAC 388-478-0060 to be eligible for Basic Food.

(b) How we calculate your AU's monthly Basic Food benefits:

(i) We start with the maximum allotment for your AU under WAC 388-478-0060.

(ii) We then subtract thirty percent of your AU's countable income from the maximum allotment and round the benefit down to the next whole dollar to determine your monthly benefit.

(iii) If your AU is eligible for benefits and has one or two persons, your AU will receive at least the minimum allotment as described under WAC 388-412-0015, even if the monthly benefit we calculate is lower than the minimum allotment.

WSR 11-17-080
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-196—Filed August 17, 2011, 11:08 a.m., effective August 21, 2011, 9:00 p.m.]

Effective Date of Rule: August 21, 2011, 9:00 p.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500A; and amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. The state recreational share of spot shrimp has been taken in Marine Area 6; in addition, the spot shrimp fishery in Marine Areas 4 and 5 will be closed on September 15, 2011, to protect spot shrimp during the onset of the egg-bearing period. 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: August 17, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-32500B Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325:

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7, except as provided for in this section:

a. Effective immediately until further notice, Marine Area 7 north of a line from Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary, is open as follows:

i. Open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.

ii. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

2) Effective immediately until further notice, all waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

3) Effective immediately until 9:00 p.m. September 15, 2011, all waters of Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Area 5, are open to the harvest of all shrimp species,

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. August 21, 2011:

WAC 220-56-32500A	Shrimp—Areas and seasons. (11-145)

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

WAC 220-56-32500B	Shrimp—Areas and seasons.

WSR 11-17-081
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-197—Filed August 17, 2011, 11:11 a.m., effective August 19, 2011]

Effective Date of Rule: August 19, 2011.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000G; and amending WAC 232-28-620.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Insufficient quota and guideline remain in Marine Area 2 to allow a seven-day-per-week fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 17, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62000H Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective August 19, 2011, until further notice, it is unlawful to violate the following provisions:

(1) Catch Record Card Area 1: Open immediately through September 30. Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(2) Catch Record Card Area 2: Open Sunday through Thursday through September 18. Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

a) September 19 until further notice - Closed.

(3) Willapa Bay (Catch Record Card Area 2-1): Open immediately until further notice, Daily limit of six salmon, of which not more than three may be adult salmon. Release chum and wild Chinook.

(4) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):

a) Open September 16 until further notice. Daily limit of 2 salmon. Release Chinook and chum.

b) Notwithstanding the provisions of this subsection, Westport Boat Basin and Ocean Shores Boat Basin: Open only August 16 until further notice. Daily limit of six salmon, of which not more than four may be adult salmon. Release wild Chinook.

(5) Catch Record Card Area 3:

a) Open immediately through September 18. Daily limit of 2 salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release wild coho.

b) September 19 until further notice - Closed.

c) Notwithstanding the provisions of this subsection, waters north of 47º50'00"N latitude and south of 48º00'00"N latitude also open September 24 through October 9. Daily limit two salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release wild coho.

(6) Catch Record Card Area 4:

a) Open immediately through September 18. Daily limit of 2 salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release wild coho salmon. Release Chinook salmon caught east of the Bonilla-Tatoosh line. Release chum salmon.

b) September 19 until further notice - Closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 19, 2011:

WAC 232-28-62000G	Coastal salmon—Saltwater seasons and daily limits. (11-193)

WSR 11-17-082
EMERGENCY RULES
DEPARTMENT OF LICENSING

[Filed August 17, 2011, 12:14 p.m., effective August 17, 2011, 12:14 p.m.]

Effective Date of Rule: Immediately.

Purpose: According to RCW 46.12.005 and 46.12.600 - If, for any year beginning with 2002, the Consumer Price Index (CPI) for All Urban Consumers, compiled by the Bureau of Labor Statistics, United States Department of Labor, or its successor, for the West Region, in the expenditure category "used cars and trucks," shows an increase in the annual average for that year compared to that of the year immediately prior, the department shall, by rule, increase the then market value threshold amount by the same percentage as the percentage increase of the annual average, with the increase of the market value threshold amount to be effective on July 1 of the year immediately after the year with the increase of the annual average. The CPI showed an increase this previous year and the market value threshold amount was increased from $6790 to $7660. For this reason, WAC 308-56A-460 needs to be changed (and should have been changed effective July 1, 2011) to reflect this increase in the market value threshold amount.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-460.

Statutory Authority for Adoption: RCW 46.01.110.

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: State law requires that any changes in the market value threshold amount be accurately noted in rule by July 1, 2011, of each year. The market value threshold amount changed in 2011 and the WAC which assists in determining if total loss vehicles meet the market value threshold amount needs to be accurate in order to accurately determine if a vehicle's title needs to indicate "insurance destroyed" on it.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: August 17, 2011.

Ben T. Shomshor
Agency Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-19-045, filed 9/13/10, effective 10/14/10)

WAC 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt. (1) **What are total loss, destroyed, salvage, and wrecked vehicles?** For the purposes of this section:

(a) A total loss vehicle is one whose destruction has been reported to the department as described in RCW ((~~46.12.070~~)) 46.12.600 by an insurer (insurance companies and self-insurers as described in RCW 46.29.630);

(b) A destroyed vehicle is one whose destruction has been reported to the department as described in RCW ((~~46.12.070~~)) 46.12.600 by the vehicle's owner;

(c) A salvage vehicle as defined in RCW ((~~46.12.005~~)) 46.04.514;

Note: When used in this section, the terms "destroyed" and "destroyed vehicle" include total loss, destroyed, and salvage vehicles.

(d) A wrecked vehicle as defined in RCW 46.80.010(6).

Note: A vehicle may be considered destroyed or wrecked when the evidence of ownership is a salvage certificate/title, insurance company bill of sale, or wrecker bill of sale from any jurisdiction, or when the evidence of ownership indicates the vehicle may be a destroyed vehicle not reported to the department.

(2) **How are vehicles reported to the department as total loss, destroyed, salvage, or wrecked?**

(a) Insurers may report total loss vehicles to the department:

(i) Electronically through the department's on-line reporting system. Insurers must destroy ownership documents for a vehicle reported this way; or

(ii) By submitting the certificate of ((~~ownership~~)) title or affidavit in lieu of title indicating the vehicle is "DESTROYED"; or

(iii) By submitting a completed total loss claim settlement form (TD 420-074).

Note: Reports of total loss vehicles must include the insurer's name, address, and the date of loss.

(b) Registered or legal owners report a vehicle as destroyed by submitting the certificate of ((~~ownership~~)) title or affidavit in lieu of title indicating the vehicle is "DESTROYED," and must include the registered owner's name, address, and date of loss.

(c) Licensed wreckers report wrecked vehicles as required in RCW 46.80.090.

(d) For vehicles six through twenty years old a statement whether or not the vehicle meets the market value threshold amount as defined in RCW ((~~46.12.005~~)) 46.12.600 is also required.

(3) **What is the current market value threshold amount?** The current market value threshold amount is ((~~six thousand seven hundred ninety dollars~~)) seven thousand six hundred sixty dollars.

(4) **How is the market value threshold amount determined?** Using the current market value threshold amount described in RCW ((~~46.12.005~~)) 46.12.600 each year the department will add the increased value if the increase is equal to or greater than fifty dollars.

(5) **What if the "market value threshold amount" is not provided as required?** If the market value threshold amount is not provided when required, the department would treat the report of destruction as if the market value threshold as described in RCW ((~~46.12.005~~)) 46.12.600 has been met.

The certificate of ((~~ownership~~)) title will be branded according to WAC 308-56A-530.

(6) **What documentation is required to obtain a certificate of ((~~ownership~~)) title after a vehicle is destroyed?** After a vehicle has been reported destroyed or wrecked and is rebuilt, you must submit the following documentation to the department in order to obtain a new certificate of ((~~ownership~~)) title:

(a) Application for certificate of ((~~ownership~~)) title as described in RCW ((~~46.12.030~~)) 46.12.530;

(b) Certificate of vehicle inspection as described in WAC 308-56A-150;

(c) Bill of sale from the insurer, owner, or wrecker who reported the vehicle's destruction to the department.

(i) Bills of sale from insurers must include a representative's signature and title of office;

(ii) Bills of sale from insurers and wreckers do not need to be notarized;

(iii) Bills of sale from owners shown on department records must be notarized or certified;

(iv) A bill of sale is not required when owners shown on department records retain a destroyed vehicle and apply for a new certificate of ownership;

(v) Releases of interest from lien holder(s) or proof of payment such as a canceled check bearing a notation that it has been paid by the bank on which it was drawn or a notarized statement on a receipt from the legal owner that the debt is satisfied are required when the vehicle is retained by the registered owner(s).

(d) Odometer disclosure statement, if applicable.

(7) **What is required of a Washington licensed vehicle dealer prior to selling a destroyed or wrecked vehicle?** Except as permitted by RCW 46.70.101 (1)(b)(viii), before a dealer may sell a destroyed or wrecked vehicle under their Washington vehicle dealer license, the dealer must:

(a) Rebuild the vehicle to standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles; and

(b) Obtain a vehicle inspection by the Washington state patrol; and

(c) Apply for and receive a certificate of ownership for the vehicle, issued in the name of the vehicle dealer.

(8) **Once a destroyed or wrecked vehicle is rebuilt, do the license plates remain with the vehicle?** Whether or not the license plates remain with the vehicle depends on the circumstance:

(a) Standard issue license plates may remain with a destroyed vehicle unless they are severely damaged or the vehicle was issued a department temporary permit described in WAC 308-56A-140;

(b) Replacement license plates are required for wrecked vehicles since Washington licensed wreckers are required by WAC 308-63-070 to remove them;

(c) Special license plates may remain with or be transferred to a destroyed or wrecked vehicle;

(d) Applicants may retain the current license plate number as provided for in RCW ((~~46.16.233~~)) 46.16A.200, unless the vehicle was issued a department temporary permit as described in WAC 308-56A-140.

(9) **Will the certificate of ownership or registration certificate indicate "WA REBUILT"?** Salvage or wrecked vehicles meeting the criteria described in WAC 308-56A-530 will be branded "WA REBUILT."

WSR 11-17-085
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-198—Filed August 17, 2011, 4:57 p.m., effective August 17, 2011, 4:57 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000E; 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 portion of the quota of salmon that remains to be caught by the troll fleet. Reducing the landing limit on chinook should allow the fishery to stay within the chinook quota and 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 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: August 17, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-24-04000E 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: August 19, 2011.

(2) Landing and possession limit of 12 Chinook and 50 coho per boat per each entire open period for the entire catch areas 1, 2, 3 and 4.

(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 fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and west of 125°05'00" W longitude.

(8) 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 Salmon Management and Catch Reporting Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective August 21, 2011:

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

WSR 11-17-120
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-199—Filed August 23, 2011, 2:36 p.m., effective August 23, 2011, 2:36 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100Z; 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 Shrimp Management Area 1A and Catch Areas 23A-E, 23B, and 26D, because the spot shrimp quotas will be reached; and (2) reduces the spot shrimp weekly limit in Shrimp Management Area 1B and Catch Areas 25A, 26B-2, and 26D. 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: August 23, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-05100A 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, 1B, 1C, 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 2E, Catch Areas 23A-E, 26B-1, 26C, and the Discovery Bay Shrimp District are closed.

ii) All waters of SMA 1C, 2W, and Catch Area 23B are closed to the harvest of spot shrimp.

iii) All waters of SMA 1A are closed, except that those waters of SMA 1A south of line projected at 48º.31.5' N latitude are open to the harvest of all species except spot shrimp.

iv) Effective 6:00 p.m. August 26, 2011, all waters of Catch Area 26D 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 immediately, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 150 pounds per week in SMA 1B.

ii) Effective 12:01 a.m. August 24, 2011, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 400 pounds per week in Catch Areas 25A and 26B-2, or to exceed 260 pounds per week in Catch Area 26D.

(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) Catch Area 20A is open, effective immediately until further notice.

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

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100Z	Puget Sound shrimp beam trawl fishery—Season. (11-195)

WSR 11-17-121
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed August 23, 2011, 3:25 p.m., effective August 23, 2011, 3:25 p.m.]

Effective Date of Rule: Immediately.

Purpose: To correct a portion of the emergency declaration filed under WSR 11-17-019, which was an extension of the emergency declaration of WSR 11-09-004. This filing replaces the amended text of WAC 51-54-0900.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54-0900.

Statutory Authority for Adoption: RCW 19.27.074, 19.27.530.

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: Rules regarding installation of carbon monoxide (CO) alarms in residential settings were scheduled to go into effect on January 1, 2011 (statutory requirement), for new construction, and July 1, 2011, for existing units. The implementation date for existing units is not a statutory mandate, and may cause financial hardship on certain industries; additional time was needed to consider ways to mitigate or eliminate the economic impacts, without compromising public safety. Adoption of the emergency rules eliminates the current implementation date requirements contained in the permanent rules for installation of CO alarms, and also modifies which dwellings must have the alarms. These rules will continue to be in effect while new

permanent rules are adopted. The filing for the Fire Code under WSR 11-17-019 inadvertently left out new language effective July 1, 2011, in this same section. This replacement filing corrects that error.

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: August 23, 2011.

Kristyn Clayton
Chair

AMENDATORY SECTION (Amending WSR 10-24-059, filed 11/29/10, effective 7/1/11)

WAC 51-54-0900 Chapter 9—Fire protection systems.

902.1 Definitions.

ALERT SIGNAL. See Section 402.1.

ALERTING SYSTEM. See Section 402.1.

PORTABLE SCHOOL CLASSROOM. A structure, transportable in one or more sections, which requires a chassis to be transported, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be trailerable and capable of being demounted and relocated to other locations as needs arise.

903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code.

903.2.3 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS:
1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m^2); and clusters of portable school classrooms shall be separated as required by the building code.
2. Group E Occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.1.

903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:

1. A Group M fire area exceeds 12,000 square feet (1115 m^2).

2. A Group M fire area is located more than three stories above grade plane.

3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m^2).

4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m^2).

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION: Group R-1 if all of the following conditions apply:
1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is on only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

SECTION 906—PORTABLE FIRE EXTINGUISHERS

906.1 Where required. Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.

2. Within 30 feet (9144 mm) of commercial cooking equipment.

3. In areas where flammable or combustible liquids are stored, used or dispensed.

4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.

5. Where required by the sections indicated in Table 906.1.

6. Special-hazard areas, including, but not limited to, laboratories, computer rooms and generator rooms, where required by the fire code official.

SECTION 907—FIRE ALARM AND DETECTION SYSTEMS

(([F])) 907.2.8 Group R-1. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-1 occupancies as required in this section and Section 907.2.8.4.

((~~[F]~~)) 907.2.8.4((~~.~~)) Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ((~~by January 1, 2011,~~)) outside of each separate sleeping area in the immediate vicinity of the bedroom in sleeping units((~~. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries~~)) within which fuel-fired appliances are installed, and in sleeping units that have attached garages.

((~~[F]~~)) 907.2.8.4.1 Existing sleeping units. Existing sleeping units shall be equipped with carbon monoxide alarms by ((~~July 1, 2011~~)) January 1, 2013.

((~~[F]~~)) 907.2.8.4.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL

2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

((~~[F]~~)) 907.2.9 Group R-2. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 through 907.2.9.3.

((~~[F]~~)) 907.2.9.1.1 Group R-2 boarding homes. A manual fire alarm system shall be installed in Group R-2 occupancies where the building contains a boarding home licensed by the state of Washington.

EXCEPTION: In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

((~~[F]~~)) 907.2.9.3 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ((~~by January 1, 2011,~~)) outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units((~~. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries~~)) within which fuel-fired appliances are installed, and in sleeping units that have attached garages.

((~~[F]~~)) 907.2.9.3.1 Existing dwelling units. Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ((~~July 1, 2011~~)) January 1, 2013.

907.2.9.3.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instruction.

((~~[F]~~)) 907.2.10 Group R-3. Carbon monoxide alarms shall be installed in Group R-3 occupancies as required in Sections 907.2.10.1 through 907.2.10.3.

((~~[F]~~)) 907.2.l0.1 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ((~~by January 1, 2011,~~)) outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units((~~. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries~~)) within which fuel-fired appliances are installed, and in sleeping units that have attached garages.

((~~[F]~~)) 907.2.10.2 Existing dwelling units. Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ((~~July 1, 2011~~)) January 1 2013.

EXCEPTION: Owner-occupied Group R-3 residences legally occupied prior to July 1, 2010.

((~~[F]~~)) 907.2.10.3 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

909.6.3 Elevator shaft pressurization. Where elevator shaft pressurization is required to comply with Exception 6 of IBC Section 708.14.1, the pressurization system shall comply with and be maintained in accordance with IBC 708.14.2.

909.6.3.1 Activation. The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire code official. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

909.6.3.2 Power system. The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

SECTION 915 ALERTING SYSTEMS

915.1 General. An approved alerting system shall be provided in buildings and structures as required in chapter 4 and this section, unless other requirements are provided by another section of this code.

EXCEPTION: Approved alerting systems in existing buildings, structures or occupancies.

915.2 Power source. Alerting systems shall be provided with power supplies in accordance with Section 4.4.1 of NFPA 72 and circuit disconnecting means identified as "EMERGENCY ALERTING SYSTEM."

EXCEPTION: Systems which do not require electrical power to operate.

915.3 Duration of operation. The alerting system shall be capable of operating under nonalarm condition (quiescent load) for a minimum of 24 hours and then shall be capable of operating during an emergency condition for a period of 15 minutes at maximum connected load.

915.4 Combination system. Alerting system components and equipment shall be allowed to be used for other purposes.

915.4.1 System priority. The alerting system use shall take precedence over any other use.

915.4.2 Fire alarm system. Fire alarm systems sharing components and equipment with alerting systems must be in accordance with Section 6.8.4 of NFPA 72.

915.4.2.1 Signal priority. Recorded or live alert signals generated by an alerting system that shares components with a fire alarm system shall, when actuated, take priority over fire alarm messages and signals.

915.4.2.2 Temporary deactivation. Should the fire alarm system be in the alarm mode when such an alerting system is actuated, it shall temporarily cause deactivation of all fire alarm-initiated audible messages or signals during the time period required to transmit the alert signal.

915.4.2.3 Supervisory signal. Deactivation of fire alarm audible and visual notification signals shall cause a supervi-

sory signal for each notification zone affected in the fire alarm system.

915.5 Audibility. Audible characteristics of the alert signal shall be in accordance with Section 7.4.1 of NFPA 72 throughout the area served by the alerting system.

EXCEPTION: Areas served by approved visual or textual notification, where the visible notification appliances are not also used as a fire alarm signal, are not required to be provided with audibility complying with Section 915.6.

915.6 Visibility. Visible and textual notification appliances shall be permitted in addition to alert signal audibility.

WSR 11-17-123
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed August 23, 2011, 3:43 p.m., effective August 23, 2011, 3:43 p.m.]

Effective Date of Rule: Immediately.

Purpose: To extend the current emergency rule amending the 2009 Washington State Energy Code, Section 101.3.2.6 regarding duct testing and sealing in existing buildings. The proposed permanent rule has been filed under WSR 11-16-082.

Citation of Existing Rules Affected by this Order: Amending WAC 51-11-0101.

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 state building code council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of Section 101.3.2.6 of the 2009 edition of the Washington State Energy Code, revised WAC 51-11-0101, is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the citizens of the state of Washington is based on the following findings:

The Washington State Energy Code 2009 edition ("2009 Energy Code") as adopted by the council pursuant to chapter 34.05 RCW was originally set to become effective on July 1, 2010. A previous emergency rule and permanent rule extended the effective date to January 1, 2011. This rule includes a provision to require duct testing and sealing in existing housing stock when a furnace is replaced. The council was approached by industry representatives who testified that this would provide a hardship to a portion of the population during the current economic climate. The cost for the testing and sealing of ducts on top of the cost of a new furnace could exceed the available budget for those whose furnaces fail this winter. On top of that, a difficult El Nino winter is forecast and could impact the health and safety of those who cannot afford a replacement unit.

The council is currently in the process of considering a permanent rule for this section. The proposed permanent rule on this topic is filed under WSR 11-16-082 and is the same as this emergency rule. Public hearings are scheduled for September 9, 2011, and October 14, 2011.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: August 23, 2011.

Kristyn Clayton
Council Chair

AMENDATORY SECTION (Amending WSR 10-03-115, 10-13-113 and 10-22-056, filed 1/20/10, 6/21/10 and 10/28/10, effective 1/1/11)

WAC 51-11-0101 Section 101—Scope and general requirements.

101.1 Title: Chapters 1 through 10 of this Code shall be known as the "Washington State Single-Family Residential Energy Code" and may be cited as such; and will be referred to herein as "this Code."

101.2 Purpose and Intent: The purpose of this Code is to provide minimum standards for new or altered buildings and structures or portions thereof to achieve efficient use and conservation of energy.

The purpose of this Code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefitted by the terms of this Code.

It is intended that these provisions provide flexibility to permit the use of innovative approaches and techniques to achieve efficient use and conservation of energy. These provisions are structured to permit compliance with the intent of this Code by any one of the following three paths of design:

1. A systems analysis approach for the entire building and its energy-using sub-systems which may utilize renewable energy sources, Chapters 4 and 9.

2. A component performance approach for various building elements and mechanical systems and components, Chapters 5 and 9.

3. A prescriptive requirements approach, Chapters 6 and 9.

Compliance with any one of these approaches meets the intent of this Code. This Code is not intended to abridge any safety or health requirements required under any other applicable codes or ordinances.

The provisions of this Code do not consider the efficiency of various energy forms as they are delivered to the building envelope. A determination of delivered energy efficiencies in conjunction with this Code will provide the most efficient use of available energy in new building construction.

101.3 Scope: This Code sets forth minimum requirements for the design of new buildings and structures that provide facilities or shelter for residential occupancies by regulating their exterior envelopes and the selection of their mechanical systems, domestic water systems, electrical distribution and illuminating systems, and equipment for efficient use and conservation of energy.

Buildings shall be designed to comply with the requirements of either Chapter 4, 5, or 6 of this Code and the additional energy efficiency requirements included in Chapter 9 of this Code.

Spaces within the scope of Section R101.2 of the International Residential Code shall comply with Chapters 1 through 10 of this Code. All other spaces, including other Group R Occupancies, shall comply with Chapters 11 through 20 of this Code. Chapter 2 (Definitions), Chapter 7 (Standards), and Chapter 10 (default heat loss coefficients), are applicable to all building types.

101.3.1 Exempt Buildings: Buildings and structures or portions thereof meeting any of the following criteria shall be exempt from the building envelope requirements of Sections 502 and 602, but shall comply with all other requirements for mechanical systems and domestic water systems.

101.3.1.1: Buildings and structures or portions thereof whose peak design rate of energy usage is less than three and four tenths (3.4) Btu/h per square foot or one point zero (1.0) watt per square foot of floor area for space conditioning requirements.

101.3.1.2: Buildings and structures or portions thereof which are neither heated according to the definition of heated space in Chapter 2, nor cooled by a nonrenewable energy source, provided that the nonrenewable energy use for space conditioning complies with requirements of Section 101.3.1.1.

101.3.1.3: Greenhouses isolated from any conditioned space and not intended for occupancy.

101.3.1.4: The provisions of this code do not apply to the construction, alteration, or repair of temporary worker housing except as provided by rule adopted under chapter 70.114A RCW or chapter 37, Laws of 1998 (SB 6168). "Temporary worker housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an employer for his or her employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy, and includes "labor camps" under RCW 70.54.110.

101.3.2 Application to Existing Buildings: Additions, historic buildings, changes of occupancy or use, and alterations or repairs shall comply with the requirements in the subsections below.

EXCEPTION: The building official may approve designs of alterations or repairs which do not fully conform with all of the requirements of this Code where in the opinion of the building official full compliance is physically impossible and/or economically impractical and:

1. The alteration or repair improves the energy efficiency of the building; or

2. The alteration or repair is energy efficient and is necessary for the health, safety, and welfare of the general public.

In no case, shall building envelope requirements or mechanical system requirements be less than those requirements in effect at the time of the initial construction of the building.

101.3.2.1 Additions to Existing Buildings: Additions to existing buildings or structures may be made to such buildings or structures without making the entire building or structure comply, provided that the new additions shall conform to the provisions of this Code.

EXCEPTION: New additions which do not fully comply with the requirements of this Code and which have a floor area which is less than seven hundred fifty square feet shall be approved provided that improvements are made to the existing occupancy to compensate for any deficiencies in the new addition. Compliance shall be demonstrated by either systems analysis or component performance calculations. The nonconforming addition and upgraded, existing occupancy shall have an energy budget or Target UA which is less than or equal to the unimproved existing building (minus any elements which are no longer part of the building envelope once the addition is added), with the addition designed to comply with this Code.

101.3.2.2 Historic Buildings: The building official may modify the specific requirements of this Code for historic buildings and require in lieu thereof alternate requirements which will result in a reasonable degree of energy efficiency. This modification may be allowed for those buildings which have been specifically designated as historically significant by the state or local governing body, or listed in The National Register of Historic Places or which have been determined to be eligible for listing.

101.3.2.3 Change of Occupancy or Use:

Any space not within the scope of Section 101.3 which is converted to space that is within the scope of Section 101.3 shall be brought into full compliance with this Code.

101.3.2.4 Alterations and Repairs: All alterations and repairs to buildings or portions thereof originally constructed subject to the requirements of this Code shall conform to the

provisions of this Code without exception. For all other existing buildings, initial tenant alterations shall comply with the new construction requirements of this Code. Other alterations and repairs may be made to existing buildings and moved buildings without making the entire building comply with all of the requirements of this Code for new buildings, provided the requirements of Sections 101.3.2.5 through 101.3.2.8 are met.

101.3.2.5 Building Envelope: The result of the alterations or repairs both:

1. Improves the energy efficiency of the building, and

2. Complies with the overall average thermal transmittance values of the elements of the exterior building envelope in Table 5-1 of Chapter 5 or the nominal R-values and glazing requirements of the reference case in Tables 6-1 and 6-2.

EXCEPTIONS:
1. Untested storm windows may be installed over existing glazing for an assumed U-factor of 0.90, however, where glass and sash are being replaced, glazing shall comply with the appropriate reference case in Tables 6-1 and 6-2.
2. Where the structural elements of the altered portions of roof/ceiling, wall or floor are not being replaced, these elements shall be deemed to comply with this Code if all existing framing cavities which are exposed during construction are filled to the full depth with batt insulation or insulation having an equivalent nominal R-value. 2x4 framed walls shall be insulated to a minimum of R-15 and 2x6 framed walls shall be insulated to a minimum of R-21. Roof/ceiling assemblies shall maintain the required space for ventilation. Existing walls and floors without framing cavities need not be insulated. Existing roofs shall be insulated to the requirements of this Code if
a. The roof is uninsulated or insulation is removed to the level of the sheathing, or
b. All insulation in the roof/ceiling was previously installed exterior to the sheathing or nonexistent.

101.3.2.6 Mechanical Systems: Those parts of systems which are altered or replaced shall comply with Section 503 of this Code. When a space-conditioning system is altered by the installation or replacement of space-conditioning equipment (including replacement of the air handler, outdoor condensing unit of a split system air conditioner or heat pump, cooling or heating coil, or the furnace heat exchanger), the duct system that is connected to the new or replacement space-conditioning equipment shall be ((~~sealed, as confirmed through field verification and diagnostic testing in accordance with procedures for duct sealing of existing duct systems~~)) tested as specified in RS-33. The test results shall ((~~confirm at least one of the following performance requirements:~~

~~1. The measured total duct leakage shall be less than or equal to 8 percent of the conditioned floor area, measured in CFM @ 25 Pascals; or~~

~~2. The measured duct leakage to outside shall be less than 6 percent of the conditioned floor area, measured in CFM @ 25 Pascals; or~~

~~3. The measured duct leakage shall be reduced by more than 50 percent relative to the measured leakage prior to the installation or replacement of the space conditioning equipment and a visual inspection including a smoke test shall demonstrate that all accessible leaks have been sealed; or~~

~~4. If it is not possible to meet the duct requirements of 1, 2 or 3, all accessible leaks shall be sealed and verified through a visual inspection and through a smoke test by a certified third party~~)) be provided to the building official and the homeowner.

EXCEPTIONS:
1. Duct systems that are documented to have been previously sealed as confirmed through field verification and diagnostic testing in accordance with procedures in RS-33.
2. Ducts with less than 40 linear feet in unconditioned spaces.
3. Existing duct systems constructed, insulated or sealed with asbestos.

101.3.2.7 Domestic Water Systems: Those parts of systems which are altered or replaced shall comply with section 504.

101.3.2.8 Lighting: Alterations shall comply with Sections 505 and 1132.3.

101.3.3 Mixed Occupancy: When a building houses more than one occupancy, each portion of the building shall conform to the requirements for the occupancy housed therein. Where approved by the building official, where minor accessory uses do not occupy more than ten percent of the area of any floor of a building, the major use may be considered the building occupancy.

101.4 Amendments by Local Government: Except as provided in RCW 19.27A.020(7), this Code shall be the maximum and minimum energy code for single-family residential in each town, city and county.

WSR 11-17-125
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-201—Filed August 23, 2011, 4:30 p.m., effective August 23, 2011, 4:30 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100I; and amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fish-

eries targeting a harvestable amount of sockeye salmon available. 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: August 23, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-47-50100I Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/24

(a) It is unlawful to retain rockfish, Chinook, coho, and chum.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:00 AM - Midnight	8/24

(a) It is unlawful to retain rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/24, 8/25, 8/26

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(4) **"Quick Reporting Fisheries"**:

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. August 26, 2011:

WAC 220-47-50100I	Puget Sound all-citizen commercial salmon fishery—Open periods.

WSR 11-17-133
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed August 24, 2011, 8:53 a.m., effective August 25, 2011]

Effective Date of Rule: August 25, 2011.

Purpose: The department is amending WAC 388-106-0125 to reduce personal care hours in order to implement the 2011-2013 operating budget (2ESHB 1087). An average of ten percent acuity-based reduction is made to personal care service hours for adult clients receiving in-home personal care under Medicaid programs. The actual reduction will

range between six and eighteen percent per client depending on acuity.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0125.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Governor's Executive Order 10-04.

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

Reasons for this Finding: The department held a CR-102 hearing under WSR 11-12-088 on July 5, 2011. This CR-103E continues emergency rules filed under WSR 11-10-035 while the department completes the process for permanent adoption. The initial public notice (CR-101) was filed January 18, 2011, under WSR 11-03-081. Additionally, in *M.R. v. Dreyfus*, the plaintiffs asked the United States District Court for a preliminary injunction that would prevent the department from implementing the reduction in the personal care hours. The United States District Court denied the plaintiff's request, but the plaintiffs appealed that decision to the Ninth Circuit Court of Appeals. The court has not issued a decision yet. The department is proceeding with the adoption of the rules to the extent possible.

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

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

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

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

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

Date Adopted: August 18, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-11-050, filed 5/12/10, effective 6/12/10)

WAC 388-106-0125 If I am age twenty-one or older, how does CARE use criteria to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E.** CARE then further classifies you into:

(a) **Group E High** with ((~~416~~)) 393 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with ((~~346~~)) 327 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with ((~~277~~)) 260 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with ((~~234~~)) 215 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with ((~~185~~)) 168 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with ((~~138~~)) 120 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with ((~~194~~)) 176 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with ((~~174~~)) 158 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with ((~~132~~)) 115 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with ((~~87~~)) 73 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B.** CARE further classifies you into:

(a) **Group B High** with ((~~147~~)) 129 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with ((~~82~~)) 69 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with ((~~47~~)) 39 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B.** CARE further classifies you into:

(a) **Group B High** with ((~~147~~)) 129 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with ((~~101~~)) 84 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with ((~~82~~)) 69 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with ((~~47~~)) 39 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A.** CARE further classifies you into:

(a) **Group A High** with ((~~71~~)) 59 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with ((~~56~~)) 47 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with ((~~26~~)) 22 base hours if you have an ADL score of 0-4.

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

WSR 11-17-145
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed August 24, 2011, 11:10 a.m., effective August 24, 2011, 11:10 a.m.]

Effective Date of Rule: Immediately.

Purpose: Under section 6014 of the Deficit Reduction Act of 2005 (DRA), medicaid will not pay for long-term care services for individuals whose equity interest in their home exceeds $500,000. Effective January 1, 2011, these limits are to be increased each year by the percentage increase in the consumer price index-urban (CPIU). Because 2011 is the first year the excess home equity limits are indexed to the CPIU, those limits will actually increase by 1.1 percent next year, rounded to the nearest $1,000. Effective January 1, 2011, the excess home equity limits will be $506,000.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1350.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.09.500, and 74.09.530.

Other Authority: Deficit Reduction Act of 2005 (DRA).

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

Reasons for this Finding: Federal standard change of the excess home equity provisions effective January 1, 2011, based on the CPIU. This CR-103E continues emergency rules filed under WSR 11-10-038 while the department completes the process for permanent adoption. The initial public notice (CR-101) was filed December 29, 2010, under WSR 11-02-032. The department is coordinating with the health care authority (HCA) regarding current recodifying and emergency WACs HCA has filed which affect WAC references in chapters 388-513 and 388-515 WAC.

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

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

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

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

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

Date Adopted: August 23, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-12-058, filed 5/28/09, effective 7/1/09)

WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services. This section describes how the department defines the resource standard and countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (8) through (11) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (3) of this section applies.

(2) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

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

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

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

(6) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility;

(b) WAC 388-475-0250, How to determine who owns a resource; and

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

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

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

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

(ii) WAC 388-475-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver described in WAC 388-513-1367. Effective January 1, 2011, the excess home equity limits will increase to five hundred six thousand dollars. On January 1, 2012 and on January 1 of each year thereafter, this standard may be increased or decreased by the percentage increased or decreased in the consumer price index-urban (CPIU). For current excess home equity standard starting January 1, 2011 and each year thereafter, see http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

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

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

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

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

(d) For an SSI-related client, excess resources are reduced:

(i) In an amount equal to incurred medical expenses such as:

(A) Premiums, deductibles, and coinsurance/copayment charges for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;

(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility.

(ii) As long as the incurred medical expenses:

(A) Are not subject to third-party payment or reimbursement;

(B) Have not been used to satisfy a previous spend down liability;

(C) Have not previously been used to reduce excess resources;

(D) Have not been used to reduce client responsibility toward cost of care;

(E) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(F) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or boarding home is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

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

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross income must be at or below the special income level (SIL), 300% of the federal benefit rate (FBR).

(B) In a medical institution, excess resources and income must be under the state medicaid rate.

(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program when excess resources are added to nonexcluded income, the combined total is less than the:

(A) Private medical institution rate plus the amount of recurring medical expenses for institutional services; or

(B) Private hospice rate plus the amount of recurring medical expenses, for hospice services in a medical institution.

(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

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

(8) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(9) If subsection (8)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources

ordinarily allowed by law. Effective January 1, 2009, the maximum allocation is one hundred and nine thousand five hundred and sixty dollars. This standard increases annually on January 1st based on the consumer price index. (For the current standard starting January 2009 and each year thereafter, see long-term care standards at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the beginning of the current period of institutional status, up to the amount described in subsection (9)(a) of this section; or

(ii) The state spousal resource standard of forty-five thousand one hundred four dollars effective July 1, 2007 through June 30, 2009. Effective July 1, 2009 this standard increases to forty-eight thousand six hundred thirty-nine dollars (this standard increases every odd year on July 1st). This increase is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2009 and each year thereafter, see long-term care standards at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(10) The amount of the spousal share described in (9)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(11) The amount of allocated resources described in subsection (9) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(12) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (5) or (13)(a), (b), or (c) of this section applies.

(13) A redetermination of the couple's resources as described in subsection (7) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a), if subsection (8)(b) applies; or

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

(i) The first regularly scheduled eligibility review; or

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